DELHI UNIVERSITY
LIBRARY

DELHI UNIVERSITY LIBRARY

Cl. No. X 7 ...

Ac. No. Date of release for loan

This book should be returned on or before the date last stamped below. An overdue charge of 5 Paise will be collected for each day the book is kept overtime.

S. M. DAS GUPTA'S

E INDIAN INCOME-TAX ACT

FOURTH EDITION, 1941

THE
INDIAN INCOME-TAX ACT

ACT XI OF 1922

With All Subsequent Amendments

(The Law, Practice & Procedure)

BY

SUDHIR MOHON DAS GUPTA, M.A., B.L.

Pleader, Judge's Court, Khulna

FOURTH EDITION

EASTERN LAW HOUSE, LIMITED

Law Publishers,

P. 13, Ganesh Chandra Avenue, Calcutta

1941

All Rights Reserved]

Published by
D. K. DE
For EASTERN LAW HOUSE, LTD.
P. 13, Ganesh Chandra Avenue,
Calcutta

FIRST EDITION—1932
SECOND EDITION—1934
THIRD EDITION—1939
FOURTH EDITION—1941

Printed by
TRIDIBESH BASU, L.A
THE K. P. BASU PTG. WORKS,
11, Mohendra Gossain Lane, Calcutta

TO

MY FATHER

BABOO SIVENDRA CHANDRA DAS GUPTA

PLEADER, KHULNA

THIS BOOK

IS MOST RESPECTFULLY

DEDICATED

FOREWORD

Home Department,
Simla
9-7-31

I had occasion some years ago to compliment the author on the ability of his pleadings before me in Income-tax appeals, and advised him to concentrate on this branch of law. He has written what seems to be an excellent book in every way, which should prove invaluable to assessees, lawyers and assessors. His treatment of sections 10, 22 and 23 is particularly admirable

D. GLADDING

PREFACE TO THE FOURTH EDITION

The law of income-tax as laid down in the amended Act of 1932 is a highly complicated one for several reasons. The Act of 1922 had undergone various modifications from time to time before 1939 but the latest amendment is virtually an attempt to fit in a new Act within the framework of the old, and the result cannot be said to appear to be very happy on the whole. Wordings and sentences in several places remain, to say the least, ambiguous, and the intentions of the law-makers lie hidden behind the barricade of a row of negatives ; stop-gap arrangements may be noticed in section 17 or 22 (*1*) ; signs of mutilation appear prominently here and there : some of the sections have been left blank. For the purposes of the public at large these are serious drawbacks in the Act, and, as a fiscal Act, though it vitally affects the interest of all sections of people, the understanding of the provisions of the law is almost a hopeless task.

The basis of taxation too has undergone drastic changes. Income arising beyond the borders of British India has been brought within the scope of the Act. This necessitated proper definition of a resident person : one may be a resident and at the same time not ordinarily a resident, thus requiring elaborate investigation into the person's movements for several years prior to the relevent "previous year." Business loss sustained in any year may be set off against profits of subsequent years under certain conditions. The method of calculating depreciation has been modified. Persons earning taxable income have been made legally bound, under penalty, voluntarily to file returns of their income. Interests and salaries payable outside British India are liable to taxation at the maximum rate. Assessments have been made liable to be reopened even after 8 years if an income be detected to have escaped assessment.

These and similar other changes in the principles of taxation have made the administration of the Act a highly intricate process, requiring tact, patience and resourcefulness on the part of the departmental officers.

Experience has shown that ingenious people sometimes try to evade the tax without transgressing the letter of the law. The amended Act has incorporated several provisions to put a stop to such attempts.

The setting up of the Appellate Tribunal is an innovation under the amended Act, introduced in response to the public

demand for an independent Tribunal for the hearing and decision of second appeals. Hitherto the assessees had, in certain cases, the right to appeal to the Commissioner of Income-tax from the orders of the Appellate Assistant Commissioners. Moreover, the Commissioner had wide powers of review and of reference of a case to the High Court on points of law. These statutory judicial powers of the Commissioner have been withdrawn from him and vested in the Appellate Tribunal. But the condition is that an appeal to the Tribunal "shall be accompanied by a fee of one hundred rupees." Previously the assessee could approach the Commissioner for review without much cost to him, while the present provision is likely to shut out the smaller assessees from seeking the desired relief at the hands of the Tribunal.

The amendments and innovations are far-reaching and revolutionary in character, but the time is as yet premature to hazard an estimate as to the effect of the Act in practical operation.

My sincerest thanks go to Babu Sures Chandra Sen, B.L., Advocate, High Court and Babu Karuna Mohon Das Gupta, who have rendered me a great service by their valuable suggestions.

Babu Binoyendra Nath Das Gupta, M.A., B. Com., R.A. has kindly contributed the accounts portion "Book Keeping" in the Miscellaneous Chapter. I am indebted to him for his kind contribution and fully appreciate its value.

I am also grateful to Babu Birendra Mohon Das Gupta for compiling the alphabetical list of cases.

Thanks are also due to the enterprising publishers for bringing out this edition so speedily.

BAR LIBRARY,
KHULNA

SUDHIR MOHON DAS GUPTA

PREFACE TO THE THIRD EDITION

The Indian Income-tax Act (Act XI) of 1922 came into force from 1st April, 1922. The experience of thirteen years led the Government of India to consider the necessity of amending the Act on some fundamental points affecting the scope of the tax and the extent of liability, as well as the administration of the Income-tax Act. Accordingly a Taxation Enquiry Committee was appointed which submitted its report in 1936.

The Amending Act of 1939 came into operation on the 1st of April, 1939, and it was published in the Gazette of India on the 5th of February, 1939.

There have been far-reaching, revolutionary and fundamental changes by the Amending Act in its scope, incidence and charge of tax. The Amendment Act of 1939 inaugurates a new era in the administration of Income-tax law in British India by radically changing the law and the mode of its administration.

The principal changes introduced by the Amending Act (No. V of 1939) are enumerated below :

(1) Introduction of "slab system" in place of "step system". (section 3.)

(2) Foreign income accruing or arising in British India has been made taxable. Remittance basis has been practically abandoned. (section 4.)

(3) "Resident," "non-resident," and "ordinarily resident" have been defined. (section 4-A.)

(4) Income from "Local authorities" will attract liability in certain circumstances. (section 4.)

(5) Administrative side has been reorganised and re-shuffled. (section 5.)

(6) Separate assessment of co-sharers in property has been provided. (section 9.)

(7) Sources of taxable income have been reduced by amalgamation of profession with business. (section 10).

(8) Change has been effected in the principle of depreciation from "original cost" to written order value. (section 10.)

(9) Liability for legal and illegal avoidance. (section 16.)

(10) Marginal relief has been deleted from the Act but incorporated in the Annual Finance Act. (section 17.)

(11) Deduction of super-tax at source in certain cases has been introduced. (section 18.)

(12) Statutory obligation of every person whose income is likely to exceed the non-taxable limit to make a return of his income on the basis of a public notice given by the Income-tax officer. [section 22 (*1*).]

(13) Provision has been made to carry forward losses (sections 10 and 24.)

(14) "Succession" to business, etc., made more explicit. (section 26.)

(15) Penal provisions have been made more drastic. (section 28.)

(16) Provision has been made for appeal against summary assessment under section 23 (4). (section 30.)

(17) Section 34 has been remodelled on the English line and has been extended to eight and four years. (section 34.)

(18) Period under section 35 has been extended to four years. (section 35.)

(19) New chapter (Chapter VB) has been introduced containing provision as to avoidance of liability to income-tax and super-tax.

(20) Special provisions have been made for superannuation funds. (Chapter IXB.)

(21) A new schedule has been added relating to computation of profits and gains of Insurance Companies. The changes are therefore fundamental and far-reaching and necessarily this edition incorporating the amendment has been brought out. (Schedule).

(22) Establishment of Appellate Tribunal to come into force not later than two years from the commencement of the Amendment Act. (Schedule).

The present edition has been thoroughly revised, recast and brought up-to-date with illustrations, replete with up-to-date English and Indian decisions.

Besides incorporation of the Rules, a miscellaneous chapter has been added containing important discussion on subjects which daily confront the assessees.

I must express my sincere thanks and gratitude to Babu Atul Mohon Das Gupta, M.A., B.L., pleader for his valuable suggestions.

I am indebted to Babu Karuna Mohan Das Gupta, B.L., pleader, but for whom this edition would not have seen the light of day.

I am also indebted to Babu Birendra Mohan Das Gupta for the alphabetical list of cases cited.

My sincerest thanks go to those who rendered me assistance by their kind criticisms and suggestions which have been fully utilised in this edition.

Thanks are also due to the enterprising publishers for bringing out this edition so speedily.

BAR LIBRARY.
KHULNA.

SUDHIR MOHAN DAS GUPTA

PREFACE TO THE SECOND EDITION

The recent introduction of several drastic amendments, *e.g.*, assessment of the income of a deceased person by treating his legal representative as the assessee, depreciation allowance for capital assets in connection with income from profession or vocation, immediate assets of persons leaving British India, appeals against refusal to register a firm or to grant a refund claimed, *etc.* and the numerous additions and alterations in the existing sections of the Act, have necessitated the publication of a second edition.

The present edition has been thoroughly revised, recast and brought up-to-date with copious illustrations, replete with recent English and Indian decisions.

I am indebted to Babu Atul Mohan Das Gupta, M.A., B.L., Pleader for his valuable suggestions.

I am grateful to Babu Karuna Mohan Das Gupta, B.A., Editor, Income-tax Law Reports, for the preparation of the alphabetical list and Index of Cases.

My sincerest thanks to those who rendered me assistance by their kind criticisms and suggestions which have been fully utilised in this new edition.

Thanks are also due to the enterprising publishers for bringing out this edition so speedily.

BAR LIBRARY, KHULNA,
Dated, the 24th July, 1934.
} SUDHIR MOHAN DAS GUPTA

PREFACE TO THE FIRST EDITION

The publication of a critical and annotated edition of the Indian Income-tax Act, soon after the passing of Supplementary Finance Act, 1931, appears to be most opportune. The times are stirring. The extreme financial difficulties of the Government have led them to make the extraordinary steps of introducing a fresh bill in the middle of the financial year and of enacting the same by certification, thus widening and deepening the base of income-tax to an enormous extent.

As a result of that, a very large number of persons with very modest income, barely sufficient for the mere living, have suddenly been brought under the operation of the Act.

The assessees, who were confident that the Finance Act, passed almost under similar circumstances earlier in the year, had reached the high watermark of direct imposition so far as income-tax was concerned are faced with further demands in the shape of surcharge. Though on theoretical grounds all reasonable men admit that income-tax is the most equitable form of taxation, the sentiment against it is there all same : its demand is often so difficult to bear.

There is the clamour in certain quarters that clever people are hoodwinking the Government and are evading the proper burden of taxation : on the other hand, some assessees labour under the grievance that the Act is often administered as if it were an instrument and not a guide.

The Act has its own intricacies and lawyers specialising in the Act are few. The need for constantly referring to the touch-stone of the letter of law and of understanding the spirit and implications of the law seems to be widely felt, and present work, including as it does the most recent rules and rulings, is placed before the public in the hope that it may partially satisfy that need.

I have endeavoured to arrange the notes in such a way as to make them useful to the Bench and the Bar in particular and to the assessees in general.

Attempts have been made to make the book as practical as possible by introducing a miscellaneous chapter with copious illustrations.

I am grateful to Babu Atul Mohan Das Gupta, M.A., B.L., for his able and kind suggestions.

My thanks are due to Babu Pratul Mohan Das Gupta, B.Sc., and Karuna Mohan Das Gupta. B.A. for the alphabetical list of cases cited.

Thanks are due to the enterprising publishers who have brought out this edition so speedily and who have done everything to give the book a decent get-up.

BAR LIBRARY, KHULNA,
Dated, 25th January, 1932.

S. M. DAS GUPTA

TABLE OF CONTENTS

PART I

		Pages
Preface	... ...	ix
Table of Contents	... ...	xvii
Table of cases cited	... ...	xxiii
Indian Income-tax Act—Commentaries	...	1—814
Schedule	... ...	815
Indian Finance Act	... ...	826

PART II

Rules of the Central Board of Revenue with forms		827

PART III

MISCELLANEOUS

Chapter I	Interpretation of statutes ...	977
Chapter II	Mathematical Calculations ...	985
Chapter III	Stamps and Court fees and application for copies	994
	Effect of repeal	1001
	Salaries	1002
	Duties and obligation of company ...	1005
	Working Method of Recognised and Government Provident Fund ...	1010
	Bad and doubtful debts	1011
	Marginal Relief	1012
	Vakalatnama	1012
	Registration under the Act ...	1014
	Association of Persons	1016
	Difference between assessments u/s 23(2) read with section 13 and section 23(4)	1016
	Local Authority	1017
	Previous Year	1021

	Pages
Liquidator's liability to tax ...	1022
Receipts of a casual and non-recurring nature	1023
Book-keeping	1023
Authors and Income-tax ...	1034
Partnership between firms ...	1038
Bengal Finance Act 1939	1039
Transfer of Assets to wife ...	1040
Examination reports ...	1041
Finance Act, 1941	1043

PART IV

The Excess Profit Tax Act, 1940	1056
Schedule I ...	1076
Schedule II ...	1080
The Excess Profit Tax Rules, 1940 ...	1087
Schedule	1095
Index	1125

THE INDIAN INCOME-TAX ACT, 1922

TABLE OF CONTENTS

PREAMBLE

		Pages
1.	Short title, extent and commencement ...	1
2.	Definitions	7
	CHAPTER I	
3.	Charge of income-tax	53
4.	Application of Act	75
	CHAPTER II	
5.	Income-tax authorities	115
	CHAPTER IIA	
5-A.	Appellate tribunal	124
	CHAPTER III	
	TAXABLE INCOME	
6.	Heads of Income chargeable to income-tax ...	128
7.	Salaries	131
8.	Interest on securities	152
9.	Property	161
10.	Business	178
11.	Other sources	255
12.	Managing agency	263
13.	Method of accounting	265
14.	Exemption of a general nature	286
15.	Exemption in the case of life insurance ...	293
16.	Exemptions and exclusions in determining the total income	298
17.	Determination of tax payable in certain special cases	306

CHAPTER IV

DEDUCTION AND ASSESSMENT

		Pages
18.	Payment by deduction at source	309
19.	Payment in other cases	327
19-A.	Supply of information regarding dividends ...	328
20.	Certificate by company to shareholders receiving dividends.	330
20-A.	Supply of information regarding interest ...	334
21.	Annual return	335
22.	Return of income	337
23.	Assessment	360
23-A.	Power to assess individual members of certain firms, associations and companies ...	404
24.	Set-off of loss in computing aggregate income ...	409
24-A.	Assessment in case of departure from British India	422
24-B.	Tax of deceased person payable by representative	425
25.	Assessment in case of discontinued business ...	432
25-A.	Assessment after partition of a Hindu undivided family	441
26(1).	Change in constitution of a firm ...	455
26(2).	Change of ownership of business	455
26(3).	Procedure in registration of firms	469
27.	Cancellation of assessment when cause is shown	480
28.	Penalty for concealment of income or improper distribution of profits	495
29.	Notice of demand	507
30.	Appeal against assessment under this Act ...	508
31.	Hearing of Appeal	519
32.	Appeal against orders of Assistant Commissioner	531
33.	Power of review	532
34.	Income escaping assessment	535
35.	Rectification of mistake	559
36.	Tax to be calculated to nearest anna ...	561
37.	Power to take evidence on oaths etc. ...	562
38.	Power to call for information	565
39.	Power to inspect the register of members of any Company	567

CHAPTER V

LIABILITIES IN SPECIAL CASES

		Pages
40.	Guardians, trustees and agents	570
41.	Courts of Wards, etc.	572
42.	Non-residence	577
43.	Agent to include persons treated as such ...	597
44.	Liability in case of a discontinued firm or Partnership	602

CHAPTER VA

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING

44-A.	Liability to tax of occasional shipping ...	605
44-B.	Return of profits and gains	605
44-C.	Adjustment	606

CHAPTER VB

44-D.	Avoidance of Income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad ...	608
44-E.	Avoidance of tax by certain transactions in securities	611
44-F.	Avoidance of tax by sales *cum* dividend ...	613

CHAPTER VI

RECOVERY OF TAX AND PENALTIES

45.	Tax when payable	629
46.	Mode and time of recovery	631
47.	Recovery of penalties	638

CHAPTER VII

REFUNDS

48.	Refunds	640
49.	Relief in respect of United Kingdom income-tax	646
49-A.	Relief in respect of Indian State and Dominion Income	654
49-B.	Payment of Income-tax by company to be deemed payment by share-holders	654

Pages

49-C. Relief granted to company to be deemed relief granted to share-holders 655

49-D. Relief in respect of tax charged in country not providing for relief in respect of British Indian Income-tax 655

49-E. Power to set off amount of refunds against tax remaining payable 655

49-F. Power of representative of deceased person or persons disabled to make claim on his behalf... 656

50. Limitation of claims for refund 663

CHAPTER VIII

OFFENCES AND PENALTIES

51. Failure to make payments or deliver returns or statements or allow inspection 667

52. False statement in declaration 670

53. Prosecution to be at instance of Assistant Commissioner 672

54. Disclosure of information by a public servant ... 673

CHAPTER IX

SUPER-TAX

55. Charge of super-tax 686

56. Total income for purposes of super-tax ... 695

57. *Repealed* 696

58. Application of Act to super-tax 696

CHAPTER IX-A

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUND

58-A. Definitions 698

58-B. The according and withdrawal of recognition ... 699

58-C. Conditions to be satisfied by a recognized provident fund 700

58-D. Power to relax restrictions of employer's contributions in certain cases 703

58-E. Annual accretion deemed to be income received ... 703

		Pages
58-F.	Exemption of accumulated balance from income-tax	703
58-G.	Exemption of accumulated balance from income-tax and super-tax	704
58-H.	Deduction at source of income-tax payable on accumulated balance due	705
58-I.	Account of recognised provident fund ...	705
58-J.	Treatment of balances in newly recognised provident funds	706
58-K.	Treatment of fund transferred by employer to trustee	707
58-L.	Provision relating to rules	708
58-M.	Application of this chapter	709

CHAPTER IX-B

SUPERANNUATION FUNDS

58-N.	Definitions	717
58-O.	Approval and withdrawal of approval ...	717
58-P.	Conditions for approval	718
58-Q.	Application for approval	719
58-R.	Exemption of superannuation fund from income-tax	719
58-S.	Treatment of rapid contribution	720
58-T.	Reduction from pay of and contribution on behalf of employee to be included in return under section 21	721
58-U.	Liabilities of trustees on cessation of approval of fund	721
58-V.	Particulars to be furnished in respect of superannuation fund	721

CHAPTER X

59.	Power to make rules	727
60.	Power to make exemptions etc	729
61.	Appearance by authorised representative ...	744
62.	Receipts to be given	749
63.	Service of notices	750
64.	Place of assessment	750

		Pages
65.	Indemnity	755
66.	Statement of case by Commissioner to High Courts and appeal to lie in certain cases to Privy Council	767
66-A	Reference to be heard by Benches of High Courts and appeal to lie in certain cases to Privy Council	803
67	Bar of suits in Civil Court ...	808
67-A.	Computation of periods of limitation ...	811
68.	*Repealed*	812
	Transitory provisions	813
	Schedule	815

TABLE OF CASES

References are to pages.

A

	PAGES
A. A. R. Chettiar Firm, 1934 Rang. 354 : 152 I. C. 941 : 1934 I. T. R. 386	501, 504
Abbadada & Co. *v.* C. I. T., 180 I. C. 675 : A. I. R. 1938 Rang. 435	476, 775, 781
Abdul Bari Choudhury, 133 I. C. 81 : A. I. R. 1931 Rang. 194 : 9 Rang. 281 : 5 I. T. C. 352 ...	394, 487, 490, 517, 791
Abdul Hossain Musaji *v.* C. I. T., 10 I. T. C. 255 ...	235
Abdul Kader Maracayar, 54 M. L. J. 298 : 28 T. C. 372 : 51 M. L. J. 650 : 49 Mad. 742 ...	504, 782, 798
Abeyram Chunalal *v.* C. I. T., 6 I. T. C. 343 : 145 I. C. 562 : A. I. R. 1933 All. 197 ...	345, 351, 363, 763
Abouth Bros. *v.* C. I. T., 7 I. T. C. 38	472
Acchuram, 95 I. C. 308 : 7 Lah. 104	355
A. C. Macnab *v.* C. I. T., 167 I. C. 584 : A. I. R. 1936 Lah. 1001	204
Adamjee Hazi Dawood *v.* C. I. T., Burmah, 8 I.T.C. 387 : A. I. R. 1936 Rang. 85 : (1935), 13 Rang. 729 : 161 I. C. 976	532, 645, 666
Aditya Narayan Singha Bahadur *v.* C. I. T., A. I. R. 1935 All. 318	351
A. G. *v.* Lord Lansdale. 1 Sim 105	100
Agra Spinning and Weaving Mills Co, Ltd., A. I. R. 1934 All. 170 : 1934 I. T. R. 79	40, 63
Ahamadin *v.* C. I. T., 7 I. T. C. 346	276
A. H. Forbes, 119 I. C. 402 : A.I.R. 1929 Pat. 429 ; 4 I. T. C. 1	154, 156

	PAGES
Ahamadpur Katwa Rly. Co. Ltd. *v.* C. I. T., 8 I.T.C. 280 : 63 Cal. 109	204
Ahmedabad New Cotton Mills Co., Ltd., A. I. R. 1930 P. C. 56 : 271 51 C. L. J.	129
A. K. A. C. D. *v.* Chettiar Firm, 6 Rang. 492 : A. I. R. 1928 Rang. 28	783
A. K. A. C. T. *v.* Chettiar Firm, 113 I. C. 810 ...	782
A. K. A. C. T. V. *v.* Commr. of I-tax, 6 Rang. 652 : 116 I. C. 47 : A. I. R. 1929 Rang. 8 ...	516
A. K. R. P. L. A. Chettyar Firm *v.* Commissioner of Income-tax, Burma, 132 I. C. 718 ...	801
Alagananda Muralidhar *v.* C. I. T., Madras, 8 I.T.R. 69	225
Alagan Chetty, 3 I. T. C. 44	247
A. L. A. R. Bros. *v.* Commissioner of Income-tax, Madras, 3 A. P. C. 209	643
A. L. A. R. Firm by Official Receiver *v.* C. I. T., 8 I. T. C. 195	489
A. L. A. R. N. Firm *v.* C. I. T., 8 I. T. C. 195 : 1936 I. T. R. 97	488
Alcock Ashdown Co., 28 C.W.N. 762 : 47 Bom. 742	782, 789, 796, 798
Alianza Co. *v.* Bell, 5 T. C. 60	247
A. M. S. Chettyar, 123 I. C. 801	421
Amarchand Madhabji & Co. *v.* C. I. T., Bombay, 8 I. T. C. 224	226
Amar Singh *v.* C. I. T., Punjab, 1935 I. T. R. 171 ...	779
Ambabar *v.* Govinda, I. L. R. 23 Bom. 257 ...	52
Ambalal Sarabhai, 77 I. C. 699 : A. I. R. 1924 Bom. 182 : 1 I. T. C. 234	47
American Thread Company *v.* Joyce, 58 S. J. 308 ...	793
Amir Sing Thersingh *v.* C. I. T., Punjab, 8 I. T. C. 199 : A. I. R. 1935 Lah. 361	543
Amrita Bazar Patrika, Ltd., A. I. R. 1938 Cal. 241 : 174 I. C. 817	226, 229
Amritalal Gandhi, 2 I. T. C. 48	666
Amta Light Railway *v.* C.I.T., Bengal, 2 I. T. C. 509	254
Amulyadhan Auddy, 63 Cal. 1157 : 9 I. T. C. 306 : 1936 I. T. R. 164 : A. I. R. 1937 Cal. 369 ...	170
Amulyadhan Singha, A. I. R. 1937 Cal. 369 ...	260

PAGES

Anandamayee *v.* Purna, 9 M. I. A. 26 484

Anand, A. I. R. 1931 Pat. 306 : 133 I. C. 753 : 5 I. T. C. 411 ... ... 381, 494, 791

Anantapur Gold Mines *v.* Chief Commissioner of Income-tax, Madras, 64 I.C. 682 : 44 Mad. 718 789, 797

Anderson *v.* Bingham, 2 Bro & Bing. 156 N. ... 684

Andrew M'Gown *v.* Inland Revenue Commissioners, 1916 S. C. 821 684

Anglo-Persian Oil Co., Ltd., 37 C. W. N. 430 : 6 I. T. C. 419 : A. I. R. 1933 Cal. 777 : 60 Cal. 843 ... ... 245, 325, 542, 544

Anwarali *v.* Tofazal Ahamad, 84 I. C. 487 : A. I. R. 1925 Rang. 64 : 2 Rang. 391 ... .. 676, 678

Anwar Khan Mahabubkhan *v.* C. I. T.,6 I. T. R. 581 785, 803

Appovier *v.* Subba Aiyar, (1866) 11 M. I. A. 75 ... 175

A. R. A. N. Chetyar Firm, 110 I. C. 29 ... 344, 358, 394

A. R. Hattiangadi, 8 I. T. R. 83 138

A. R. A. M. A. L. A. Arunachalam Chettiar. 138 I.C. 291 347

Armitage *v.* Moore, 4 T. C. 199 575

Armitage, (1893) 3 Ch. 337 421

Arunachalam Ayyar *v.* Subbarmiyah, 46 Mad. 61-62 485, 486

Arunachalam Chettiar, 162 I. C. 1 (P. C.) 63 I. A. 233 : A. I. R. 1929 Mad. 769 : 3 I. T. C. 441 : 2 I. T. C. 38 ... ... 416, 444, 462, 793

Asghar Ali and Mahamad Ali, A. I. R. 1932 Oudh 10 783

Ashton Gas Company *v.* Attorney General. (1906) A. C. 10 : 93 L. T. 676 ... ... 148, 166, 218

Asoka Mills *v.* Commissioner of Income-tax, Bombay, 6 I. T. C. 339-340 ... ... 363, 518

Assam Railway and Trading Co. Ltd. *v.* Commissioner of Inland Revenue, 12 A. T. C. 123 ... 6

A. T. C. & A. F. Harvey *v.* C. I. T., Madras, 8 I. T. C. 311 ... ...

Atherton *v.* British Insulated and Helsby Cables, Ltd., 10 T. C. 155 2

	PAGES
Attorney General *v.* Alexander, (1874) L. R. 10 Ex. 20	114
Attorney General *v.* College at William and Mary, 1 Ves. Jun. 245	100
Attorney General .. Nottengham, 20 Times. L Rep. 257-258	681, 684
Attorney General *v.* Ruper, 2 P. Won. 125 ...	100
Attorney General *v.* Till, 7 T. C. 440	668, 669
Aurangabad Mills Ltd., 45 Bom. 1286 : 64 I. C. 9	785, 790
Australia and China Telegraph Co., 44 Mad. 489 ...	592
A. W. Dalal *v.* C. I. T., 9 I. T. C. 195 ...	280, 792

B

Babu Sahib, 22. T. C. 502 ...	793
Babulal Raj-Garhia *v.* C. I. T., 1936 I. T. R. 148 ...	173, 783
Badri Shah Sahon Lal *v.* C. I. T. 167 I. C. 464 : A. I. R. 1936	279, 417
Badridas Ramrai, 2. I. T. R. 183	402
Bai Latifa *v.* Tata Iron and Steel Co. Ltd. 8 I. T. R. 337	292
Baiznath *v.* C. I. T., 2 I. T. C. 176 : 94 I. C. 156 ...	378, 400
Bai Chambai Kanga *v.* C. I. T., Bom. 3 I. T. C. 77	666
Bai Sakina Boo, A. I. R. 1932 B. 116 : 34 B. L. R. 100	30, 48, 196, 794
Baldeodas Rameswar, 135 I. C. 281. Cal. ...	555
Balji Singh *v.* Gangaram, 99 I. C. 143	5
Balkishan Nathani *v.* C. I. T., A. I. R. 1924 Nag. 153	411
Ballarpur Collieries, 122 I. C 689	421
Ballav Das Muralidhar, 4 I. T. C. 318 : 54 Bom. 430 : A. I. R. 1930. Bom. 201	224, 225
Banshidhar Podda, A. I. R. 1934 Pat. 46 ...	225
Banshilal Abirchand, 108 I. C. 805 : A. I. R. 1928, Nag. 102 : 9 I. T. C. 206 : A. I. R. 1939 N. 121 : 1936 I. T. R. 66	271, 449, 477

	PAGES
Banke Beharilal, *v.* C. I. T., A. I. R. 1937 L. 878 : 10 I. T. C. 461	137
Bartlett *v.* C. I. R., 7 T. C. 229	440, 446
Basanti *v.* Babulal, 124 I. C. 19 : 1931 All. 225 ...	29
Basheshwar Nath *v.* Amolak Ram Aminchand & Co., A. I. R. 1933 Lah. 214	563
Basanti Lal Ramjidas *v.* C. I. T., 5 I. T. C. 383 ...	748
Basantrai Takhats Singh *v.* C. I. T., U. P., 4 I. T. C. 321 : A. I. R. 1930 All. 228	171, 257
Bates, Ch. (1928) L. J. N. 456	66
Batuk Prosad *v.* C. I. T., 5 I. T. C. 138 ...	500
Baxendale *v.* Murphy, 40 T. L. R. 784	575
B. C. G. A. Ltd. *v.* C. I. T., A. I. R. 18 L. 306 : 1937 I. T. R. 279 : A. I. R. 1937 L. 338 : 10 I. T C. 249 : A. I R. 1937 Lah. 338 ...	223, 281, 416, 784
Beare *v.* Carter, Decided by the King's Bench Division on 9th May, 1940	235
Begg Sutherland and Co., 2 I. T. C. 30 : 21 T. C. 36	463, 469, 604
Beharilal Chatterjee *v.* C. I. T., 7 I. T. C. 123 : 1934 All. 930	345, 363
Beharilall Mullick, 31 C. W. N. 557 : A. I. R. 1927 Cal. 553 : 54 Cal. 630 : 2 I. T. C. 328 ...	6, 54, 65, 129, 169, 170
Bejoy Sing Dhudhuria, 57 Cal. 918 : A. I. R. 1930 Cal. 641 (F. B.) A. I. R. 1933 P. C. 145 : 143 I. C. 145 : 60 Cal. 1029 : 6 I. T. C. 449 ...	4, 56, 130, 150, 155, 172, 197, 292
Bellorophon, 31 L. T. Rep. 756 : 445 Jour. Adm. 5...	681
Beliram *v.* C. I. T., 8 I. T. C. 380 : A. I. R. 1935 Lah. 275	450
Bell *v.* National Provident Bank of England, 5. T. C. 1 : 1904 1 K. B.	458, 466
Bengal Coal Ltd., *v.* Sri Jonardan Kishor Pal, 50 C. L. J. 293	52
Bengal Nagpur Railway Co., Ltd., 27 C. W. N. 34 : 70 I. C. 46 : 1 I. T. C. 178	200, 204

	PAGES
Bent *v.* Robertie, (1887) 3 Ex. D. 66	143
Benarasi Das *v.* C. I. T., 163 I.C. 658 : A. I. R. 1936 L. 489 : 1936, I. T. R. 346 : 1936 I. T. R. 217	382, 395, 490, 505
Beyon *v.* Thorpe, 7 A. T. C. 190	140, 249
B. H. Patel *v.* C. I. T., 9 I. T. C. 110	462
Bhagabati Prosad, 138 I. C. 682 : A. I. R. 1932 All. 390	386, 524
Bhagabandas Nankchand *v.* C. I. T., 10 I. T. C. 448	223
Bhagabat Ch. De *v.* Haragovinda Pal, 20 W. R. 269	28
Bhagat Halai, 3 I. T. C. 48 : 4 I. T. C. 48 ...	277, 371, 793
Bhagat Jivan Das *v.* Income Tax Commissioner, Lahore, 117 I. C. 637 : A. I. R. 1929 Lahore 609 : 117 I. C. 157	5, 6
Bhagawandas Harakumar Das *v.* C.I.T., C. & P.V.P. (Misc. Judicial, Case No. 54 B. of 1936 from Nagpur)	474
Bhanjee, 44 M. L. J. 991	356
Bharat Insurance Co., Ltd. *v.* C. I. T., 38 C. W. N. 375	232
Bhanjilal, 90 I. C 1018 : 6 Lah. 373	774
Bhikampur Sugar Concern, I Srinivasan Tax Case, Page 29 : 53 I. C. 301 : A. I. R. 1919 Pat. 377 F. B. : 1 I. T. C. 29	17, 31
Bhikazi Venkatesh *v.* C. I. T. 8 I. T. C. 410 : A.I.R. 1927 N. 283	209, 245, 277, 354, 372
Bhiwani Sahi Bishambar Doyal *v.* C. I. T., 1936 I. T. R. 222 : 9 I. T. C. 412	351, 395, 488
Bhogilal Hargovindas Patel *v.* C.I.T., 9 I. T. C. 111	467
Bhola Saha Narasing Das *v.* C. I. T., 41 T. C. 401 : A. I. R. 1930 L. 738 : 116 I. C. 454 ...	201, 202, 777
Binny & Co., Ltd., 82 I. C. 17 : 2 I. T. C. 466 : 50 Mad. 920	68, 198, 666

	PAGES
Bonjraj Hukumchand *v.* C. I. T., 5 I. T. C. 303 : A. I. R. 1931 Cal. 683 : 58 Cal. 1446 : 35 C. W. N. 589	224, 227, 369, 378, 780, 800
Biradhamal Lodh *v.* Income-tax Commissioner, A.I.R. 1934 All. 217 : 56 All. 504 : 1934 I.T.R. 164	447, 518, 527
Bir Bhan, A. I. R. 1933 L. 29	345
Birendra Kishore Manikya *v.* Secretary of State for India, I Srinivasan Tax cases Page 67 : 48 Cal. 766 : 6 I. T. C 67 : I. T. C., 67 : 25 C. W. N. 80	16, 24, 26, 789
Biseswar Prosad Pursattomdas, 7 I. T. C. 74 ...	763
Bishnupriya Choudhury, 1 I. T. C. 261 : A. I. R. 1924 Cal. 337 : 50 Cal. 907	354, 372, 777
Bissendayal Doyalram, A. I. R. 1938 Cal. 636 : 1938 I. T. R. 165	223, 418
Bisseswarlall Brijlal, 34 C.W.N. 363 : A. I. R. 1930 Cal. 449 : 128 I. C. 327 : 4 I. T. C. 36 : 57 Cal. 1336 : 4 I. T. C. 355	47, 48, 471, 472, 792
B. I. Fletcher, 1937, I. T. R. 428	136
B. K. Pal & Co. *v.* C. I. T., 7 I. T. C. 204 : A. I. R. 1939 Cal. 196 : 182 I. C. 270 : 6 I. T. R. 395	228, 415, 418, 467, 774
B. N. Elias *v.* C. I. T., Bengal, 40 C. W. N. 476 : 9 I.T.C. 1 : 3. I.T.R. 408 : I.L.R. 63 Cal. 538	69, 70, 71, 168, 175
Board of Revenue *v.* Madras Export Co., Ltd., 46 I. L. R. Mad. 360	588, 590, 593, 596
Board of Revenue *v.* Mylapore Hindu Permanent Fund, A. I. R. 1928 M. 684	160
Bombay Trust Corporation Ltd., A.I.R. 1928 Bom. 448 : 34 C.W.N. 230 : 52 Bom. 702 : A. I. R. 1930 P. C. 54	95, 598
Bonar Law Memorials Trust *v.* Commr. Inland Revenue, 17 T. C. 508	103

	PAGES
Botts Case, 1921, A. C. 171	67
Bourne and Hollingsworth *v.* Ogden, 45 T. L. R. 222 : 4 T. C. 349	231
Bowers *v.* Harding, 3 T. C. 22	201
Boyd *v.* Stephens, 5 A. T. C. 247	623
Brickwood *v.* Reynold, (1898) 1 Q.B. 95 : 3 T. C. 600	247
Brijlal Rangalal, 106 I. C. 193 : 2 I. T. C. 458 ...	359, 372, 373, 790
Briggs *v.* Hurtley, 19 L. T. Ch. 416	100
British Co. Corporation *v.* Regent	636
British Mexican Co. *v.* The Commr. of Inland Revenue, 16 T. C. 570	58
British Sugar Manufacturers Ltd. *v.* Haris, (1938) 2 K. B. 220	264
Brizznath, 94 I. C. 156	272
Brizlal *v.* Commissioner of Income-tax, Bengal, 4 I.T.C. 369, ...	447
Brown *v.* National Provident Institution, (1921) 2 A. C. 222	54
Buchobi *v.* Makhanlal, I. L. R. 3 All. 55 ...	52
Bulchand Keshav Das, A. I. R. 1930 Sind. 301 : 128 I. C. 678 : (1934), 2 I. T. R. 197 ...	47, 453, 454, 478, 516, 782, 808
Bulaki Saha *v.* Crown, 1 I. T. C. 256	539
Bulaki Sahi, 86 I. C. 870 : 6 Lah. 30 : ...	799, 806
Burma Railway Co. *v.* Secy. of States, 64 I. C. 801	167
Burma Corporation Ltd. *v.* C. I. T., 4 I. T. C. 49 ...	238
Burnly S. S. Co., 3. T. C. 275	218
Burn & Co. *v.* Commissioner of Income-tax, Bengal, 38 C. W. N. 205 : 61 Cal. 1932 : 7 I. T. C. 86	549, 550
Bush, Beach & Gent, Ltd. *v.* Road, 8 I. T. R. 36 : Decided by the King's Bench Division on 26th May 1939	58, 235

C

C. A. M. K. Kassi Chettiar, 2 I. C. 98	794
Calauhoun *v.* Brooks	490

PAGES

Calcutta Exchange Association Ltd., 8 I. T. C. 85 : 62 Cal. 547 : 39, C. W. N. 327 : 1935 I. T. R. 105, 174

Calgan *v.* Administrator General of Madras, 15 M. 424 100

Caltness Iron Co. *v.* Black, I. T. C. 287 ... 215

Canadian Minister of Finance *v.* Smith, 5 A. T. C. 621 : 42 T. L R. 734 ... ... 129, 229

Cameron *v.* Panderghurst, 8 I. T. R. 75, decided on the 12th of March, 1940, by the House of Lords 58, 235

Captain Maharaj Kumar Gopal Saran Narain Singh *v.* C. I. T., 1935 P. C. 143 : 156 I. C. 856 : 39 C. W N 1093 P. C. : 8 I. T. C. 340 (P. C.) ... 139, 258

Carlill *v.* Carbolic Smoke Ball Co., 1893 Q. B. 256... 304

Carlisle and Silloth Golf Club *v.* Smith, (1913) 2 K. B. 177 · 6 T. C. 198... ... ... 59, 160

C. Chettiar, 122 I. C. 349 : A I. R. 1930 Mad. 119... 95

Central Talkies Circuit *v.* C. I. T., Bombay, 7 I. T. R. 628 : 180,I. C. 556 787

Central Provinces Manganese Ore & Co., Ltd. *v.* C. I. T., 9 I. T. C. 191 245

Central India Spinning and Weaving Co. *v.* C. I. T., 10 I. T. C. 131 : A. I. R. 1937 Nag. 154 ... 532, 533

Chandrika Prosad Ram Swarup *v.* C. I. T., U. P. & C. P., 7 I. T. R., 269, ... 64

Chang lo Chwan, 115 I. C. 697 : A. I. R. 1929 Rang. 102 ... ... 272, 794

Chamber of Commerce, Hapur, A. I. R 1936 All. 704 : 4 I. T. C. 393, ... 102

Chandra Sen Janai, 50 All. 589 : 108 I. C. 234 ... 352, 372, 374

Champalal Giridharilal *v.* King Emperor, A. I. R. 1933 Nag. 358 ... ... 669, 671

Chellappa Chettiar *v.* C. I. T., (1937) I. T. R. 97 : 10 I. T. C. 181 : 1937 Mad. 734 : A. I. R. 1930 Mad. 119 : 4 I. T. C. 188 ... ... 57, 204

Chengal Varaya, 91 I. C. 137: 48 Mad. 836 ... 269, 271

	PAGES
Chetyar Firm, A. I. R. 1928 Rang. 108 : 117 I. C. 564 : 122 I. C. 902 : A. I. R. 1939 Rang. 4 : A. I. R. 1925 Rang. 245 : A. I. R. 1930 Rang. 274	344, 358, 372, 382, 777, 806
Chibbet *v.* Robinson, 3 A. T. C. 529	140, 248
Chimanlal Rameshwarlal *v.* C. I. T., Bengal, 8 I. T. R. 408	225, 441
Chinnamal Achi *v.* Chinamuna Saithakhati Rowther, 158 I. C. 776	637
Chiranjilal & Sons *v.* C. I. T., A. I. R. 1937 L. 415 : 7 I. T. C. 42 : A. I. R. 1937 L. 445 ...	52, 475
Chotoylal, 5 I. T. C. 4467 : A. I. R. 1932 All. 83	388, 395, 546, 556
Chokeylal Mulidhar, A. I. R. 1932 All. 471 : 4 I. T. C. 7	447
Chouthmal Golapchand, 6 I. T. R. 733 : A. I. R. 1939 Cal. 559	417
Chokalingam, 2 Rang. 579 : 84 I. C. 521, ...	785
Chunilal Kalayandas, 87 I. C. 35 : 1 I. T. C. 419 ...	130, 196
Chunnamal Saligram, A. I. R. 1931 Lah. 320 : 121 I. C. 508	165, 166
Chunibhai Madhablal, Bart *v.* C. I. T., 9 I. T. C. 345	417
Chunilal Madhablal *v.* C. I. T., 39 B. L. R. 1209 ...	786
Chunilal Nathumal *v.* C. I. T., 5 I. T. C. 261 ...	394
City of London Corporation *v.* Styles, 2 T. C. 239	247
C Laksmi Sevak Sahi *v.* C. I. T., 6 I. T. C. 42 ...	774
Colonial Sugar Refining Company, Irving (1905) A.C. 369	5, 386 806, 365
Commercial Properties Ltd., A. I. R. 1928 Cal. 456	792
Committee of A. B. Lunatic *v.* Simpson, 7 I. T. C. 222	575
Cook *v.* Knalt, 4 T. L. R. 104	149
Cooper *v.* Blackstone, 5 T. C. 347	143
Corporation *v.* Aderson, 10 Cal. 445	184

	PAGES
Corporation of Calcutta *v.* Cossipore Municipality, 1922 P. C.	779
Countess Warwick Steamship Co., Ltd. *v.* Ogg., 8 T. C. 652, ...	247
Costantines Co., 11 T. C. 730, ...	57
Cowan's case, (1920) 7 T. C. 372 C. A. ...	140, 149 248
C. P. L. E. Chettiar Concern *v.* C. I. T., Burma, 7 I. T. C. 200, ...	791
Crichton's Oil Company, (1902) 2 C. H. 86 ...	421
C. T. A. C. T. Nachiappa, A. I. R. 1933 R 230 : 7 I. T. C. I, ...	44
C. T. V. S. Cheyar Firm, 122 I. C. 902 : 8 Rag. 644	270
Currimbhoy Ebrohim Baronetcy, 5 I. T. C. 491 ...	574
Curtis Brown Ltd. *v.* Jarvis, 14 T. C. 744, ...	57
Curtis *v.* J & Goldfield Ltd., 9 T. C. 319 · 4 A. T. C. 183	222, 234, 250
C. I. R. *v.* Brown, 6 A. T. C. 65	113
C. I. R. *v.* Burrel, 9 T. C. 27	66
C. I. R. *v.* Fishers Executors, 42 T. L. R. 340 ...	66
C I. R. *v.* Forest, 8 T. C. 704	66
C. I. R. *v.* Grannite, 6 A. T. C. 678 : 13 T. C. 1 ...	234
C. I. R. *v.* Longford, 7 A. T. C. 211	576
C. I. R. *v.* Lysaght, 44 T. L. R. 374	113, 114
C. I. R. *v.* Maxse, 12 T. C. 41	199
C. I. R. *v.* Okaley, 9 T. C. 582	66
C. I. R. *v.* Pakenham, 7 A. T. C. 211	576
C. I. R. *v.* Samson, 8 T. C. 20	66
C. I. R. *v* The Anglo Brewing Co. Ltd., 12 T. C. 803	249
C. I. R. *v.* Von Glehn, 2 T. C. 232	129, 227
C. I. R. *v.* Warnes, 12 T. C. 227	129, 229
C. I. R. *v.* Wright, 5 A. T. C. 525	66
C. I. R. *v.* Zorab, 6 A. T. C. 68	113
C. I. T. *v.* A. A. R. Chettiar, 142 I. C. 708 : 6 I.T.C. 385 : A. I. R. 1933, Rang. 30	504, 507
C. I. T., Burma *v.* A. L. V. R. P. Firm, 8 I.T.R. 531 : A. I. R. 140 R. 281	462
C. I. T. *v.* A. S. A. Concern, A. I. R. 1937 R. 257 ...	229

PAGES

C. I. T., Madras *v.* Abdul Aziz Saheb, 7 I. T. R. 647 285

C. I. T., Bombay *v.* Abubakar Abdul Rahaman, 9 I. T.C. 102 : 163 I.C. 351 : 1935 B. 225 : 7 I.T.R. 139 : 41 B. L. R. 232 : 182 I. C. 712 : A. I. R. 1939 Bom. 195 ... ... 38, 69 102, 169

C. I. T. *v.* Achrulal Munalal, 1938 N. L. J. 172 ... 274

C. I. T., Bombay *v.* Ahmedabad Millowners Association, 7 I. T. R. 369 ... ... 64, 69

C. I. T. *v.* Ahmedabad Advance Mills, 44 C. W. N. 379 (P. C.) : 8 I. T. R. 95 : A. I. R. 1940 P. C. 36 ... ... 96, 158

C. I. T. *v.* Ahmedabad New Cotton Mills, A. I. R. 1930 P. C. 56 282

C. I. T., Madras *v.* Andhra Insurance Ltd., O. P. No. 34 of 1937 819

C. I. T. *v.* Arunachalam Chettiar, A. I. R. 1924 Mad. 474 : 47 M. 160 ... ... 411, 416

C. I. T. *v.* Aryan Chettiar, 46 L. W. 901 ... 552

C. I. T. *v.* Badrdas Ramrani, A. I. R. 1940 Nag. 88 : 7 I. T. R. 613 : 64 I. A. 102 : A. I. R. 1937 P. C. 133 : I. L. R. 1937 Nag. 191 ... 283, 348 394, 483

C. I. T., Bombay *v.* Bank of Chettinad Ltd., 7 I. T. R. 1 : 190 I. C. 218 (P. C.) 588

C. I. T. *v.* B. B. Jubb, A. I. R. 1938 Rang. 315 ... 775

C. I. T. *v.* Beharilal Ramchandra, A.I.R. 1937 Oudh. 416 : 10 I. T. C. 473 : 169 I. C. 404 ... 513, 523 784

C. I. T. *v.* Best & Co., I. L. R. 55 Mad. 832 : A. I. R. 1932 Mad. 434 ... ... 419, 458 467

C. I. T. *v.* Bhanjee Ramjee, 44 I. L. R. Mad. 773 : 1 I. T. C. 147 ... 601, 586 593

C. I. T. *v.* Bhogilal Hargovandas Patel, 9 I.T.C. 110 418, 419

C. I. T. *v.* Bisweswar Singh, A.I.R. 1935 Pat. 342 ... 288

C. I. T. *v.* Biswanath Vaskar Satte, 10 I. T. C. 386 : A. I. R. 1937 B. 493 : 174 I. C. 327, ... 209, 239

C. I. T. *v.* Bombay Burmah Corporation Ltd., 143 I. C. 532 : A. I. R. 1933 R. 175 ... 140

	PAGES
C. I. T. *v.* Bombay Trust Corporation, 179 I. C. 649 : A. I. R. 1936 P. C. 269 : 164 I. C. 18 : 52 Bom. 216 : 56 Bom. 216 : 34 C. W. N. 230 : A.I.R. 1930 P. C. 54 : 41 C. W. N. 33 ...	353, 378 588, 589 784, 788 491
C. I. T., Madras *v.* Bosotto Brothers Ltd., 8 I. T. R. 41	262
C. I. T. *v.* Buckingham and Carnatic Co., Ltd., 9 I. T. C. 114 : A.I.R. 1936 P.C. 5 : 159 I. C. 545...	215, 243
C. I. T. *v.* C. P. L. R. Chettiar Concern, A. I. R. 1934 Rang. 132 ...	781
C. I. T., Burma *v.* Central Bank of India, Rangoon, 188 I. C. 614 : A. I. R. 1940 R. 123 ...	153
C. I. T. *v.* Central Popular Insurance Co. Ltd., 7 I. T. R. 556 : A. I. R. 1939 Sindh. 364 : 185 I. C. 683	787
C. I. T., Bombay *v.* Chamanlal Mangaldas & Co., 10 I. T. C. 58	475
C. I. T. *v.* Chanlo Chawan, A. I. R. 1929 R. 102 ...	281
C. I. T. *v.* Chitnavis, 6 I. T. C. 456	254
C. I. T., Bombay *v.* Chotolal Mohonlal, 8 I.T.R. 114...	70, 175
C. I. T. *v.* Corrimbhai Ebrahim & Sons Ltd., A. I. R. 1933 Bombay 422 : 422 A. I. R. 1936 P. C. 1 : 60 I. L. R. Bom. 172 : 7 I. L. R. 60 Bom. 172	192, 584 587, 588 589, 595
C. I. T., Bombay *v.* D. & L. Pitale, A. I. R. 1938 Bom. 343 : 5 I. T. C. 716	70
C. I. T., Bombay *v.* D. R. Naik, 12 I. R. Bom. 201 : A. I. R. 1939 Bom. 362 : 41 B. L. R. 652 : 184 I. C. 836 : 1939 I. T. R. 362 ...	172, 539 688
C. I. T., Burma *v.* Dey Bros., A. I. R. 1936 R. 219...	537
C. I. T., Lahore *v.* Dewan Bahadur Kishan Kishore, 7 I. T. R. 427	64
C. I. T. *v.* Dhakeswar Prosad, A. I. R. 1936 Pat. 295 : 1936 I. T. R. 71	279
C. I. T., Madras *v.* Diwan Bahadur S. L. Mathias, 7 I. T. R. 48 : 43 C. W. N. 225	23

PAGES

C. I. T., Bombay *v.* Dwarkanath Haris Chandra Pitale, 5 I. T. R. 716 : A. I. R. 1938 Bom. 353 : 1937 I. T. R. 716 ... ... 69, 175

C. I. T. *v.* Fletcher, A. I. R. 1937 P. C. 261 : 5 I. T. R. 428 : 64 I. A. 323 : 39 B. L. R. 1050 : 169 I. C. 658 : 82 T. C. 321 ... ... 138, 141 239

C. I. T. *v.* Gangaram Bal Mukunda, A. I. R. 1938 Lah. 10 : 1937 I. T. R. 464 378

C. I. T., Bombay *v.* Gangaram Kanayalal & Co., 8 I. T. R. 421 : A. I. R. 1940 S. 214 ... 384, 390

C. I. T., Burmah *v.* Gaspher & Company, Rangoon, 8 I. T. R. 100 230

C. I. T., Madras *v.* Gelli Krishanmurthi & others, 8 I. T. R. 121 477

C. I. T. *v.* Ghulam Hydar Bundali, 10 I.T.C. 14 ... 587, 602

C. I. T., Bombay *v.* Gond Saraswat Brahmin Co-operative Housing Society Ltd., 10 I.T.C. 422 175

C. I. T. *v.* Gopal Bajnath Monohar, A. I. R. 1935 Bom. 410 : 89 T. C. 273 : A. I. R. 1936 Bom. 386 : 38 B. L. R. 929 : 4 I. T. R. 417 : 165 I. C. 518 ... .. 537, 546 786, 787

C. I. T. *v.* Gopal Saran, 7 I. T. C. 257 : A. I. R. 1935 P. C. 143 : 13 Pat. 661 : 8 I. T. C. 340 ... 129, 131

C. I. T. *v.* Grain Merchants Association, 176 I. C. 736 : 40 B. L. R. 1227 : 1938 I, T. R. 427 : A. I. R. 1939 Bom. 45 102

C. I. T. *v.* Haji Jamal Nurmahamad, 1 I. T. C. 396 : A. I. R. 1925 Bom. 251 202

C. I. T., Madras *v.* Harveys Ltd. 8 I. T. R. 307 ... 210

C. I. T., Burma *v.* Haji Md. Osman, 10I. T. C. 330 : 1937 Rang. L. R. 174 587

C. I. T. *v.* Hirabai Desai & Sons, 8 I. T. C. 246 : 1936 I. T. R. 95 279

C. I. T. *v.* Hungerford Investment Trust Co., Ltd., A. I. R. 1936 P. C. 219 : 3 I. T. R. 188 ... 290, 805

C. I. T., Bombay *v.* Ibrahimji Hakimji and others, 8 I. T. R. 501 : A. I. R. 1941 Sindh. 9 ... 69, 541,

C. I. T. Burma *v.* J. I. Milne, A. I. R. 1934 Rang. 4 . 148 I. C. 98 : 1934 I. T. R. 28 : 1937 I. L. R. 11 Rang. 454 ... ... 786, 787

	PAGES
C. I. T. Madras *v.* J. M. Md. Ismail Rowther, A. I. R. 1940 Mad. 433	58
C. I. T. *v.* Jadavi Zhaverchand Gandhi, 10 I. T. C. 383	387
C. I. T. *v.* Joynarayan, A. I. R. 1929 Nag. 243 ...	387
C. I. T. *v.* Jessingbhai Ugarchand, 175 I. C. 816 : A. I. R. 1938 Bom. 350	452, 476
C. I. T. *v.* K. B. K. K. Katrak, A. I. R. 1937 S. 234 171 I. C. 375 : 1937 I. T. R. 527	140
C. I. T. *v.* K. H. Hatrak, 1937 I. T. R. 527 ...	787
C. I. T. *v.* K. K. C. T. Chettiar Firm, A. I. R. 1930 R. 249 : 126 I. C. 213	202
C. I. T. Burmah *v.* Kakina Dairy, Rangoon, A. I. R. 1908 Rang. 260 F. B. 51	779
C. I. T. *v.* Kantaga Grant Ltd., 10 I. T. C. 438 ...	51
C. I. T. *v.* Karuppa Kangani, 55 M. L. J. 844 : A. I. R. 1929 M. 35 : 3 I. T. C. 282	54
C. I. T., Bombay *v.* Khemchand Ramdas, 42 C. W N. 873 : A. I. R. 1938 P. C. 175 : 40 B. L. R. 854 : 65 I. A. 236 : 175 I. C. 1 : 6 I. T. R. 414 : 8 I. T. R. 159 : 190 I. C. 875 : A. I. R. 194 S. 92 : 13 Ind. R. S. 102	69, 282, 283, 383, 546, 565
C. I. T. *v.*, Kikabhai, 121 I. C. 38 : 4 I. T. C. 178 : A. I. R. 1930 Nag. 6	30, 472
C. I. T., Bengal *v.* Krishna Kumar Seal and another, 36 C. W. N. 1144 : A. I. R. 1932 Cal. 886 ...	165
C. I. T., B. & O. *v.* Kumar Kamaksh Narayan Singh, Maharaja of Padma, 8 I. T. R. 563 ...	259
C. I. T. *v.* Lakshminarayan, 59 I. L. R. B. 618 : 3 I. T. 367	290, 292
C. I. T. *v.* Laksmi Narayan Badridas Agarwal, A. I. R. 1934 Nag. 183 : 1934 I. T. R. 246 : 153 I. C. 7 : 31 N. L. R. 32	352, 396, 402, 491
C. I. T. *v.* Lokmul Bajumal, 174 I. C. 140 ...	544
C. I. T., Bombay Presidency *v.* Luxmidas Devidas, 1937 I. T. R. 584 : 5 I. T. R. 589 : 39 B. L. R. 910 : 10 I. T. C. 414	70, 71, 102, 168, 175

	PAGES
C. I. T., Burmah *v.* M. A. Baperia & others, 7 I. T. R. 225	64, 69
C. I. T. *v.* M. A. L. Chettiar Firm, 156 I. C. 463 : A. I. R. 1935 R. 171 : 8 I. T. C. 182 ...	276
C. I. T. *v.* Maharaja of Darbhanga, 12 Pat, 318 : 142 I. C. 437 : A. I. R. 1933 P. C. 108 : 37 C. W. N. 598 ; 57 C. L. J. 318	275, 282
C. I. T. *v.* Maharajadhiraj of Darbhanga, 126 I. C. 833 : 9 Pat. 240 : A. I. R. 1930 Pat. 81 ...	368
C. I. T. *v.* Maharajadhiraj Kumar Biseswar Singha, A. I. R. 1940 Pat. 24	784
C. I. T., U. P. *v.* Maharaj Kumar of Vizianagram, 3 I. T. R. 155	808
C. I. T., Bengal *v.* Mahilaram Ramjidas, 44 C. W. N. 929 (P. C).8 I. T. R. 422	541
C. I. T. *v.* Mahomed Mehdi, 155 I. C. 180 : 8 I. T. C. 210 : A. I. R. 1935 Oudh. 305	341
C. I. T. *v.* Makanji Lalji, A, I. R. 1937 Bom. 479 : I. L. R. 1937 Bom. 827...	73, 172
C. I. T., Bombay *v.* Manufacturer's Life Insurance Company, Civil reference, No. 11 of 1937 ...	819
C. I. T. *v.* Masookhlal Zaveri, 168 I. C. 209 : A. I. R. 1937 R. 102 : 1937 A.L.R. 26 : 5 I.T.R. 646	460, 462, 778
C. I. T. *v.* Mathukaruppan Chettiar, 7 I. T. R. 29	462
C. I. T. *v.* Mazagaon Dock Ltd., A. I. R. 1938 B. 374 : I. L. R. (1938) B. 374 : 7 I. T. C. 283 : 1934 I. T. R. 284	241, 242 463
C. I. T. *v.* Mcdonald and Company, 7 I. T. C. 466 : 37 B. L. R. 126	232, 263, 264
C. I. T. *v.* Mercantile Bank of India Ltd., A. I. R. 1936 P. C. 219, 40 C. W. N. 1157 : (1936) 38 B. L. R. 995	34, 303
C. I. T. *v.* Metro Goldwyn Mayer Ltd., (Decided on 2nd Nov. 1938 in Civil Reference No. 10 of 1938) : 7 I. T. R. 176	587, 596
C. I. T. *v.* Mohonlal Chotolal, 10 I. T. C. 46 ...	303
C. I. T., C. P. and U. P. *v.* Matiram Nandaram, 8 I. T. R. 132 (P. C.) 44 C. W. N. 373 (P. C.) : A. I. R. 1940, P. C. 33	237

PAGES

C. I. T. *v* C. Mattay Gangaraju, 2 I. T. C. 109 ... 534

C. I. T. *v*. N. N. Chettyar firm, 1934 I. T. R. 83 ... 440

C. I. T. *v*. N. N. Firm, 2 I. T. R. 85 462

C. I. T., Bombay *v*. Narain Das & Co., 7 I.T.R. 305 : 187 I. C. 893 : A. I. R. 1939 S. 318 ... 462, 787

C. I. T., Bombay *v*. Nathulal Bachar Das & Co., 10 I. T. C. 72 475

C. I. T. *v*. Nawab Shaha Nawaz Khan, A. I. R. 1938 Lah. 741 : 1938 I T. R. 370 ... ... 378, 514, 526

C. I. T. *v*. Nawal Kishore Kharatilal, 172 I. C. 332 (P.C.) : A. I. R. 1938 P. C. 8 ... ... 360, 404, 601

C. I. T. *v*. P. L. L. Firm, 1934 Rang. 132 ... 791

C. I. T. *v*. P. R. A. L. L. Mathu Karuppan Chettiar, 7 I. T. R. 29 462

C. I. T. *v*. P. V. R. Visalakshmi Achi, A. I. R. 1937 Rang. 258 : 170 I. T. C. 127 : 10 R. R. 58 : A. I. R. 1937 Rang. 238 ... ... 584, 587 779

C. I. T. *v*. P. T. Chengal Varaya Chettiar, A. I. R. 1937 Mad. 300 : 167 I.C. 864 : 10 I. T. C. 136 603

C. I. T., B & O. *v*. Pandit Dhaneswardhar Misra, 8 I. T. R. 41, ... 23

C. I. T. *v*. Pethu Permal Chettiar, A. I. R. 1929 Mad. 34 202

C. I. T. *v*. Piroj Bhai Contractor, A. I. R. 1937 B. 214 544

C. I. T., Madras *v*. Power Securities Corporation Ltd., (unreported) 188

C. I. T., Bombay *v*. R. S. Gangaram Kanayalal & Co., A. I. R. 1940 S. 214 387

C. I. T. *v*. Raja of Babbile, A. I. R. 1937 M. 515 : 10 I. T. C. 146 289

C. I. T. *v*. Rangoon Electric Tramway and Supply Co. Ltd., A. I. R. 1933 R. 22 : 6 I. T. C. 374 : 1933 I. T. R. 315 ... ... 138, 239

C. I. T., B. & O. *v*. Rani Prayag Kumari Devi, 8 I. T. R. 25 64

C. I. T. *v*. Remington Type Writer Ltd., 55 Bom. 243 588

	PAGES
C. I. T., Madras *v.* S. L. Mathias, A. I. R. 1937 Mad. 795 : 7 I. T. R. 48 : 43 C. W. N. 225 : 171 I. C. 1 : 46 L. W. 247 :	51, 586 788
C. I. T. *v.* S. M. Chitnavis, A. I. R. 1932 P. C. 178	784
C. I. T. *v.* Saldhana, 138 I. C. 1 : A. I. R. 1932 Mad. 378	70
C. I. T. *v.* Sabur District Urban Bank Limited, 8 I. T. R. 269	69
C. I. T. *v.* Sarangpur Cotton Manufacturing, Ltd., 172. I.C. 1 : 42 C. W. N. 194 : 40 B. L. R. 257	281, 283
C. I. T. *v.* Seth Birdichand, 6 I. T. R. 367 ...	803
C. I. T., *v.* Seth Margoomal, 7 I. T. R. 208 : 182 I. C. 278	50, 473, 476
C. I. T., U. P. & C. P. *v.* Seth Mathuradas Mahta, 7 I. T. R. 160	211
C. I. T. *v.* Sindh Light Railway, 6 I. T. C. 271 . A. I. R. 1932 S. 192 : 138 I. C, 673 ...	4, 440, 458, 463
C. I. T., B. & O. *v.* Sir Kameswar Singh, 137 I. C. 289 : 39 C. W. N. 1255 : A. I. R. 1935 P. C. 172 : 8 I. T. R. 52 · 182 I. C. 841 : 6 I. T. R. 686	51, 230, 236, 417
C. I. T., Bengal *v.* Shaw Wallace & Co. A.I.R. 1932 P. C. 138 : 36 C. W. N. 653 P. C. : 55 C. L. J. 386	4, 139
C. I. T. *v.* Subramanian Chettiar, A. I. R. 1928 Mad. 889 : 3 I. T. C. 187	202
C. I. T. *v.* Tata & Sons Ltd., 7 I. T. R. 195 ...	264
C. I. T., Bombay, *v.* Tejbhandas Matumal, A. I. R. 1936 S. 68 : 163 I. C. 275 : 1936 I. T. R. 227	202
C. I. T., Madras *v.* Vallimai Achi, (Decided on the 1st day of Nov. 1938 O. P. No. 105 of 1938) : 180 I. C. 270	71, 359
C. I. T., Burmah *v.* Ved Nath Singh, 8 I.T.R. 222 : A. I. R. 1940 R. 65 : 186 I. C. 807 ...	65, 73, 539
C. I. T. *v.* V. S. R. Firm, A. I R. 1935 R. 109 ...	275
C. I. T., Bombay *v.* Western India Life Assurance Co. Ltd., A. I. R. 1938 Bom. 345	819

	PAGES
Commissioner of Income Tax, Burma *v.* A. A. R. Chettiar Concern, 142 I. C. 758	504
Commissioner of Income Tax *v.* A. R. M. A. L. A. Arunachalam Chettiar, A. I. R. 1932 Mad. 433	503
Commissioner of Income Tax, Madras, *v.* A. V. P. Mr. Lakshmian Das Chettiar, subsequently represented by his legal representative L. Deivenai Achi, 8 I. T. R. 545	74
Commissioner of Income Tax *v.* Badridas Ram Raz Shap Akola, 7 I. T. R 613	385
Commissioner of Income Tax *v.* Bakiram Radmal, A. I. R. 1934. Nag. 175	752, 754
Commissioner of Income Tax, Burma, *v* Bengal Urban Co-operative Society Ltd., A. I. R. 1934 R. 17 : I. L. R. 11 Rang. 521 7 I C. 61 ...	56, 659, 743
Commissioner of Income Tax *v.* Bosatto Brothers ited, 8 I. T. R. 41	177, 215
Commissioner of Rvenue *v.* British Salmson Aero Engines Ltd., 7 I. T. R. 245	58
Commissioner of Inland Revenue *v.* Barriel, 9 T. C. 27	57, 421
Commissioner of Income Tax, Burma, *v.* C. P. L. Chettiar Concern, A. I. R. 1934 Rang. 132 ...	797
Commissioner of Inland Revenue *v.* Cad Walder, 5 T. C. 101	112
Commissioner of Income Tax *v.* Dewan Bahadur S. L. Mathias, 7 I. T. R. 48	96
Commissioner of Inland Revenue *v.* Fleming, 14 T. C. 88 : 7 A. T. C. 387	162, 575
Commissioner of Income Tax, Bombay *v.* Ibrahimiji Hakimji & others, 8 I. T. R. 501 ...	64, 164
Commissioner of Income Tax *v.* J. V. Saldhana, 138 I. C. 1 : A. I. R. 1932 M. 378	64, 571
Commissioner of Income Tax, Burma *v.* K. A. R. K. Firm, A. I. R. 1934 R. 1, ...	215
Commissioner of Income Tax *v.* R. C. Gajapati Narayan Deo, Raja of Parlakamedi, 91 I. C. 940 : 49 M. 22	539, 541, 542
Commissioner of Taxation *v.* Kirk, (1900) A. C. 588	593

	PAGES
Commissioner of I. Tax, Bombay *v.* Khemchand Ramdas, A. I. R. 1934 S. 148 : 62 T. C. 360	421
Commissioner of Income Tax, Burma *v.* Kakina Diraj, Rangoon A. I. R. 1938 (Rang) 260 (F.B.)	24
Commissioner of Inland Revenue *v.* Korean Syndicate Ltd., 1 K. B. 598 : 12 T. C. 181 ...	178, 193
Commissioner of Income Tax, B. & O. *v.* Maharajadhiraj Sir Kameswar Singh of Darbhanga, A. I. R. 1934 Pat. 178	22
Commissioner of Inland Revenue *v.* Marine, Steam and Turline Company, (1920) 1 K. B. 193 : 12 T. C. 178	178, 192
Commissioner of Inland Revenue *v.* Makse 4 A. T. C. 467 : 12 T. C. 41	194
Commissioner of Income Tax *v.* Mellor, I. L. R. 48 B. 504	463
Commissioner of Income Tax *v.* N. N. Burjorjee, A. I. R. 1931 R. 101 : 131 I. C. 507... ...	539
Commissioner of Income Tax *v.* N. N. Firm, A. I. R. 1934 R. 13	459
Commissioner of Income Tax, Madras *v.* Nachel Achi, A. I. R. 1934 M. 63	465, 551
Commissioner of Income tax *v.* National Mutual Life Association of Australasia, 134 I. C. 555 : A. I. R. 1931 B. 440 : A. I. R. 1933 B. 427 : 1933 I. T. R. 350 . 6 I. T. C.	160, 593 65, 426
Commissioner of I. Tax *v* Patridge, 49 M. 296 ...	201
Commissioner of Income tax, Burma *v.* Rangoon Electric Tramway Supply Co., Ltd., 142 I. C. 239 : A. I. R. 1933 R.	151, 45
Commissioner of Income tax *v.* Rani Rudh Kumari 8 I. T. C. 292	607
Commissioner of Income tax *v.* Solomon & Sons, 72 T. C. 58 : 11 R. 514	214
Commissioner of Income tax, Bengal *v*, Shaw Wallace & Co. 136 I. C. 743 : 36 C. W. N. 683 : 6 I. T. C. 178 : 59 I. A. 212 ...	5, 6, 68, 258, 807
Commissioner of Income tax *v.* T. S. T. S, Chettiar firm, A. I. R. 1931 R. 333	556

PAGES

Commissioner of Income tax *v.* The Ballarpur Collieries, 4 I. T. C. 255 212

Commissioners *v.* University College of North Wales, 5 T. C. 408 103

D

Dalget *v.* Ramratan, 25 I. C. 26 484

Damodar Prosad, 120 I. C. 639 : 3 I. T. C. 405 ... 524

Daphne *v.* Shaw, 6 A. T. C. 21 : 11 T. C. 256 ... 209

David Sasson and Company, Ltd., A. I. R. 1940 Bom. 169 : 8 I. T. R. 7 ... ... 243, 415

Dayaram Sovaram, 2 I. T. C. 226 794

Dayaldas Kushiram *v.* C. I. T., (Central), 8 I. T. R. 138-139 189 : I. C. 844 : A. I. R. 1940 Bom. 234 : 42 B. L. R. 414 ... ... 123, 767

Debichand *v.* C. I. T., 4 I. T. C. 33 810

Debidut *v.* Shriram, A I. R. 1932 Bom. 292 : 34 B. L. R. 236 ... ... 677, 678

Dabidut *v.* Narayan Das, 56 Bom. 324... ... 679

Debidas Madanlal *v.* C. I. T., A. I. R. 1934 Nag. 183 7 : I. T. C. 132 775

Delhie Cloth Company *v.* C. I. T., 54 I. A. 421 : 53 M. L. J. 819 5

Delhie Cloth Mills *v.* C. I. T., A. I. R. 1927 P. C. 242 805

Delhie Cloth and General Mills Co., Ltd., 117 I. C. 383 : A. I. R. 1929 Lah. 326 : 560, 777, 807

Delhie Cloth and General Silk Ltd., 47 C. L. J. 1 (P. C.) 806

Dental Stores, A. I. R. 1931 Lah. 341 377

Deokinandan & Sons, A. I. R. 1930 Lah. 605 : ... 355: 377 550

Deokarandas, 4 I. T. C. 398 : 126 I. C. 786 ... 389

Derry *v.* C. I. R., 6 A. T. C. 754 113

De Silva, *v.* De Silva, 5 B. L. R. 784 27

De Souza *v.* Commissioner of Income tax, U. P., 6 I. T. C. 134 : A. I. R. 1932 All. 374 ... 754, 755

Devis *v.* Devis, (1894) 1 Ch. 393 261

	PAGES
Devon Mutual Steamship Insurance Association *v.* C. I. R., 13 T. C. 184	247
Dey Brothers *v.* C. I. T., Burma, 8 I. T. C., Burma, 8 I. T. C. 186 : 1935 I. T. R. 213 ...	753
D. H. and C. H. Pitale of Bombay, 1938 Bom. 353	168
Dhaniram Dharampal *v.* C. I. T., 4 I. T. C. 253 : A. I. R. 1936 Lah. 468 : 9 I. T. C. 233 : 163 I. C. 857	345, 508
Dhakeswar Prosad Narayan Singh *v.* C. I. T., B. & O., Privy Council Appeal No. 290 of 1938 (Decided on 23rd January, 1939	808
Dibrugarh District Club, 55 Cal. 971 : 32 C. W. N. 691	59, 60
Dickenson *v.* Gross, 1 I. T. C. 14	475
Dinanath Hansraj, 2 I. T. C. 304	810
Dinanath Hemraj, A. I. R. 1927 All. 299 : 25 A. L. J. 225 : 100 I. C. 756 : 49 All. 616 ...	758, 762, 763, 765, 777
Dinshaw *v.* C. I. T., 6 I. T. C. 150 : 66 I. A. 318 : 58 Bom. 579 : A. I. R. 1934 P. C. 180 Mad.	223, 225, 254, 784
Dinshaw Maneckjee Petit, 51 Bom. 370 : 2 I. T. C. 255	63
Dituram Idan *v.* C. I. T., 1937 I. T. R. 502 : A. I. R. 1937 Lah. 814	783, 803
Diwan Chand *v.* C. I. T., Punjab, (1934) 2 I. T. R. 382	792
D. K. Balaji Rao *v.* C. I. T., Madras, 8 I. T. C. 80	141
Dodington *v.* Hallet, (1750) V. S. 497	260
Dorai Swami, Ayyar & Co., 74 I. C. 22 : A. I. R. 923 Mad. 682	46
Doyaram Ramdas *v.* Secretary of State, 1 I. T. C. 250	810
Drake *v.* Attorney General, 52 R. R. 162 ...	780
Dulichand *v.* C. I. T., 4 I. T. C. 33	387
Dunichand, A. I. R. 1929 Lah. 593 : 117 I. C. 69 ...	386, 512, 518
Dunichand Dhaniram *v* C. I. T., A. I. R. 1926 Lah. 161 7 Lah. 201	378
Duncan's Executors *v.* Farmer, 5 T. C. 417 ...	140, 248

	PAGES
Durbasha Nasarwangi Mehata *v.* C. I. T., Bombay, (Decided on 22nd August, 1934, Bombay High Court	429, 431
Dyer *v.* Dyer, 2 W. R. 141	28

E

E. A. Cohen, 129 L. T. 797	193
E. Abbot *v.* C. I. T., 9 I. T. C. 9 : 2 I. T. L. R. 205	143
Eastern Extension Australian and China Telegraph Co., Ltd, 44 Mad. 489	200
Ebrahim Bhai Mulla Badruddin *v.* C. I. T., 5 I. T. C. 302	277
Ebrahim Saha & Co, 110 I. C. 207 : A. I. R. 1928 8 Mad. 543	6
Edinburgh Southern Cemetery Co. *v.* Kinmount, 2 T. C. 516	215
Egyptian Delta Land and Investment Co., Ltd. v. Todd, 44 T. L. R. 747	626
Ellis C Reid, A. G. R. 1931 Bom. 333	493
E. M. Chettiar Firm *v.* C. I. T., A. I. R. 1930 Rang. 4 : 122 I. C. 898 : 7 Rang. 635 : 8 Rang. 437...	281, 512, 525, 791, 808
Emperor *v.* Kajorimal Kalayan Das, 4 I. T. C. 60 ...	805
English Crown Spelter Co , Ltd. *v.* Baker, 5 T.C. 327	222, 234
English and Scottish Co-operative Society, 1929 M. W. N. 534	742
English and Scottish Trusts *v.* Burnton (1892), 2 Q. B. 700	155
Equitable Life Assurance *v.* Bishop, 1 Q. B. 177 ...	59, 61
Erischsen *v.* Last, 4 T. C. 422	192
Evans and Philips, 4 A. T. C. 20	218
Eyres *v.* Finnieston Engineering Co., 7 T.C. 74 ...	249

F

Faley *v.* Fletcher, 7 W. R. 141	258
Farmer Company Cotton's Trustees, 31 T. L. R. 478	793
Farmer and Merchant's Bank *v.* C. I. R., 69 F. 912 (C. C. A.) 1932	246

	PAGES
Feroz Saha, A. I. R. 1930 L. 197 : A. I. R. 1933 P. C. 198 : 144 I. C. 886 : 65 M. L. J. 335 : 125 I. C. 191 . A. I. R. 1930 Lah. 187 : 132 I. C. 704 : 32 P. L. R. 234	269, 272, 274, 793, 794, 802, 807
Fir *v.* Cedar Timber Company, 101 L. J., P. C. 113 1932 A. C. 441	186
Fisher's Executors Case, 10 T. C. 302	67, 68
Fitzerald *v.* Comr. In. Revenue, 1919, 2 K.B. 154 : 7 T. C. 284	54
Fletcher *v.* C. I. T., 8 I. T. C. 320	440
Forbes, A. I. R. 1929 Pat. 1419 : 42 Cal. 151 : 19 C. W. N. 138	421, 809
Frydson *v.* Glynn Johnes, 1 A. T. C. 346 ...	201
Fry *v.* Shiels Trustees, 6 T. C. 585	572, 575

G

Ganesh Das, 100 I. C. 675 : A. I. R. 1927 Lah. 248	539, 545
Ganeshilal Bhattawala, Misc. Case no. 447 of 1934 decided on 5th May, 1938	219
Ganeshilal Ramchand, Decided on 11th. Nov. 1940 Civil Mis. No. 444 of 1939	285, 384
Gangaram Balmukunda *v.* C. I. T., A. I. R. 1937 Lah. 721 : 1937 I. T. R. 464 : 177 I. C. 36 ...	281, 283, 371, 387, 784
Gangasagar, A. I. R. 1929 All. 919 : 28 A. L. J. 26 : 120 I. C. 435 4 I. T. C. 97	196, 503, 344, 347, 380, 421 670, 671, 673
Gangasagar Ananda Mohun Saha, 33 C.W.N. 1190 : 55 Cal. 953 : A. I. R. 1928 Cal. 836 ...	443, 455, 776, 790, 795
Gardner *v.* Lucas, 3 A. C. 562	5
Gavazzi *v.* Mace, 42 T. L. R. 389	623
General Corporation Ltd. *v.* C. I. T., 9 I. T. C. 29 : 1936 Mad. 267 : 1935 I. T. R. 350 ...	417

PAGES

Ghansyamdas Ramkumar, 6 I. T. C. 198 ... 48, 447

Ghum Ram *v.* Mahamad Yusuf, 1928 All. 549 : 111 I. C. 686 30

Gillat and Watts *v.* Colquhoun, 2 T. C. 76 ... 247

G. I. M. Gregory & Co., 41 C. W. N. 132 : I. L. R. (1937), 2 Cal. 7 ... ... 459, 780

Gimson *v.* C. I. R., 9 A. T. C. 170 66

Giridhar Das Hariballav Das, 3 I. T. C. 83 ... 247

Glasgow Corporation Water Commissioner *v.* Miller, 2 T. C. 131 59

Gokul Chand, 94 I. C. 128 : A. I. R. 1927. Lah. 449 270, 783

Gokul Chand Diwanchand *v.* C. I. T., 7 I. T. C. 358 275

Gokul Chand Jagannath, 76 I. C. 139 ... ... 780, 796

Gokul Das Laxmichand *v.* C. I. T., A. I. R. 1937 Sindh. 201 418

Gokuldas Mills, Ltd., 80 I. C. 282 217

Gokuldas Chunilal *v.* Commr. of I. Tax, A.I.R. 1932 Nag. 152 : 140 I. C. 490 ... ... 517, 599

Gomedali Laxinarayan *v.* C. I. T., 82 T. C. 239 : A. I. R. 1935 Bom. 412 ... ... 73, 688

Gopalchand Chotey, 133 I. C. 621 811

Gopal Das Parsotamdas *v.* C. I. T., A. I. R. 1940 All. 537 : 9 I. T. R. 130 : 192 I. C. 41 ... 346, 348

Gopee *v.* Swami, 28 Mad. 517 99

Gopeekristo Gossain *v.* Ganga Prosad Gossain, 6 M. I. A. 53 27

Gopinath Naik, 9 I.T.C. 136 : 1936 All. 286 : 58 All. 200 : A. I. R. 1936 All 286 : 1936 I. T. R. 1 : 1935 A. L. J. 1342 ... ... 279, 284, 367, 383, 388, 490

Gopiram Gobindaram *v.* C. I. T., 9 I. T. C. 289 : 1936 I. T. R. 157 280

Gordhandas G. Mehta, 8 I. T. R. 80 291

Gossain *v.* Gossain 6 M. I. A. 53 28

Governor-General in Council *v.* Chotelal Shibdas and another, 7 I. T. R. 411 636

Govinda Saran, A. I. R. 1927 Oudh. 465 : 105 I. C. 556 : 2 I. T. C. 480 ... ... 440, 492, 644, 783

	PAGES
Govt. Mail Motor Service, 6 T. T. C. 120 : 136 I. C. 707	216, 380, 487
Gould *v.* Curtis, 6 T. C. 293 : 29 T. L. R. 469 ...	297, 298
Graham *v.* Green, (1925), 2 K. B. 37	415
Grainger & Sons *v.* Guough, 3 T. C. 462 : (1896), A. C. 325	247, 590, 591
Gramophone and Typewriter Co., Ltd. *v.* Stanley, 5 T. C. 358	196
Granite City Steamship Co., 13 T. C. 1 ..	207
Greenwood *v.* Smith, 3 K. B. 275	593
Gresham Life Assurance Society, Ltd. *v.* Bishop, (1902) A. C. 287	158
Gresham Life Assurance Society, Ltd. *v.* Styles, 67 I. T. 497 : 3 T. C. 185	160, 193
G. Seammel and Nephew, Limited *v.* Rowles, (1939) All. England Law Reports Annotated, 337 ...	230
Gulab Rani, A. I. R. 1921 Sindh 41	637
Gulichand Tulsidas, 118 I. C. 535 : A. I. R. 1929 Lah. 246	381
Gully *v.* Bishop's Executor, 10 B. I. C. 584 ...	305
Gunda Subbayya *v.* C. I. T., Madras, (1939) I. T. R. 21 : 181 I. C. 514 : A.I.R. 1939. Mad. 371	283, 368, 384
Guptoo Estates, A. I. R. 1930 Cal. 1 : 34 C. W. N. 327 : 50 C. L. J. 375	165, 167, 191, 257, 261, 263
Gurmuk Roy *v.* Secretary of State, 2 I. T. R. 412 ...	808
Gurucharan Prasad Khatri, 1931 A.L.J. 336 : A.I.R. 1931 All. 421 : 131 I. C. 875	500, 540, 554, 555

H.

Hafiz Abdul Gaffoor and others *v.* C. I. T., C. P., 7 I. T. R. 625	472
Haigh *v.* Brooks, 10 A. & E. 309	305
Hakim Ram Prasad, 9 I. T. C. 181	234
Hall *v.* C. I. R., 5 A. T. C. 154	66

	PAGES
Hancock *v.* General Reversionary and Investment Company, Ltd. 7 T. C. 358 ...	228, 249
Hanturam Bharumal *v.* C. I. T., 1938 I. T. R. 290	439
Hara Kissen Das, 132 I. C. 492 : 8 I.T.C. 9 : A.I.R. 1935 Lah. 959	4, 534
Hara Krishna Das, 8 I.T.C. 275 : 132 I. C. 430-429 :	500, 522, 524
Harananda Rai Harabhagat Rai *v.* C. I. T., 9 I.T.C. 215	440
Harak Chand Tularam, 3 I. T. C. 363	203
Hartland *v.* Diggins, 10 T. C. 247	148
Haridas Premji, A. I. R. 1930 Cal. 409 : 4 I. T. C. 475	48
Harisingh Santokchand, 2 I. T. C. 80	33, 443
Harvey *v.* Great Northern Rly. Co., 1 D. E. G. and J. 606	34
Harmukchand Jagadharmal, 3 I. T. R. 212 ...	779
Harmuk Ray Dulichand, A. I. R. 1928 Cal. 587 : 114 I. C. 90 : 56 Cal. 39 : 32 C. W. N. 710-713	352, 355, 359, 370, 372, 374, 376, 563
Havelisaha Sardanilal *v.* C. I. T., A. I. R. 1933 Lah. 829 : 7 I. T. C. 32 : 146 I. C. 550 ...	157, 173
Hawken *v.* Compton, 2 T. C. 306	794
Hazarilal *v.* Emperor, 20 N. L. W. 214 : 1937 I. T. R. 610	671
Hazarimal Kalayanmal, A. I. R. 1930 All. 209 ...	796
Hazi Abdullah Sahi & Co., 70 I. C. 30 ...	797
Hazi Ali Jan *v.* C. I. T., 7 I. T. C. 372 : 164 I. C. 1018	278
Hazi Ali Mahomed *v.* C. I. T., 8 I. T. R. 243 ...	390, 541, 781
Hazi Bibi *v.* Sir Sultan Mahamad, 32 Bom. 599 ...	123
Hazi Ghulam Rasul Khudabakash *v.* C.I.T., 19 Lah. 113 : 1937 I. T. R. 506 : 181 I. C. 332 : A.I.R. 1938 Lah. 105	472, 473
Hazi Nur Mahammad Hazi Alimulla, 10 I.T.C. 426	379, 472, 475, 564
Hazi Rahimtulla Hazi Tar Mahamad, 92 I. C. 351 : 2 I. T. C. 118	809, 810

	PAGES
Hazi Taj Mahammad Hazi Abdul Rahaman & Co. *v.* Commissioner of Income tax U. P., 6 I.T.C. 240	546
Headmasters' Conference, 10 T. C. 748... ...	98
Helsby, (1894) 1 Q. B. 742	485
Hemming *v.* Williams, (1871), L. R. 6 P. C. 480 ...	802
Hemraj Kanji *v.* C. I. T. 6 I. T. C. 354 : A. I. R. 1933 Sindh. 146	234, 793
Highland Railway *v.* Special Commissioner, 2 T. C. 151	439
Hilder *v.* Dexter, 71 L.J. Ch. 781	237
Himalayan Assurance Company, Ltd. 42 C.W.N. 440	819
Himat Ram Pali Ram *v.* Commissioner of Income tax, B. & O., 5 I. T. C. 134	754
Hiralal Saha *v.* C. I. T., 7 I. T. C. 471 ...	275
Hirananda Jairam *v.* C. I. T., A. I. R. 1936 Lah. 452	417
Hosenbhai Bhori, 89 I. C. 92 : A.I.R. 1925 Nag. 415	47
Hoshnakamal Thakardaw *v.* C. I. T., 1933 Lah. 822	784
Hossen Kassem Dada *v.* C. I. T., Bengal, 41 C.W.N. 629 : 10 I. T. C. 204	474
Hotz Trust, Simla, A. I. R. 1929 Lah. 929 : 5 I.T.C. 8 : 129 I. C. 116	63, 70, 572
Howden Boiler and Armaments Co., Ltd. *v.* Stewart, 9 T. C. 205	439
Howletts Case, 10 T. C. 454	149
Howrah Amta Light Railway Ltd., 32 C.W.N. 757 : 2 I. T. C. 509	197, 221
H. S. Gour of Nagpur, 3 I. T. R. 350 : 6 I. T. C. 317	251, 256, 782
H. T. Couville *v.* C. I. T , Punjab, 9 I. T. C. 238 : 41 C. W. N. 33 : 66 C. L. J. 194 : A. I. R. 1936 P. C. 269 : 164 I. C. 18	51
Hudson Bay Co., 25 T. L. R. 709 : 5 T. C. 424 ...	57, 197
Hughes *v.* Utting & Co., Ltd., 8 I. T. R. 57 ...	58, 235
Hughes *v.* Vargas, 9 Times L. Rep. 471 ...	681, 984
Hukumchand Hardatrai *v.* C. I. T., 2 I. T. C. 140	534, 774, 794
Humayun Reja Choudhury *v.* C. I. T., 10 I. T. C. 7	101
Hungerford Investment Trust, Ltd., A. I. R. 1936 P. C. 219 : 40 C. W. N. P. C. 1157 ...	303

PAGES

Hunt & Co., 14 T. C. 165 371

Hunter *v.* Rex, 5 T. C. 13 297

Husanaly & Co., 43 Mad. 498 : 1 I. T. C. 48 : 55 I.C. 1003 ... ... 506, 669

Hyett *v.* Lennard, (Decided on the 3rd of May by King's Bench Division) 237

I

Imperial Tobacco Co. of India, Ltd., 26 C.W.N. 745 : 67 I. C. 902 ... ... 592, 598

Inahimsa Rowther, 58 Mad. 455 22

India Radio Cable Co. *v.* C. I. T. 8 I. T. C. 233 : 1937 I. T. R. 270 (P. C.) : 41 C. W. N. P. C. 869 : 168 I. C. 769 : 30 B. L. R. 1025 : A.I.R. 1937 P. C. 189 : (1937) 239 B. L. R. 1025 (P. C.) 199, 232, 264

Indian etc. Rowther *v.* C. I. T., Madras, 3 I. T. C. 33 : 51 Mad. 455 129

Income tax Commissioner *v.* Chitnavis, 59 I. A 290 : 28 N. L. R. 205 : 36 C. W. N. 797 : 137 I. C. 772 225

Indian Life Assurance Co. *v.* C. I. T., A. I. R. 1931 Bom. 150 788

Indu Bhusan Sarkar *v.* Commissioner of Income tax, Bengal, A.I.R. 1926 Cal. 819 : 30 C.W.N. 529 19

Indra Chand Kajriwal *v.* C. I. T., B. & O., 7 I. T. R. 506 533

Inland Revenue Commissioner *v.* Sangster, 12 T. C. 208 194

Irish Provident Association *v.* Kavanagh, 4 A. T. C. 115 466

Isabella Coal Co., 29 C. W. N. 927 : 2 I. T. C. 87 ... 199, 220, 221

Ismail Bhai, 68 I. C. 623 752

Iswar Dass *v.* C. I. T., 13 I. C. 523 : A. I. R. 1931 Lahore 432 275

Iswar Das Dharam Chand, 92 I.C. 249 ... 783

J

	PAGES
Jacob *v.* C. I. R., 10 T. C. 1	66
Jacson *v.* British Mexican Petroleum Co., Ltd., 16 T. C. 570	58
Jagamandhar Das *v.* C. I. T., 156 I. C. 939 : A. I. R. 1935 All. 378	279
Jagannath *v.* C. I. T., 2 I. T. C. 180	275
Jagannath Therani *v.* C. I. T., 2 I. T. C. 4 : 4 Pat. 385 : 86 I. C. 777 : A. I. R. 1925 Pat. 405 ...	250, 512, 524
Jaharmal Ladhuram v. Harisingh, 28 I. C. 538 ...	62
Jaidayal Madan Gopal, 143 I. C. 391 : 6 I. T. C. 226 : 54 All. 846	29, 428, 478
Jalabrato De *v.* Balaram De, 26 Cal. 281 ...	678
Jambudas Debidas (unreported)	777
Jambudas *v.* C. I. T., A. I. R. 1927 Nag. 336 : 104 I. C. 336	277, 371, 776, 387
James Cycle Co. *v.* Commr. of Inland Revenue, 12 T. C. 103	794
James Shiptone & Sons *v.* Morris, 14 T. C. 413 ...	460
Jamunadhar Patdhar *v.* C. I. T. 155 I.C. 526 : A.I.R. 1935, L. 201	342
Jangi Bhagat Ramavatar A. I. R. 1933 Pat. 127 : 3 I. T. C. 418 : 1930 Pat. 121 : 121 I.C. 332	353, 388, 505, 784, 801
Janki Kumar *v.* C. I. T., 51 T. C. 42	259
Janki Das Gopinath Karnal, 82 T. C. 457 ...	448, 449
Jathu Shaha Nathen Shaha *v.* Commissioner, Punjab, 6 I. T. C. 165 : 138 I. C. 187 : A. I. R. 1932 Lah. 575	447, 471, 792
Jawla Prosad Chobe *v.* C. I. T., Bengal, (1935), 3 I. T. R. 395, ...	546
Jenab Bibi, 1932 Sindh. 48, ...	810
Jhuri Misra *v.* C. I. T. 3 I. T. C. 248, ...	490
Jiwan Das *v.* C. I. T., Lahore, 117 I. C. 637 ...	4
J. M. Casey, A. I. R. Pat. 44	32

PAGES

J. N. Surty *v.* Chaiter Firm, 4 Rang. 265, ... 485

Jnandabala Dasi *v.* Buttokristo Bairagi, 1906 I. L. R. Cal. 1040, ... 33, 636

Joharmal Uttamchand, 2 I. T. C. 301 793

Jhon Smith and sons *v.* Moore, 12 T. C. 966, ... 193, 224, 247

Johnson Bros. & Co. *v.* C. I. R., 12 T. C. ... 147

Jonson *v.* Warwick, 67 Q. B. 516 484

Jones *v.* Commissioner of Inland Revenue, 1 K. B. 711 178

Jones *v.* Wright, 6 A. T. C. 895 575

Jones *v.* Lankashire Coal owners Association, 1937 A. C. 827 59

Joshep Hargreaves Ltd., 82 L. T. Rep. 132 : (1900) 1 Ch. 347 ... ... 682, 684

Jatram Sher Sing, A. I. R. 1934 All. 559 : 7 I. T. C. 173 : 2 I. T. R. 129 ... ... 494, 791

Jaynarayan Matiram, A. I. R. 1926 Nag. 243 ... 199

Jayram and others *v. v.* King Emperor, A. I. R. 1923 Pat. 111 : 72 I. C. 954 636

Jayram Matiram, A. I. R. 1929 Nag. 243 ... 777

Jubilee Mills, 89 I. C. 595 : 2 I. T. C. 25 ... 56

Jugal Kishore Mukt Lal *v.* Commissioner of Income-tax, U. P. 6 I. T. C. 185 : (1938), 6 I. T. R. 494 273, 451, 468, 476

Jupudi Kesav Rao *v.* C. I. T. 9 I. T. C. 64 : 43 M. L. W. 155 : 1935 M. W. N. 1237 : A. I. R. 1936 Mad. 67 : 70 M. L. J. 13 ... 476

J. W. Smith *v.* Incorporated Council of Law Reporting for England and Wales, 6 T. C. 477 ... 245

Jyoti Prasad Singh Deo, 1 I. T. C. 103 : 6 Pat. L. J. 62 : 254 259

K

K. Ananda *v.* Commissioner of Income tax, B. & O., 5 I. T. C. 417 : P. L. T. 915 ... ... 518, 528

Kadik Ltd. *v.* Clark, 4 T. C. 549 196

Kajari Mal Kalyan Mal. A. I. R. 1930 All. 209 : 122 I. C. 741 : 3 I. T. C. 451 : A. I. R. 1930 All. 211 ... ... 340, 342, 486, 778, 798

	PAGES
Kalayanji Vithaldas and others *v.* Commissioner of Income tax, 10 I. T. C. 163 : 41 C. W. N. 385 : 1937 I. T. R 90 : A. I. R. 1937 P. C. ...	36
Kaladhan Suratee Bazar, *In re* : A.I.R. 1931 Rang. 1	173
Kalumal Sarimal *v.* Commr. of I. T., Punjab, A. I. R. 1929 Lah. 461 : 3 I. T. C. 341 : 103 I. C. ...	439, 444, 522
Kamalapat Motilal, 1939 I. T. R. 347 : 7 I.T. R. 374	215, 243
Kameswar Singh, A. I. R 1933 P. C. 108 : 142 I. C. 437 : 12 Pat. 318	270, 274
Kanahaiyalal, 9 I. T. C. 368	758
Kanappa Naicker *v.* C. I. T., A.I.R. 1937 Mad. 316 : 10 I. T. C. 154 : 168 I. C. 13 : 45 L. W. 33 ...	462, 474
Kangra Valley State Co., Ltd., 16 Lah. 479 : 7 I. T. C. 375 : Lah. 146 I. C. 599	230, 234, 790
Karam Chand *v.* C. I. T., A. I. R. 1931 Lah. 601 : 131 I. C. 630 : 12 Lah. 714 : 5 I. T. C. 315 ...	518, 526
Karam Elliahi Mahamad Safi, 116 I.C. 547 : 3 I.T.C. 456	212, 417
Karachi Chamber of Commerce and Karachi Indian Merchant's Association, 1939 I. T. R. 575 ...	244
Kartar Singh *v.* C. I. T., A. I. R. 1937 L. 905 : 175 I. C. 739	290
Karuppaswami Moopanar *v.* C. I. T., 7 I. T. C. 283 : 1936 I. T. R. 284 : 1934 I. T. R. 284 : 2 I. T. R. 284 :	203, 462
Karuppia Pillai *v.* C. I. T., Madras, 8 I. T. R. 1 .	604
Kasinath Bagla, A. I. R. 1932 All. 1 : 4 I. T. C. 472	395, 546, 588
Kayaram Ramdas, 78 I. C. 940	809
Kedarnath Kesriwal, 34 C. W. N. 1093 : A. I. R. 199 Cal. 209	388, 395, 545, 546, 555
Kesridas & Sons, A. I. R. 1926 L. 201	270
Keshordea Chamaria, 8 I. T .C. 472 : 3 I. T. R. 418: A. I. R. 1937 Cal. 583 : 1939 P. C. 163 : 43 C. W. N. 1009 : 1939 I. T. R. 394 : 10 I. T. C. 249 : 63 I. L. R. Cal. 401 :	69, 168, 169, 576, 774

PAGES

Kesridas & Sons, A. I. R. 1926 L. 201 270
K. H. Mady, 8 I. T.R. 179... 236
Khan Shahib Mahamad Naqui, 31 P. L. R. 418 : 5. I. T. C. 279 : A. I. R. 1931 L. 656 ... 420
Khemchand Ramdas, A. I. R. 1932. Sindh 1 ... 800
Khemchand Thawoomal, 78 I. C. 438 809
Khemchand Thoomal *v.* C. I. T. 10 I. T. C. 245 ... 245
Khusiram Karamchand, 100 I. C. 774 : A. I. R. 1928 Lah. 219 · 2 I. T. C. 517 : 356, 374, 385, 777,
Killing Valley Tea Company *v.* Secretary of State for India, I Srinivasan Tax Cases, Page 54 : (48 Cal. 161) : 31 C. L. J. 421 : 61 I. C. 107 : 1. T. C. 54 ... . 17, 31, 195, 779
Kinlock *v.* C. I. R., 5 A. T. C. 469 113
King *v.* Income tax Special Commissioner, (1936) 1 K. B. D. 447 514
King and Patrige, 92 I. C. 943 : 49 Mad. 296 ... 199, 218
Kirtanlal Rasiklal *v.* C. I. T., 7 I. T. C. 209 ... 353, 779
Kishen Kishore *v.* C. I. T., 141 I. C 417 : A. I. R. 1933 L, 284 : A. I. R. 1935 Lah. 361 ... 171, 290, 542, 544
K. M. Selected Coal Co., 3 Pat. 295 220
Kopokum *v.* C. A. M . A. L. Firm, 140 I. C. 156 ...
K. R. M. T. T. Thyagaraja Chettiar *v.* Collector of Madura, 163 I. C. 60 : A. I. R. 1936 Mad. 398 635
Krepal Sing *v.* C. I. T., A. I. R. 1937 Lah. 305 : ... 387, 448
Krisna & Co., 7 I. T. R. 513 285
Krisna lal Seal *v.* C. I. T., Bengal, A. I. R. 1932 Cal. 886 : 36 C. W. N. 1144 : 60 Cal. 357 ... 166
Krisna Kumar and Mohendra Kumar Ghose, 35, C. W. N. 312 795
Krisna Kumar *v.* C. I. T., 58 Cal. 906... ... 934
K. Sidha Gowder & Sons *v.* C. I. T., 6 I. T. C. 78 : 137 I. C. 680 ... ... 203, 421
K. T. M. T. M. Abdul Kayam Sahi Hossain Sahib *v.* C. I. T., Madras, 7 I. T. R. 652 ... 238
Kumar Kedarnarayan Singh, Benaras, 6 I. T. R. 157 290, 292
Kutner *v.* Philips, (1891) 2Q. C. 271 129

L

	PAGES
Lachman Das Baburam, 88 I. C. 216 : A. I. R. 1930 All. 49 : 4 I. T. C. 61 : A. I. R. 1933 All. 833 : 1933 I. T. R. 275 : 148 I. C. 352 ...	122, 349, 350, 785, 786, 787
Lachiram Basantlal Nathani, 5 I. T. C. 114 : 34 C. W. N. 310 : A. I. R. 1931 Cal. 545 : 1936 I. L. R. 58 Cal. 909 : 34 C. W. N. 1206 ...	120, 539, 543, 544, 551
Lachman Das Baburam, 47 All. 631	486
Lachman Prosad Baburam, A. I. R. 1930 All. 49 : 126 I. C. 801 : 4 I. T. C. 61	349, 374, 376, 382, 388, 760, 762, 763, 766
Lahore Ice Factories Association *v.* C. I. T., Lah. 2 I. T. R. 362	778
Lakshman Das *v.* C. I. T., 8 I. T. C. 169 ...	279
Lakshminarayan Sen & Sons *v.* C. I. T., Bengal, 9 I. T. C. 329 : 40 C. W. N. 833... ...	233, 253 254
Lakshmi Sewak Sahu, 6 I. T. C. 142	782
Lakshman Chettiar, A. I. R. 1930 Mad. 21 ...	794
Lakshmi Insurance Co., Ltd. *v.* Commissioner of Income tax, Punjab, A. I. R. 1931 Lah. 441 : 5 I. T. C. 24	551, 728
Lala Suraj Dev Khanna *v.* C. I. T., 9 I. T. R. 190 ...	519
Lala Tribeni Ram of Gorakhpur, (1938) 6 I. T. R. 450	472
Lala Ram Narayan Lal, 10 I. T. C. 292 ...	468
Lala Indra Sen, 8 I. T. R. 187	415
Lal Puranmal, 2 I. T. C. 236	225
Lal Muhamad Sardar Mamud, 7 I. T. C. 347 : 1934 I. T. R. 358	345
Lal Suresh Sing of Kala Kankar, 2 I. T. L. R. 277...	258
Lal Mohan Poddar, 55 Cal. 423 : 31 C. W. N. 996...	355, 369, 563, 564
Lalit K. Mitra, 4 I. T. C. 476 : A. I. R. 1932 Pat. 166 : 140 I. C. 712	389, 487

PAGES

Lalit Prosad Chiranjilal, 6 I. T. C. 182 ... 350, 351

Lallu Mal Sangham Lal *v.* C. I. T. 17 Lah. 494 : 416 I. C. 598 : 1936 I. T. R. 250... ... 166

Lamp *v.* Kent Water Works, (1904) A. C. 27 ... 34

Last *v.* London Assurance Corporation, (1885) 10 A. C. 438 59

Latter *v.* Goolden, (unrepoted) 682

Law Shipping Co., Ltd., 12 T. C. 621 207

Laxminarayan Badridas, 1937 P. C. 133 : 1937 I. T. R. 170 394

Laycock *v.* Freeman Hardy and Wills Ltd., 22 T. C. 288 462

Leonghmoh & Co., (unreported) 782

Lemm *v.* Mitchel, (1912) A. C. 400 5

Leigh, 6 A. T. C. 514 66

Levene *v.* C. I. R., 44 T. L. R. 374 112

Liverpool Corn Trade Association *v.* Monks, 2 K. B. 110 : 10 T. C. 442 59

Liverpool & London Globe Insurance Co. *v.* Bennet, 6 T. C. 327 ... ... 62, 159

Lingya Reddi, 104 I. C. 703 : 50 Mad. 763 ... 20

L. N. Gododia & Co., 7 I. T. C. 393 : 16 Lah. 494 : 1934 I. T. R. 322 250

L. N. Sen, 40 C. W. N. 833 233

Lobs *v.* Theocothick, 9 Ves. 246 265

London Bank of Mexico *v.* Apthorpe, 2 K. B. 378 ... 247

Lord Advocate *v.* A. B. 3 I. T. C. 617 669

Lower Stein *v.* De Salis, 5 A. T. C. 162... ... 112

Lowry *v.* Consolidated African Selection Trust Ltd., (Decided by the House of Lords on the 8th May 1940) 237

L. R. M. S. T. Firm, 32. T. C. 416, ... 350, 357

Lucknow Ice Association, 92 I. C. 257 : 2 I. T. C. 156 : A. I. R. 1926 Oudh. 191 ... ... 60, 788, 800

M

M. Abdul Quyum & Co. *v.* Commissioner of Income tax, U. P., A. I. R. 1933 Oudh. 396 ...

Maclaine *v.* Eccat, 42 T. L. R. 416 ... ...

	PAGES
Macpherson & Co., 6 T. C. 107	591
Macdonald *v.* Shant, (1923) A. C. 337 : 8 T. C. 420	149
Madan Mohonlal *v.* C. I. T., A. I. R. 1935 Lah. 742 : 8 I. T. C. 431	543, 774
Madan Pal *v.* Kounel Bibi, 8 W. R. 42 ..	98
Madandas Jethabhai, A. I. R. 1928 Bom. 443 ...	781
Madras Cricket Club *v.* C.I.T., Madras, 1 I. T. L. R. 153 : 71 T. C. 290 : 1934 M. W. N. 773 : 1934 Mad. 670 : 1934 I. T. R. 209	168
Madras Central Urban Bank Ltd., 118 I. C. 107 : A. I. R. 1929 Mad. 387 : 56 M. L. J. 431 : 52 Mad. 640	154, 742
Madras and Southern Maharatta Railway Co., Ltd. *v.* C. I. R., 12 T. C. 1111	204
Madras Hindu Permanent Fund Ltd., 6 I. T. C. 326	205
Maganlal Pranjiban, 7 I. T. C. 39	354
Ma Hla Mra Khine *v.* Ma Hla Kra Pru, A.I.R. 1938 Rang. 84	678
Maharajadhiraj Bijoychand Mahatab Bahadur of Burdwan, 8 I. T. C. 378	23
Maharajadhiraj Darbhanga, 111 I. C. 638 : A. I. R. 1928 Pat. 468 : A. I. R. 1923 Pat. 123 ...	32
Maharaja Darbhanga, 28 C. W. N. 49 : A. I. R. 1928 Pat. 468 : 7 Pat. 550 : I. L. R. 6 Pat. 29 : 133 I. C. 33 : 10 Pat. 261 : A. I. R. 1931 Pat. 223 : 12 P. L. T. 502 : A. I. R. 1930 Pat. 81 : 4 I. T. C. 283 : A. I. R. 1938 123	19, 24, 26, 157, 172, 173, 382, 389, 446, 463, 492, 794, 802
Maharaj Kumar *v.* Banogi, 21 P. R. 1904 ...	484
Mahamad Aslam *v.* C. I. T., 10 I. T. C. 26 : A. I. R. 1936 All. 817	175
Mahamad Ibrahim, 109 I. C. 129	807
Mahammad Hassen Lobbi & Co., 3 I. T. C. 431 ...	464
Mahamad Naqui, 132 I. C. 1	421
Maharani of Jaipur *v.* C. I. T., 189 I. C. 458 : 1940 C. W. N. 514 : 8 I. T. R. 489	390, 781
Mahamad Kasim Rowther, 106 I. C. 308 : 126 I. C. 595 : A. I. R. 1930 Mad. 763	249, 351

PAGES

Maharani Janki Kuer, 133 I. C. 88 256

Mahadeo Asram Prosad Shahi Bahadur, 100 I. C. 897 : A. I. R. 1927 Pat. 133 : 6 Pat. 29 : 2 I. T. C. 281 ... ... 155, 256, 259

Mahad Ali *v.* Chunilal, A. I. R. 1924 All. 834 ... 171

Mahanj Bag Club, (Unreported) 60

Mahiuddin Ahmed, 27 Cal. 674 ... ... 184, 157

Mahilaram Ramjeedas, A. I. R. 1938 Cal. 557 : 177 I. C. 255 ... ... 546, 553

Major L. H. G. Couville *v.* C. I. T., Punjab, 8 I.T.C. 399 : A.I.R. 1935 Lah. 978 : 1935 I. T. R. 404 141

Makul Ali *v.* Ali Ahamad, 40 Cal. 574 171

Makhanlal Ramswarup. 86 I. C. 27 ... .. 774, 782, 789, 794

Manager Radhika Mohon Ray Wards Estate, 8 I. T. R. 460 19

Manbhum Transport Company, Ltd., 6 I. T. C. 204 340

Manikkam Chettiar *v.* I. T. O. 1938 I. T. R. 180 ... 636

Marine Steam Turbine Co., Ltd., *v.* Commissioner of Inland Revenue. 12 T. C. 174 194

Market Harbourough Advertising Co., 5 T. C. 95 ... 65

Martin & Co., 50 C. L. J. 300 : A. I. R. 1929 Cal. 753 : 124 I. C. 519 ... ... 47, 781

Marquis of Chandos *v.* Inland Revenue Commissioner, 20 L. R. Ex. 269 779

Massey Co., 115 I. C. 814 . 3 I. T. C. 302 ... 212, 787

Mathuradas, 7 I. T. C. 34 345

Mathuradas & Sons, A. I. R. 1933 Lah. 815 : 147 I. C. 273 ... ... 447, 448

Mathuradas Chunilal. 7 I. T. C. 84 : A. I. R. 1933 Lah. 815 : 1933 I. T. R. 212 395

Mathu Krishna Ayar, 26 Mad. 230 637

Mathuppa Chettiar *v.* C. I. T., 180 I. C. 825 : A.I.R. 1939 Mad. 302 540

Matilal Onkare Chaure *v.* C. I. T., 9 I. T. C. 16 . 223

Matiram Rasonlal Coal Co , Ltd , 140 I. C. 904 ... 213

Mayaram Durga Prosad *v.* Commissioner of Income tax, C. P., 5 I. T. C. 471 ; 501, 554

	PAGES
Mazagaon Dock Ltd., A.I.R. 1938 Bom. 241 : I.L.R. (1938) Bom. 374	243
M. Chettiar Firm, A. I. R. 1930 Rang. 224 : 127 I.C. 468	792
Mcdougall *v.* Smith, 7 T. C. 134	575
Mckenly *v.* Jenkins, 5 A. T. C. 317 : 10 T. C. 372 ..	228
Md. Hazi Abdul Rahaman *v.* C. I. T., 6 I. T. C. 240	395
Md. Aminoff *v* C. I. T., A. I. R. 1938 Lah. 864 ..	775
Md. Hazi Sardar, 5 I. T. C. 159	356
Md. Hyat Hazi Md. Sarder *v.* C. I. T., I. L. R. 12 Lah. 129 : 131 I. C. 81 : A. I. R. 1931 Lah. 87	359, 366, 373, 375, 392, 394, 401, 485, 811
Md. Mohasin Mulla Bux *v.* C. I. T., 178 I. C. 404 : 10 I. T. C. 72 : 8 I. T. R. 247	474, 787
Md. Mohsin Mulla Badiruddin *v.* C. I. T., A. I. R. 1938 Lah. 194	469
Mehar Banoo Khanum *v.* Secretary of State, 53 Cal. 34	27
Melamal Shibdayal *v.* C. I. T., A. I. R. 1936 Lah. 546 : 1936 I. T. R. 206	279
Melaram Shibdayal *v.* C. I. T., Panjab, A. I. R. 1937 Lah. 308 : 101 I. C. 126 : 1937 I. T. R. 329 ...	38
Merchants Mahini Flour Mills Co., Ltd. *v.* C. I. T., A. I. R. 1937 Lah. 876	534, 774
Mersy Dock *v.* Lucas, 2 T. C. 25	193, 197
M. H. Shanjana & Co., Ltd., 52 Bom. 87 : 95 I.C. 517	439
Mian Channu Factories Union *v.* C. I. T., Punjab, 9 I. T. C. 246 : 1936 I. T. R. 203 : 166 I. C. 150 : A. I. R. 1936 Lah. 548	70, 203, 475
Michael Farady, Rodgers and Eller *v.* Carter, 11 T.C. 565	462
Mickle Thawait, (1885) 11 Ex. 452	4, 5
Minister of National Revenue *v.* Katharine Spooner, 147 I. C. 747 P. C. : (1933) A. C. 684 ...	178, 258
Mitchel *v.* Noble Ltd., 11 T. C. 372	249
Mitchel & others *v.* Macneil & Co., 31 C.W.N. 630 : 103 I. C. 120	441, 493, 515, 644

	PAGES
Mittar Chand Lakshmidas *v.* C. I. T., A. I. R. 1937 Lah. 172 : 10 I. T. C 102	450
M. E. R Raja Malek, 35 C. W. N. (Notes) : 139 I.C. 295 : A. I. R. 1932 Nag 68	39, 807
Mohonlal *v.* C. I. T., 6 I. T. C. 104	752
Mohonlal Deokaran Das *v.* C. I. T., 3 I. T. C. 317 : 1929 Lah. 173	395
Mohonlal Hardeo Das, 5 I. T. C. 128 : 9 Pat. 172 : 4 I. T. C. 90 : 122 I. C. 810 : A. I. R. 1930 Pat. 14	345, 350, 353, 388, 390, 392. 511, 516, 774, 775
Mahiuddin Pakkiyar Marakyyar, 46 I.L.R. Mad. 839	671
Mahiuddin Shahib. 2 I. T. C. 472 : A.I.R. 1927 Mad. 1052 : 53 M. L. J. 719	60, 63, 70
Mongalgiri Sree Uma Maheswary Gin and Rice Factory, 97 I. C. 850 : 2 I.T.C. 251 : 51 M.L.J. 360 : A. I. R. 1926 Mad. 1032 : 24 L. W. 680	177, 215, 261, 262
Mooljee Sicka, 40 C. W. N. 517 : 7 I. T. R. 493 : 1935 I. T. R. 123 : 8 I. T. C. 147. A. I. R. 1938 Cal. 562 :	23, 72, 73, 467, 775, 778
Moore *v.* Stewards Lloyds Ltd., 6 T. C. 501 ...	223
Morley *v.* Lawford & Co., 45 T. L. R. 30 ...	223, 234
Morley *v.* Tattersall, 7 I. T. R. 316 : 22 T. C. 51 ...	57, 58
Moss *v.* Hell, 5 Ex. 46	305
Mothay Gangarayu *v.* C. I. T., Madras, 8 I.T.C 76 : 1935 I. T. R. 58 : 100 I. C. 291 : 50 Mad. 335	196, 785
Mouri *v.* Surendra, 10 W. R. 178	485
M. S. M. Perianna Pillai, 122 I. C. 449 : A. I. R. 1930 Mad. 113	356
Mufft Mahamed Aslam Kalifa Manday *v.* C. I. T., C. P. and U. P., 4 I. T. R. 412 : A. I. R. 1936 All. 816 : 10 I. T. C. 26 : 107, I. C. 969 ...	69, 70
Muhammad Yakub Khan *v.* Commr. of Income tax, 31 I. C. 308	21

PAGES

Mukunda Swarup, 2 I. T. C. 495 : 107 I. C. 683 : A. I. R. 1928 All. 81 F. B. 6, 21, 22, 196

Mulchand Hiralal *v.* C. I. T., 17 Pat. 102 : 1938 I. T. R. 151 ... ... 250, 254

Mulla Fida Ali Sultan Ali *v.* C. I. T., C. P., 1937 I. T. R. 615 472

Muniswami Chetty, 77 I. C. 89 : A. I. R. 1924 Mad. 205 . . .. 176, 417

Mussammat Hashen Banu Bibi and others *v.* C.I.T., Bengal, 8 I. T. R. 482 801

Muzafar Ali Khan *v.* Commr. of I. Tax, 137 I. C. 752 : 4 I. T. C. 4 389

M. V. Krishna Iyer & Sons, 3 I. T. C. 286 ... 476

Mylapore Hindu Permanent Fund, 1 I. T. C. 217 ... 61

Mythili Ammal *v.* Janaki Ammal and another, 7 I. T. R. 657 679

N

Nabdip Nogendra Nath Das, 7 I. T. R. 488 ... 284, 384

Nabin *v.* Dokhobala, 10 C. 686 28

Nachiappa Chettyar *v.* C. I. T., 6 I. T. C. 369 : 1933 Mad. 701 440

Nachiappa Chettiar *v.* Secretary of State, 7 I. T.L.T. 339 810

Nafarchandra Pal *v.* Sukur, 48 Cal. 189 ... 776

Nagin Chand Shibsahi *v.* C. I. T., A. I. R. 1938 L. 620 501

Nagpur Electric Light and Power Co., Ltd. ... 248

Nakanchand, 96 I. C. 368 : A. I. R. 1926 Lahore 421 39, 271

Nalder *v.* Walters, 15 T. C. 380 201

Nanhmal Jankidas *v.* C. I. T., Lahore, 156 I. C. 227 491

Nanhemal Jankinath *v.* C.I.T., Punjab, 8 I.T.R. 437 533

Nandalal Bhandari Mills Ltd., 7 I. T. R. 452 ... 588

Nanhelal, 111 I. C. 159 : A. I. R. 1928 Nag. 241 ... 269

Narayan Das *v.* C. I. T., A. I. R. 1937 S. 47 : 9 R.S. 147 778

Narain Das Mohonlal *v.* Commissioner of Income-tax, U. P., 6 I. T. C. 248 : A.I.R. 1933 All. 231 503

	PAGES
Narayan Atmaram Patkar *v.* C. I. T., 7 I. T. C. 207 : A. I. R. 1934 Bom. 378 : 1934 I.T.R. 486	276, 784, 791
Narayan Parashram Tullu, 20 Bom. 332 ...	591
Narasingh Nandy Chowdhury, 41 C. W. N. 46 ...	232
Nathumal, 9 Lah. 201 : A. I. R. 1920 Lah. 109 ...	776, 807
Nathuram *v.* C. I. T., 9 I. T. C. 178 : A. I. R. 1937 Lah. 919	371
Nathu Sao *v.* C. I. T., C. P., 1934 I. T. R. 463 ...	73
Nathusa Pathusa *v.* C. I. T, 7 I. T. C. 129 ...	73
National Mutual Association Australasia Ltd. *v.* C. I. T., 6 I. T. C. 426 : 57 I.L.R. Bom. 519 : A. I. R. 1931 Bom. 448	345, 586, 588, 601, 796
National Provincial Bank of England Ltd. *v.* Bell, 6 T. C. 1	486
Naval Colliery Co., Ltd. *v.* Commissioner of Inland Revenue, 6 A. T. C. 351 : 12 T. C. 1017 ...	207, 215, 248
Nawabzadi Mehar Bano Khanum *v.* Commissioner of I. Tax, Bengal, II Srinavasan Tax case, Page 99 : 53 Cal. 34 : 29 C. W. N. 969 ...	16, 24
Nawal Kishore Khairatilal, A. I. R. 1930 Lah. 1014 : 132 I. C. 857 : A. I. R. 1936 Lah. 897 ...	389, 494, 515, 549, 600
N. B. Munsi *v.* C. I. T., 8 I. T. C. 104 ...	488
Nedungadi Bank, 1 I. T. C. 355 : 2 I. T. C. 243 ...	218, 221
Nehalchand Kishorilal *v.* C. I. T., 2 I. T. C. 338 : A. I. R. 1927 All. 397	440, 464, 603, 604
Neelu Megham Pillai *v.* Secretary of State, 1937 I. T. R. 424 : 172 I. C. 244	119
New Market Commissioner *v.* Rex, 7 T. C. 49 ...	571
New York Life Insurance Co. *v.* Styles, 2 T. C. 460 : 14 A. C. 381	59, 60, 160
New Victoria Mills, 10 I. T. C. 108	210
Nielson Anderson & Co. V. Collins, and Tern *v.* Scanlau 4 T. L. R. 420	623
Nikidevi *v.* C. I. T., 2 I. T. R. 365 : 7 I. T. C. 370...	278, 352, 791, 792

	PAGES
Nimchand Daga, A. I. R. 1931 Cal. 686 : 5 I. T. C. 286 : 35 C. W. N. 534	291, 551
Nirmal Kumar Singha, 29 C. W. N. 591 ...	400
N. L. Sen, 40 C. W. N. 833 : 9 I. T. C. 329 ...	228
Noone Vardarajan Chetty *v.* Vutukuri Kanakiah, 7 I. T. R. 331 : A. I. R. 1939 Mad. 546 ...	677
Noor Mahamad Hazi Alimullah, 10 I. T. C. 426 ...	553
Nopechand Mangiram, 2 I. T. C. 146	203, 246
North British Mercantile Insurance Ltd., 41 C. W. N. 905	819
North British Railway Co. *v.* Scott, (1923) A. C. 37	148
North Madras Mutual Benefit Co., Ltd., 1 I.T.C. 172	61
Norwich Union Fire Insurance *v.* Megee, (1896), 3 T. C. 457	159
N. S. Mundy, A. I. R. 1930 Cal. 625 F. B. : 129 I. C. 411 : 34 C. W. N. 788 : 4 I. T. C. 370 ...	95

O

Official Assignee, Estate Jnanendra Nath Paramanick, 41 C. W. N, 683	168
Ogilvie *v.* Barron, 11 T. C. 504	465
Old Mankind Conservative Association, 5 T. C. 189	65
Ounsworth *v.* Vickers, 6 T. C. 671	227

P

Paddington Burial Board *v.* Commissioner of Inland Revenue, 2 T. C. 46	197
Palaniappa Chettiar, 122 I. C. 339	556
Pallay *v.* Ramdhan Lala, 13 M. L. J. 364 ...	98
Pallumal Bholanath, A. I. R. 1933 All. 541 : 6 I. T. C. 463 : 1933 I. T. R. 235 : 146 I. C. 759 ...	359, 375, 528
Panchapagesa Ayer, 62 M. L. J. 656 : 6 I. T. C. 69	249
Pandit Nathuram *v.* C. I. T., A. I. R. 1937 All. 981 : 9 I. T. C. 178	280
Pandurang Ramchandra, 91 I. C. 980	776
Pannalal, 29 P. L. R. 204	776
Parasdas Manwalal *v.* C. I. T., A. I. R. 1938 Lah. 209	274, 364

PAGES

Parker *v.* Chapman, 7 A. T. C. 158 : 138 L. T. 729 140, 149

Patridge *v.* Mallandaine, 18 Q. B. D. 276 : 2 T. C. 179 131

P. C. Barma *v.* C. I. T., 5 I. T. C. 1 : A. I. R. 1936 P. C. 209 : 34 C. W. N. 1017 (P. C.) : 57 I. A. 228 : 29 C. W. N. 298 ... ... 129, 790

P. C. Mallick *v.* C. I. T., A. I. R. 1938 P. C. 118 : 42 C. W. N. 537 : 13 Ind. Ruling. Cal. 211 ... 233, 540

P. D. Patel, (Advocate) *v.* Crown, 146 I. C. 653 : A. I. R. 1933 Rang. 292 . 1933 I. T. R. 363 ... 671, 672

Peninsular and Oriental S. S. Co. *v.* Leslie, 4 T. C. 177 209

Pentapathi Venkataramana and others *v.* Pentapathi Varahalu and others, 7 I. T. R. 561 ... 678

Per M.R. in Morice *v.* The Bishop of Durham, 9 Ves. 399 99

Peria Swami Nadar *v.* C. I. T , A. I. R. 1930 Mad. 1003 202

Perianna Pillai, 122 I. C. 949 754

Perrin *v.* Dickinson, 1 K. C. 107 (1930) ... 178

P. G. N. B. R. Chettiar Firm, A. I. R. 1930 Rang. 78 485

Pioneer Sports Ltd. *v.* C. I. T., 7 I. T. C. 386 : A. I. R. 1934 Lah. 876 277

Pitchard *v.* Pitchard, 14 Q. B. D. 55 484

Pilta Ramswami, 49 Mad. 831 : 2 I. T. C. 199 ... 505, 512

P. K. N. P. R. Chettiar Firm, A. I. R. 1930 Rang. 33 : 124 I. C. 267 : 4 I. T. C. 87 : 4 I. T. C. 340 : 125 I. C. 344 : I. L. R. 8 Rang. 203 ... 392, 393, 394, 485, 490, 777, 778, 794,

Pondichery Rly. Co., 5 I. T. C. 363 (P. C.) : 35 C. W. N. 895 : A. I. R. 1931 P. C. 165 ... 204, 232, 594

Pool *v.* Gurdian Investment Trust Ltd. 8 I.T.C. 167 66

Pool *v.* Royal Exchange Assurance, 1921 A. C. 65 : A. I. R. 1934 P. C. 116 574

Port Said Salt Association Ltd., 6 I. T. C. 123 : A. I. R. 1932 Cal. 626 595

	PAGES
Pramathanath Paramanick *v.* Nirod Chandra Ghosh, 7 I. T. R. 470 : 43 C. W. N. 1169 : 118 I. C. 37	678
Prag Narayan *v.* C. I. T., 6 I. T. C. 110 ...	223
Prabhat Chand Barua, 51 Cal. 504 : 1 I. T. C. 414 : 57 I. A. 228 : 106 I. C. 353 : A. I. R. 1930 P. C. 209 : 5 I. T. C. 1 : 125 I. C. 871 : 29 C. W. N. 398 : 52 Cal. 546	19, 56, 798, 805
Premsagar *v.* C. I. T., 138 I. C. 214 : 33 P. L. R. 10	274
Price *v.* Manmothshire Rly. and Cannal Co., 40 I. T. 630	5
Probinabad Stud Firm *v.* C. I. T., Punjab, A. I. R. 1936 Lah. 602 : 8 I. T. C. 439 : 168 I. C. 141	51, 102
Protap Chandra Ganguly, A. I. R. 1932 Cal. 410 : 4 I. T. C. 418 : 139 I. C. 593	347, 487, 490, 517, 524
Provident Investment Co. *v.* C. I. T., 6 I. T. C. 21 : A. I. R. 1932 Bom. 94	204
P. R. A. L. M. Mathukarupan Chettiar *v.* C. I. T., A. I. R. 1939 Mad. 357 : 7 I. T. R. 76 ...	212, 261, 284
P. S. Varier *v.* Commissioner of Income-tax, Madras, 8 I. T. R. 628	131, 257
Punjab National Bank *v.* Crown, A. I. R. 1926 Lah. 373 : 2 I. T. C. 184	156, 215
Punjab Co-operative Bank Ltd. *v.* C. I. T., I. L. R. 1938 Lah. 526 : 8 I. T. R. 635 : 191 I. C. 548 (P. C.) A. I. R. 1940 P. C. 230	157, 160, 235, 781
Pursattom Bhanji & Co., 1 I. T. C. 399 : 86 I. C. 85	45
Puran Mal *v.* C. I. T., 2 I. T. C. 236	224
Punuswami Pillai *v.* Commissioner of Income-tax, Madras, 3 I. T. C. 378	195
Pyrelal *v.* Commissioner of Income-tax, 147 I. C. 862 : 7 I. T. C. 31 : A. I. R. 1933 Lah. 827	448, 453, 471, 472, 478

Q

Queen *v.* Judge of the City of London Court, (1892) 1 Q. B. 273	374

R

PAGES

Radha Kishan & Sons, 3 I. T. C. 73 ... ... 209, 219, 245, 787, 783, 784

Radha Kishan, 101 I. C. 321 : A. I. R. 1927 Lah. 5 ... ... 351, 511, 518

Radha Kishan Ramnarayan, 117 I. C. 217 : A. I. R. 1927 Nag. 153 : 3 I. T. C. 366 422

Radha Krishnam & Sons, 2 I. T. C. 345 ... 350

Radha Mohon, 104 I. C. 841 : A. I. R. 1928 Pat. 58 : 2 I. T. C. 453 20

Radhey Lal Balmukunda, 130 I. C. 634 : A. I. R. 1931 All. 23 : 52 I. L. R. All. 991 : 4 I. T. C. 454 ... ... 270, 354, 387, 447, 786, 787

Raghunath Das Seolal *v.* C. I. T., A. I. R. 1932 Cal. 411 : 4 I. T. C. 468 ... ... 359, 375, 534, 774, 778

Raghu Kasson *v.* C. I. T., 5 I. T. C. 389 ... 352, 353

Raghunandan Prosad Singh *v.* Commr. of I. Tax, 4 I. T. C. 123 : 1933 P. C. 101 ... ... 247, 275

Raghunandan Prosad *v.* C. I. T., 1929 Pat. 476 ... 276

Raghunandan *v.* Hormasjee, 51 Bom. 342 : 29 B. L. R. 207 30

Raghunath Mahadeo, 89 I. C. 675 : A. I. R. 1925 Pat. 694 ... ... 271, 272, 381

Rai Bahadur Ganga Sagar, 53 All. 451 : A. I. R. 1931 All. 417 : 5 I. T. C. 455 ... ... 352, 387

Rai Bahadur Karamchand, 131 I. C. 639 ... 775, 783

Rai Bahadur Lokenath Prosad Dhandhania *v.* C. I. T., B & O., 8 I. T. R. 369 ... ... 50, 473

Rai Bahadur Sahu Har Prosad Raja Radha Raman *v.* C. I. T., 10 I. T. C. 83 ... ... 260, 291

Rai Sahib Hara Krishna Das, 132 I. C. 430 : 5 I. T. C. 275 ... ... 505, 513

Raja Bejoy Sing Dhudhuria, 6 I. T. C. 450 : A. I. R. 1933 P. C. 145 : 60 Cal. 1029 : 143 I. C. 145 ... 68, 171

	PAGES
Raja Bhunesh Protap Narayan Singh *v.* C. I. T., U. P., 6 I. T. C. 175	72
Raja Inugenti Rajagopala Venkat Nar Singha Rajahem Bahadur, 138 I. C. 289 : 58 Mad. 830	19
Raja Jyoti Prasad Singh Deo Bahadur, 130 I. C. 43 : 1 I. T. C. 103 : 6 P. L. J. 62	171, 220
Raja of Pittapur *v.* Secretary of State, 52 Mad. 538 P. C.	784
Raja Prabhat Chandar Barua *v.* King Emperor, High Court of Bengal Reference No. I of 1926, 11 Srinivasan Tax Cases, Page 392	16
Raja Prabhat Ch. Barua, 31 C. W. N. 765 : A. I. R. 1929 Cal. 432 : 102 I. C. 845 : 54 Cal. 863 : 45 C. L. J. 323	5
Raja of Ramnad *v.* Secretary of State, 52 Mad. 12 : 3 I. T. C. 263	809, 810
Raja S. Mahomad Mehdi, 8 I. T. C. 210 : 155 I. C. 280	344
Raja Sing Abera *v.* Commissioner of I. Tax, Punjab, 2 I. T. R. 331	792
Raja Siva Prosad Singha, 82 I. C. 653 : A. I. R. 1924 Pat. 679	790
Raja Ram Joggi *v.* C. I. T., 9 I. T. C. 214 ...	449
Rajendra *v.* Commissioner of Income-Tax, 118 I. C. 593 : A. I. R. 1929 Pat. 449 : 4 I. T. C. 15 ...	6, 18, 32
Rajendra Narayan Bhanjo, A. I. R. 1925 Pat. 581 ...	507
Rajeswar Sethapathi *v.* Secretary of State, 3 I. T. C. 263 : A. I. R. 1929 Mad. 179	672
Rajmal Paharchand *v.* C. I. T., (unreported) ...	223
Rajmani Devi, A. I. R. 1937 All. 770 : 172 I. C. 354 : 1937 I. T. R. 63	366, 418, 778
Rajniti Prasad Singha, 123 I. C. 611 : A. I. R. 1930 Pat. 33 : 9 Pat. 194 : 4 I. T. C. 264 ...	22, 154, 155, 196
Ramanandan Chetty, 43 Mad. 75	3
Rama Nath Chettiar, 2 I. T. C. 474 : 53 I. C. 976 ...	752, 780
Ramanath Kanailal, 7 C. W. N. 104	171
Ramanath Reddier, 110 I. C. 601 : A. I. R. 1928 Rang. 152 : 6 Rang. 175	774, 793, 795, 811

	PAGES
Ram Swami Chettiar, A. I. R. 1930 Mad. 808 : 52 Mad. 194	246, 251, 252, 374
Ramswami Chettier *v.* C. I. T., 4 I. T. C. 438 : 53 Mad. 904	250, 254
Ramchandra Tolba Teli *v.* C. I. T., 7. I. T. R. 154 ...	284, 387
Ramgopal, 20 Cal. 93	776
Ramgopal Mulchand, 87 I. C. 97 : 1925 All. 403 ...	785, 786
Ramjiban Mal *v.* Chand Mal, 10 All. 587 ...	485
Ram Khelwan, decided on 4-11-31	281
Ram Khelwan and Sahu Thakurdas, 7 I. T. R. 607 ...	284
Ram Khelwan Ugamlal *v.* Commissioner of Income-tax, 144 I. C. 211 : 3 I. T. C. 225 : 7 Pat. 852 : A. I. R. 1928 Pat 529 F B.	122, 359, 372, 373, 374, 399, 751, 761
Ram Krishna Das Bagri, 2 I. T. C. 324 ...	372
Ramkrishna Ramnath *v.* C. I T., 4 I. T. C. 171 : A. I. R. 1932 Nag. 65	120, 228, 357
Ram Kumer Kedarnath *v.* C. I. T., 9 I. T. C. 341 ...	281
Ram Kumer Mohonlal, 119 I. C. 569	486
Ramlal Muralidhar, A. I. R. 1931 Cal. 682 : 134 I. C. 1056	480
Ramnadhan Chettiar, 46 M. L. J. 42	217
Ramnandan Chetty, 43 Mad. 75	200
Ram Pratap Sukdayal, 3 I. T. C. 362 : A. I. R. 1930 Lah. 277	272, 273
Ram Rao *v.* Vanakatramayya, 8 I. T. L. 450 ...	678
Ram Rekha Mal & Sons *v.* C. I. T., A. I. R. 1937 Lah. 830 : 39 P. L. R. 934 : 1937 I. T. R. 137 : 172 I. C. 821	360, 451, 462, 468, 513, 523, 552, 785
Rani Ananda Kunwar *v.* C. I. T., U. P. & C. P., 8 I. T. R. 126 : 184 I. C. 827	518
Rani Sultanat Begum, A. I. R. 1933 Oudh. 475 : 146 I. C. 651 : 7 I. T. C. 255 : 10 W. N. 1003 ...	20, 258
Rank's Trustees, 38 T. L. R. 603	98

	PAGES
Rao Gopal Das Rao Vaijnath Das of Benares, (Decided by the Allahabad High Court on 7-8-36	173
Ratanchand *v.* C. I. T., 9 Lah. 188	774
Ratanchand Dhunichand, A. I. R. 1928 Lah. 944 : 9 Lah. 118	344, 774, 776
Ratanchand Khemchand Matishaw *v.* C I. T., 2 I. T. C. 225 : 98 I. C. 299	534, 774, 782
Ratanchand Lallumal *v.* C. I. T., 9 I. T. C. 12 : 163 I. C. 324	505
Ratan Singh, 50 M. L. J. 157 : 85 I. C. 478 ...	206, 777, 793
Ratan Singha, 2 I. T. C. 294	217
Raulia Mal Ranakram *v.* C. I. T., 7 I. T. C. 352 : A. I. R. 1935 Lah. 539	224, 275
Rayalu Ayer and Nagaswami *v.* C. I. T., 9 I. T. C. 381	233
Reed *v.* Seymour, 6 A. T. C. 437 : 11 T. C. 625 ...	143
Reid *v.* C. I. R., 5 A. T. C. 537	113
Reid's Brewery Co. *v.* Male, 3 T. C. 279 .	223, 234
Reid's Trustees *v.* C. I. R., 8 I. T. C. 213 ...	575
Remington Typewriter Co., 54 Bom. 214 P. C. ..	594
Rex *v.* Curties, 145 E. R. 724	635
Rex *v.* Electricity Commissioners, (1924) 1 K. B. 171	565
Rex *v.* Kensington I. T. Commissioners, (1913) 3 K. B. 870	541
Reynolds Sons & Company, Ltd. *v.* Ogston, 15 T. C. 501	466
Rhymney Iron Company, Ltd. *v.* Fowler, 3 T. C. 476	231
Rickets *v.* Colokoham, (1926) A. C. 1. ...	149
R. Johnstone *v.* C. I. T., A. I. R. 1934 Rang 377 : 7 I. T. C. 330 : 1934 I. T. R. 390 ...	138, 239
R. M. P. Chatair Firm, 7 Rang. 26 ...	352
R. M. P. L. S. Chettyar Firm, A.I.R. 1930 Mad. 127	352
R. N. Singha *v.* Secretary of State for India, 109 I. C. 180 : A. I. R. 1928 Rang. 7	809
Robert Addie and Son's Collieries, Ltd. *v.* C. I R 8 T. C. 671	226, 232

	PAGES
Rochiram Khatar *v.* C. I. T., Punjab, 6 I. T. C. 127 : 1934 I. T. R. 492	168, 276, 488, 792
Rogers *v.* Commissioner, Inland Revenue, 1 T. C. 225	113
Rogers, Pratt, Shellac & Co., 52 Cal. 1 : 28 C. W. N. 1074 : 40 C. L. J. 110	65, 192, 200, 593
Royal Calcutta Turf Club, 48 Cal. 844	59
Royal Exchange Association Company, 7 T. C. 387	571
Royal Insurance Co. *v.* Watson, 3 T. C. 500 ...	246, 247, 249
Row & Co. *v.* Secy. of State, 67 I. C. 781 ...	155
Rownfree *v.* Curtis, 8 T. C. 678	239
Rt. Rev. C. J. G. Sanders, Bishop of Lucknow, A. I. R. 1932 All 151	151
Russel *v.* Aberdeen Town and Country Bank, 2. T. C. 321	193
Rutherford *v.* C. I. T., 5 I. T. C. 71	233
Ryhope Coal Company *v.* Foyer, 1 T. C. 343 ...	466

S

Sachindra Mohan Ghose *v.* Commissioner of Income-tax, B. &. O., 136 I. C. 63 : A. I. R. 1932 Pat. 102	151
Sadhu Charan Roy Choudhury and others *v.* C. I. T., Bengal, 8 I. T. C. 177 : 62 Cal. 804 : A. I. R. 1935 Cal. 344 : 39 C. W. N. 739 : 156 I. C. 394	177, 196, 215, 261, 262
Saligram Ramlal *v.* C. I. T., Lahore, (1934).7 I. T. C. 354 : 1934 I. T. R. 448 : 1934 L. 942 ...	449
Sally Md. Hazi *v.* S. B. Neogi & Co., A. I. R. 1935 Rang. 56	809
Sanat Kumar Roy *v.* C. I. T., 2 I. T. C. 287 : 30 C. W. N. 131	534, 774 781
Saniram Rameswar *v.* Marry Pinto, 1934 I. T. R. 58 : A. I. R. 1934 Rang. 8 : 2 I. T. R. 58 ...	635, 636

	PAGES
Sankar linga Nadar, 126 I. C. 273 : A. I. R. 1930 Mad. 209 : 4 I. T. C. 226	349, 355, 370, 377, 401, 550, 557
Sankar Nanbudripad *v.* Ramswami Ayar, 41 Mad. 691	637
Sanulal *v.* C. I. T., 10 I. R. Pat. 497	752
Saraju Prosad Gourisankar, 5 I. T. C. 263 : 132 I. C. 564	346, 387, 389
Sarashpur Mills Ltd., 137 I. C. 898	213
Sardar Kripal Singh *v.* C. I. T., A. I. R. 1937 L. 897 : 176 I. C. 22 : 1937 I. T. R. 548 ...	341, 468, 778
Sardarin Puramchand, A. I. R. 1931 Cal. 729 ...	347
Satchitananda Singha, 84 I. C. 792 : A. I. R. 1925 Pat. 155	776, 777, 798
Satyendra Mohon Roy Choudhury *v.* C. I. T., Bengal, 4 I. T. C. 447 : A. I. R. 1930 Cal. 627 ...	545, 556
Scales *v.* Gorge Thompson & Co., Ltd., 13 T.C. 83 ...	439
Scottish Investment Co. Ltd., *v.* Easson, 8 T. C. 256	140
Scottish Investment Trust Co. *v.* Forbes, 6 T. C. 731	215
Scottish Provident Institution *v.* Allan, (1930) A. C. 129	794
Scottish Shire Lines, Ltd. *v.* Lethen, 6 T. C. 91 ...	213
Secretary of State *v.* Bombay Landing and Shipping Co., Ltd., (1868), 5 Bom. H. E. O. C. 2 ...	635
Secretary of State *v.* Khemchand, 1 I. T. C. 26 ...	810
Secretary of State *v.* M. A. Nyemme and others, 10 I. R. 248 : A. I. R. 1937 R. 380 : 172 I. C. 422	636
Secretary of State *v.* Myappa Chettiar, 170 I. C. 46 : A. I. R. 1937 Mad. 241	491, 810
Secretary of State *v.* Scoble, 19 T. L. R. 550 : 4 T. C. 618	258, 259
Seodolal *v.* Johurimal, 50 Cal. 549	478
Seth Bridhichand, 6 I. T. R. 367	223, 803
Seth Kishanlal *v.* C. I. T., Lucknow, Misc. Judicial Case No. 116 of 1934	483

	PAGES
Seth Kanhiyalal Goenka *v.* C. I. T., 9 I. T. C. 368 : 9 I. T. R. 25	290, 506, 514, 527, 767, 775
Seth Mathuradas *v.* C. I. T., 8 I. T. R. 412 ...	805
Seth Nathusa Pasusa *v.* C. I. T., U. P., 7 I.T.C. 129	52
Shamrao B. Deomuk *v.* C. I. T., 7 I. T. R. 515 ...	284, 383
Shaw Wallace & Co., 6 I. T. C. 178 : 59 I. A. 206 : 36 C. W. N. 653 : 136 I. C. 143 : 55 C. L. J. 386 : 35 C. W. N. 34 : 36 C. W. N. 138 ...	84, 96, 138, 139, 148, 249, 744
Shaw *v.* Kay, 1904, 12 S. L. J. 495	683
Sheolal Ramlal, 139 I. C. 316 : A. I. R. 1932 N 61 : 4 I. T. C. 375	31
Sheoduttrai Pannalal *v.* C. I. T., U. P., A. I. R. 1940 All. 530	390, 494
Sher Singh Nathuram *v.* C. I. T., 8 I. T. C. 38 : 1934 I. T. R. 479 : 137 I. C. 273 : A. I. R. 1936 L. 83 : (1935), 8 I. T. C. 38 : 1935 L. 154 : 154 I. C. 191	203, 447, 449
Sheodoyal Jagannath, 35 C. W. N. 214 ...	217
Sheodoyal Hiramal *v.* C. I. T., A. I. R. 1938 Pat. 577	223
Shell Company of Australia Ltd. *v.* Federal Commissioner of Taxation, 1931 A. C. 275 ...	564
Shiptone *v.* Moris, 14 T. C. 413	460
Shivo Prosad Gupta, 124 I. C. 467 : A. I. R. 1929 All. 819	269, 270, 382, 796, 798
Shivalall Gangaram, 103 I. C. 417 : 2 I. T. C. 425 : 50 All. 98	20
Shomchand Malukchand *v.* C. I. T., 1938 I. T. R. 297 : A. I. R. 1938 L. 545 : 43 P. L. R. 193	224, 775, 803
Shooner *v.* Zeddon, 4 M. I. A. 353	797
Shomosundram, 123 I. C. 136 : A. I. R. 1930 Rang. 10 ...	351, 377

	PAGES
Shri Maharani Lakmi Pat Mahadavi Garu, Dowager Maharani Joypur *v.* C. I. T., C.P. & U.P., 8 I. T. R. 489	292, 494
Shubramaya Sastri Gopal *v.* Commissioner of Income-tax, 57 Mad. 455 : 2 I. T. C. 152 ...	201
Sibaprotap Bhatadu, A. I. R. 1924 Mad. 880 : 84 I. C. 131	392, 793, 797
Simpson *v.* Tate, 4 A. T. C. 187 : 9 T. C. 314 ...	201
Sinsenghin, 89 I. C. 785 : A. I. R. 1925 Rang. 252	782, 797
Sind Light Railway, A. I. R. 1932 Sind 192 : 138 I. C. 673	4, 782
Sir Aditya Narayan Singh 176 I. C. 171 : A. I. R. 1938 Bom. 318	585, 586, 601
Sir Dinshaw Maneckjee Petit, Bar-at-Law, 102 I. C. 49 : 29 B. L. R. 447 : 2 I. T. C. 255 ...	47
Sir R. N. Mookerjee *v.* Commissioner of Income-tax, Bengal, 38 C. W. N. 320 P. C. : 147 I. C. 663	543, 547
Sir S. M. Chitnavis, 55 C. L. J. 575 : 6 I. T. C. 453 : 127 I. C. 772 P. C. : 59 I. A. 290 ...	224, 420
Sir Kameswar Singha, 6 I. T. R. 686	234
Sivaprasanna Singha, 2 I. T. C. 57	221
Siva Swami Chettiar, 124 I. C. 206 : 4 I. T. C. 201	372, 376
Sivaprosad Singha, A. I. R. 1926 Pat 109 ...	130
Siva Narain & Sons *v.* C. I. T., 8 I. T. C. 117 : 1935 Lah. 896 : 1935 I. T. R. 402	417
Sivaprosad Singh *v.* Emperor, 4 Pat. 73 : 1 I. T. C. 384 : A. I. R. 1924 Pat. 679 : 82 I. C. 653 ...	259, 795
S. S. Mabarek Ali *v.* C. I. T., 6 I. T. R. 625 : A. I. R. 1938 L. 186 : *See* also A. I. R. 1938 P. C. 175 : A. I. R. 1938 L. 165	387, 546, 553
S. Lalchand *v.* C. I. T., Bengal, 1 I. T. L. R. 221 : (1935), 8 I. T. C. 463	29, 478
S. L. S. Dewan *v.* Official Liquidators, A. I. R. 1933 All. 789	4
Smith *v.* Anderson, (1880) 15 Ch. D. 247, 258 ...	192
Smith *v.* Greenwood, (1922) 1 A. C. 17 : 8 T. C. 193	590, 591
Smith *v.* Incorporated Society of Law Reporting for England and Wales, 6 T. C. 477	228, 249

PAGES

Smith *v.* Ker, (1902) 1 Ch. 774 100

Smith *v.* Lion Brewery Co., (1911), A. C. 150 ... 218

Smith *v.* William, (1922) 1 K. B. 158 ... 802

S. M. Chitnavis, 117 I. C. 258 : A. I. R. 1929 Nag. 60 130

S. M. Hajee Sulaman and Sons *v.* S. B. Neogi, A. I. R. 1932 Rang. 56 644

S. M. S. Karuppiah Pillia *v.* C. I. T., Madras, 9 I. T. R. 1 462

S. M. Perianna Pillai, 122 I. C. 449 : A. I. R. 1930 Mad. 113 401

Smythe *v.* Stretton, 5 T. C. 36 197

Soma Sundaram Chettiar *v.* C. I. T., 1934 M. L. J. 638 : 22 T. C. 61 : 2 I. T. C. 61 : 7 Rang. 595 143, 201, 203, 350

Sonaram Nehalchand *v.* C. I. T., A. I. R. 1935 Lah. 227 784

Sookinaboo Salebhoy *v.* C. I. T., 6 I. T. C. 13 ... 472

South Behar Railway Company *v.* C. I. R., 12 T. C. 657 : (1925) A. C. 476 ... ... 192, 193, 594

South India Industrials Ltd. *v.* C. I. T., 8 I. T. C. 128 : 157 I. C. 143 : A. I. R. 1935 Mad. 330 223, 416

South Metropolitan Gas Co. *v.* Dadd, 13 T. C. 205 217

Southwell Savil Bros., Ltd., 4 T. C. 430 ... 229

Special Commissioners *v.* Pemsel, 3 T. C. 53 ... 98

S. P. K. A. A. M. Chettiar Firm *v.* Commr. of I. Tax, Burma, A. I. R. 1932 Rang. 52 : 6 I. T. C. 49 .. .. 389, 392, 793

S. P. K. A. M. Firm, 121 I. C. 390 : A. I. R. 1930 Rang. 35 ... ... 393, 394

Srigopalji Co. *v.* C. I. T., A. I. R. 1931 Lahore 376 : 5 I. T. C. 257 ... ... 30, 209

St. Andrews Hospital, Northampton *v.* Shea Smith, 2 T. C. 219 197

Steel Brothers & Co., Ltd., A. I. R. 1926 Rang. 97 : 82 I. C. 665 : 2 Rang 211 : 2 I. T. C. 19 : 94 I. C. 466 ... . 65, 198, 257, 591, 593

	PAGES
Stockton and Darlington *v.* Barret, 65 R. R. 26 : 8 Scott. N. R. 641	4, 5
Stott *v.* Hoddinatt, 7 T. C. 85	223, 234
Strong *v.* Woodfield, (1906) A. C. 448 : 5 T. C. 215...	227, 245, 246
Stubbs *v.* Cooper, 10 T. C. 29	207
Subromanian Chatteyer, 50 Mad. 765 : A. I. R. 1927 Mad. 841 : 40 Mad. 765	269
Sudalaimani Nadar *v.* C. I. T. Madras, 8 I. T. R. 619	196
Sudarsanam Mistry *v.* Narasingha, 25 Mad. 149 ...	62
Sully *v.* Attorney General, 2 T. C. 148 ...	114, 590
Sundarlal, A. I. R. 1931 Pat. 282	753
Sundersa Iyer, 22 T. C. 173	556
Sukdial, 122 I. C. 238	523
Sukray Roy *v.* C. I. T., 9 I. T. C. 166	73
Suppanchettiar & Co. 123 I. C. 801 : 42 T. C. 211 ...	192, 212
Swadeshi Cotton Mills, Ltd., A. I. R. 1929 All. 70...	217
Swaminath Aiyar, 1 I. T. C. 25	809, 810
Swan Brewery Case, 30 T. L. R. 199	67
Swarup Chand Pannalal *v.* C. I. T., 165 I. C. 581 : A. I. R. 1936, 397	280
Swedish Central Railway *v.* Thompson, 9 T. C. 342...	626
Sved Ali Imam, 8 I. C. 164 : A. I.R. 1935 Pat. 281...	95

T

Tahila Ram Amirchand *v.* C. I. T., Punjab, 8 I. T. C. 345	226, 779
Tara Chand Pahumal *v.* C. I. T., 9 I. T. C. 256 : A. I. R. 1936 Lah. 836 :	280, 371, 448, 451, 467
Taraguli Bai *v.* C. I. T., 2 I. T. C. 164 : 8 Lah. 335...	788, 799
Taru *v.* Scalnan, (1928) A. C. 34 : 42 T. L. R. 420 ...	594, 623
Tata Hydro Electric Agencies, Ltd. *v.* C. I. T., 41 C. W. N. 774 P. C. : 39 B. L. R. 775 : 168 I. C. 173 : 64 I. A. 215 : 1937 Bom. 388 : A. I. R. 1937 P. C. 139 : 1937 I. T. R. 202 : 1934 Bom. 62	232, 263, 264, 798

PAGES

Tata Industrial Bank, Ltd., A. I. R. 1922 Bom. 75 : 1 I. T. C. 152 ... ... 156, 214, 254

Tata Iron and Steel Company, Ltd., 64 I. C. 12 : 45 Bombay 1396 : 1 I. T. C. 125 : 23 Bom. L. R. 208 : 39 C. L. J. 16 : 28 C. W. N. 307 : 74 I.C. 469 : A. I. R. 1923 P. C. 148 ... ... 176, 246, 799, 802, 805, 807

Tebru Rubber Syndicate *v.* Farmer, 5 T. C. 658 ... 57, 63

Tejpal Jamunadas *v.* C. I. T., U. P., 10 I. T. C. 234 166

Tenant *v.* Smith, 3 T. C 158 : 1892 A. C. 150 ... 140, 143, 147

Texas Law and Mortgage Co. *v.* Haltham, 3 T.C. 255 234

Theari Garahawal Estate through Ram Prosad, Principal Officer, 1937 I. T. R. 1 : A.I.R. 1934 P. C. 34 : 38 C. W. N. 314 (P. C.) ... 65, 801

The Central Talkies Circuit, Matunga, 9 I.T.R. 44 ... 473

The Madras Central Co-operative Bank, Ltd., A.I.R. 1929 Mad. 387 159

The Madras Provincial Co-operative Bank *v.* Commr. of Income-tax, Madras, A. I. R. 1933 Mad. 489 159

Thillai Chidambaram Nadar, A. I. R. 1925 Mad. 149 751

Thiruvengada Mudaliar, A. I. R. 1928 Mad. 889 ... 775

Thompson *v.* Benstead, 7 T. C. 137 113

Thompson *v.* Betty, 3 T. C. 149 234

Thompson *v.* Bruce, 6 A. T. C. 522 ... ... 227, 249

Thomson and Balfour *v.* Leepage, 8 T. C. 541 : 1924 A. C. 27 ... ... 460, 466

Thomas Turner, 4 T.C. 25 591

Toramal Attamchand, 2 I. T. C. 301 799

Thorley, (1891) 2 Ch. 613 : 64 L. T. 515 ... 4, 5

Thornton *v.* Hewe, 31 Bea. 14 101

Thoutepu Chinna Pallayya and others *v.* C. I. T., 9 I. T. C. 377 : 1937 I. T. R. 182... ... 452

Tischler *v.* Apthorpe, 2 T. C. 89 : 52 L. T. 814 ... 572, 595, 601, 623

T. Manavader, 126 I. C. 596 130

Tolaram Ramdas *v.* C. I. T., Bombay, 173 I.C. 786 : A. I. R. 1938 Sindh 33 461

PAGES

Tricumchand Dansing, 32 C. W. N. 287 ... 561

Tricumji Jibandas, 86 I. C. 170 560

Trichinapoly Hindu Permanent Fund, Ltd., 107 I. C. 291 : A. I. R. 1938 Mad. 148 : 1937 I. T. R. 703 61

Trimbaka Son of Totaram Lingyatwari *v.* C. I. T., A. I. R. 1938 Nag. 16 532

Trustees Corporation, Ltd., 34 C. W. N. 711 ... 774

Trustees of Kespari Bai and Maharatta Trust *v.* C. I. T., Bom. 10 I. T. C. 65 102

Trustees of Sir Currimbhoy Ibrahim Baronetcy *v.* C. I. T., 58 Bom. 378 : A. I. R. 1934 P. C. 116 : 7 I. T. C. 195 : 40 C. W. N. 199 ... 61, 64, 69

Trustees of Tribune Press *v.* C. I. R., 16 Lah., 829 : 8 I. T. C. 353 : A. I. R. 1939 P. C. 208 : 43 C. W. N. 1065 : 1935 I. T. R. 246 ... 70, 101, 102, 103

Tulsidas Naginchand *v.* C. I. T., A. I. R. 1938 Lah. 551 : 181 I. C. 99 ... ... 352, 353

Turton *v.* Cooper, 5 T. C. 138 143

Turton *v.* O'brien, 7 T. C. 170 ... ... 297, 298

Turnbull *v.* Foster, 6 T. C. 206 113

Turner Morisson & Co., 117 I. C. 689 : 33 C. W. N. 112 : A. I. R. 1929 All. 212 F. B. ... 96, 148, 249

U

U. Lunyo, 146 I. C. 300 : A. I. R. 1933 Rang. 359 ... 377

Umar Baksh *v.* C. I. T., Punjab, A. I. R. 1931 Lah. 578 : 132 I. C. 689 : 5 I. T. C. 402 ... 69, 101, 802

United Colliers, Ltd. *v.* Commissioner of Inland Revenue, 8 A. T. C. 518 : 12 T. C. 1248 ... 207

United Service Club, Ltd., Simla *v.* Emperor, 2 Lah. 109 ... ... 60, 160

University of Bombay *v.* Municipal Commissioner of Bombay, 16 Bom. 217 100

Ushers Wiltshire Brewery Co., Ltd. *v.* Bruce, 31 T. L. R. 104 : 6 T. C. 399 : (1915) A. C. 433 ... 207, 218, 230, 237

Uzahar Ali *v.* Ultab Fatima, 13 M. L. A. 232 ... 28

V

	PAGES
Vadilal Lalubhai Mehta *v.* C. I. T., 3 I. T.R. 152 : 9 I. T. C. 90 : 1935 Bom. 170 : 1 I. T. L. R. 325	775, 783, 792
Vallombrosa Rubber Co., Ltd. *v.* Farmer, 5 T. C. 529	207, 233, 246
V. E. A. Chettiar Firm, A. I. R. 1930 Rang. 37 : 7 Rang. 581	778, 798
Vedathani *v.* C. I. T., 1933 I. T. R. 70 : 1. L. R. 56 Mad. 1 : 6 I. T. C. 267	73, 74, 290, 292
Venkata Chalapatty Garu, 1 I. T. C. 185 ...	269
Venkatachalam Chettiar *v.* C. I. T., 8 I. T. C. 74 : 48 I. L. R. Mad. 367 : 156 I. C. 64 : 1935 Mad. 378	532, 533, 646
Venkatachella Chettiar *v.* Sampathu Chettiar, 32 Mad. 62	678
Venkataramana *v.* Varaihalu, 7 I. T. R. 560 ...	679
Virappa Chettiar, A. I. R. 1930 Mad. 123 : 4 I. T. C. 204	57
Virvan Bansilal *v.* C. I. T., 178 I. C. 724 : A. I. R 1936 Lah. 750	352, 505, 553
Viswnatham Chettiar *v.* C. I. T., (unreported) ...	546, 547
Von Glehn, 12 T. C. 232	229
Voora Sreeramalu Chetty *v.* C. I. T., Mad., 1939 I. T. R. 266 : 185 I. C. 465	532, 805
V.P.R.P.L. Family *v.* Commissioner of Income-tax, A. I. R. 1933 Rang. 218	794
V. T. S. Sevuga P. Thaver, 140 I. C. 451 : 56 Mad. 251 : A. I. R. 1932 Mad. 757	20

W

Wall *v.* Cooper, 14 T. C. 552	794
Warness & Co., 12 T. C 227	229
Watchmaker's Alliance and Earnest Goode's Stores, 5 T. C. 117	630
Watney Co. *v.* Musgrave, 1 T. C. 272	247

PAGES

Watson Brothers *v.* Lothian, 4 T. C. 441 ... 459, 460, 466

Werle & Co. *v.* Colquhun, 2 T. C. 402 : 20 Q. B. D. 753 ... ... 192, 572, 601

Western India Turf Club, 32 C. W. N. 457 P. C. ... 463, 469

Westminister Bank *v.* Osler, (1932), 1 K. B. 668 17 I. C. 381 156

W. H. Muller *v.* Lethem, 13 T. C. 126 591

Whicker *v* Hame, 7 H. L. 124 100

Whitmore *v.* C. I. R., 5 A. T. C. 1 66

Whitney *v.* C. I. R., 10 T. C. 88 356

Wild *v.* M. Tussand, 13 T. C. 127 460

Wigmore *v.* Summerson, 9 T. C. 577 66

Williams *v.* Singer, 7 T. C. 387 ... ... 572, 574

Williams *v.* Star Newspaper Company, (1908) 24 Times. L. Rep. 297 682

William Esplen, Ltd. *v.* C. I. R., (1919) 2 K. B. 108 199

Wilmer *v.* M' Namara & Co.,Ltd., (1895) 2 Ch. 245... 247

Wilson *v.* Simpson, 5 A. T. C. 450 297

Wing *v.* O' Connel, (1927) I. R. 84 143

Woods and Lewis, (1898) 2 Ch. 211 630

Wright *v.* Mills, 62 L. T. Rep. 558 681

Y

Yagappa Nadar, 105 I. C. 489 : 50 Mad. 923 ... 20

Young *v.* Commissioner of Inland Revenue, 12 T. C. 827 248

Young *v.* Adams, (1898) A. C. 469 5

Young, 1 T. C. 57 113

Z

Zenub Bai *v.* Secretary of State, 136 I. C. 819 ... 644, 809

Zenab Kedarbai *v.* Secretary of State, A. I.R. 1936... Sindh 137 : 165 I. C. 329 646

Zesaram *v*, Commr. of Income-tax, A. I. R. 1927 Lah. 421 560

Ziwashaha Maya Shaha *v.* C. I. T. , 7 I. T. C. 403 : \. I. R 1935 Lah. 840 276

THE
INDIAN INCOME-TAX ACT

ACT NO. XI OF 1922.

As amended by subsequent enactments up to Act No. VII of 1939

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 :—

Short title, extent and commencement.

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

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

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

Extent of the Act—This Act has been declared in force in the district of Khondenals by s. 3 and Sch. of the Khondenals Laws Regulation, 1936 (4 of 1936), and in the district of Angul by s. 3 and Sch. of the Angul Laws Regulation, 1936 (5 of 1936).

In the Chittagong Hill-tract, this Act has been applied with certain exceptions to persons by s. 2 of the Chittagong Hill-tracts Laws Regulation, 1937 (Ben. Reg. 2 of 1937).

In addition to the areas referred to in sub-section (*2*), the operation of the Indian Income-tax Act, 1932, has been extended to various other areas—*vide* the Notifications of the Central Government (Political Department). Details will be found in Part II, under heading "Statutory Orders, Exemptions and Rules."

Date on which the Act comes into force :

The Indian Income-tax Act, 1922, came into force on the first day of April, and the amendments made by the Indian Income-tax (Amendment) Act, 1932, subject to the exceptions referred to below, came into force on the 1st day of April, 1939. The exceptions are :—

(*a*) The amendments to section 13 (*2*) (*vi*) and (*vii*) take effect as from the 1st day of April, 1940.

(*b*) The whole of Part II of the Indian Income-tax (Amendment) Act, 1939, (which provides for the appointment of an Appellate Tribunal, for appeals and for matters incidental thereto) comes into force on such date as the Central Government may by notification in the official Gazette appoint, such date, however, being not later than two years from the first day of April, 1939.

Applicability :

"The principle of all fiscal legislation is that if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to our judical mind to be. On the other hand if the Crown seeking to recover the tax cannot bring the subject within the letter of the law,

---

ACT NO. VII OF 1939.

An Act further to amend the Income-tax Act, 1922.

WHEREAS it is expedient further to amend the Indian Income-tax Act, XI of 1922, for the purposes hereinafter appearing ; It is enacted as follows :

Short title and commencement.

1. (*1*) This Act may be called the Indian Income-tax (Amendment) Act, 1939.

(*2*) This section and Part I shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and Part II shall come into force on such subsequent date, not later than

the subject is free, however apparently within the spirit of the law the case might otherwise appear to be" : (*In the matter of Ramanandan Chetty*, 43 Mad. 75, distinguished), but "if the Crown seeking to recover tax cannot bring the subject within the letter of the law, the subject is free. But the Court cannot undertake, out of its own notions of what is fair, to adapt or rearrange the machinery of the Act upon a matter of such character and importance as maintenance allowance" : *In the*

---

two years from the date appointed for the coming into force of Part I, as the Central Government may, in like manner, appoint :

Provided that sub-clauses (*vi*) and (*vii*) of clause (*b*) of Section 10 shall not take effect earlier than the 1st day of April, 1940.

INTRODUCTION OF THE ACT VII OF 1939.

The Indian Income-tax Act of 1922 came into operation from the 1st of April, 1922. Administrative expediency necessitated a drastic amendment of the Act. The Government of India appointed a Committee of Enquiry in October, 1934, who after careful consideration submitted their report in 1936. The present Act is based mainly on the recommendations of the Taxation Enquiry Committee Report. The result is the amendment of the Act on several fundamental points affecting the scope of the tax, extent of the liability and the general administration of the Income-tax Act.

Commencement of the Act :

Where any Act or Regulation embodies that it shall come into force from a specified date, the Act comes into force on such date ; but when no date is mentioned, it comes into operation when the Act is published in the Gazette.

In Act No. X of 1897, that is, in the General Clauses Act, 1897, section 5, clause (*1*) runs thus .

"Where any Act of the Governor-General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it received the assent of the Governor-General.

Section 5 (*3*) runs as below :

"Unless the contrary is expressed, an Act of the Governor-General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

Thus the Act will come into force on such a date, as the Central Government, may, by notification in the Official Gazette, appoint. This of course will hold good. so far as Part I is concerned.

But Part II will be operative on such a subsequent date, not later than two years from the date of operation of Part I.

The proviso puts a limit in this way that sub-clauses (*vi*) and (*vii*) of clause (*b*) of section 10 shall not take effect earlier than the 1st day of April, 1940.

Act No. VII of 1939 received the assent of the Governor-General on the 17th February, 1939, and was promulgated for general information in the Gazette of India, on the 25th February, 1939.

matter of Bijay Singh Dudhuria, 57 Cal. 918 : A. I. R. 1930 Cal. 641 (F. B.). It is a well recognised rule that in a Statute imposing pecuniary burdens, if there be a reasonable doubt with regard to the construction of any burdensome provision, the construction most beneficial to the subject is to be adopted —*Stockton and Darlington Ry.* v. *Burret*, 8 Scott N. R. 641 ; *In re Mickle Thwait* (1885), 11 Ex. 452 ; *In re Thorley* (1891), 2 Ch. 613 relied on—*in the matter of Sindh Light Railway*, A. I. R. 1932 (S.) 192.

A fiscal statute should be construed having regard to the intention and language of the statute. Exemption can only be claimed if it clearly appears in the Act.

The Income-tax Act is a fiscal enactment and in the case of an ambiguity, it is to be construed by the well-known precept in favour of the subject—*In re Hara Krishna Das*, 132 I. C. 429. *In Jiwan Das* v. *C. I. T., Lahore*, 117 I. C. 637, it is stated that it is important to remember the rule which the Courts ought to obey, that when it is desired to impose a new burden by way of taxation, it is essential that intention should be stated in plain terms. In any case the Income-tax Act being a fiscal enactment should be liberally construed and administered—*In re Jai Dayal Madan Gopal*, 143 I. C. 391.

When the language of the sections of English and Indian Acts are almost identical, Indian Courts would very much hesitate to depart from the view expressed by eminent Judges in England, unless there is something internal in the section itself which would justify its interpretation in different way—*S. L. S. Dewan* v. *Official Liquidators*, A. I. R. 1933 All. 789.

Invocation of the Imperial Income-tax Code and of decisions pronounced upon it is apt to be very misleading in the interpretation of the Indian Income-tax legislation which is framed on other and fortunately much simpler lines—*In re Bejoy Sing Dudhuria*, A. I. R. 1933 P. C. 145.

In *C. I. T. Bengal* v. *Shaw Wallace and Co.*, A. I. R. 1932 P. C. 138, it was observed : "The Indian Act is not in *pari materia*, it is less elaborate in many ways, subject to fewer refinements and in arrangement and language it differs greatly from the provisions with which the Courts in this country had had to deal. Little can be gained by attempting to reason from one to the other."

In *C. I. T.* v. *Sindh Light Ry. Co. Ltd.*, 138, I. C. 673, it has been held that "It is a well-recognized rule that in a statute imposing pecuniary burdens, if there is a reasonable doubt with regard to the construction of any burdensome provision, the

construction most beneficial to the subject is to be adopted" (vide *Stockton and Darlington Ry.* v. *Barret*, 65 R. R. 261 ; *in re Micklethwait*, 11 Ex. 452 ; *in re Thorley*, 64 L.T. 515 and *Price* v. *Monmouthshire Ry. and Canal Co.*, 40 L. T. 630).

Amending Act—Retrospective or not :

In Byles' Cardinal Rules of Legal Interpretation, it is embodied that Statutes are not to be interpreted so as to have a retrospective operation, unless they contain clear and express words to that effect or the object, subject-matter or context show that such was their object. In *Balaji Singh* v. *Ganjaram*, 99 I. C. 143, it has been specifically held that Legislative enactments have no retrospective effect unless explicitly stated to be so in the enactments themselves. Similarly in *Kopokum* v. *C. A. M. A. L. Firm*, 140 I. C. 156, it was held that amending statutes should not be construed as having retrospective effect if they affect vested interests. Attention is invited to the decisions in the following cases, *e.g. Young* v. *Adams*, (1898) A. C 469, *Delhi Cloth Company* v. *C. I. T.*, 54 I. A. 421 : 53 M. L. J. 819 and *Colonial Sugar Refining Co.* v. *Irving* (1905) A. C. 369.

Retrospective operation should not be given to an amending Act unless it is specifically provided for. Such a course would deprive vested rights. Alterations in procedure or evidence are always retrospective unless there be some good reason for it —*Gardener* v. *Lucas*, 3 A. C. 562. It must be understood that the repeal of an Act does not take away rights previously acquired before such repeal—*Lemm* v. *Mitchel* (1912), A. C. 400.

Section 6 of the General Clauses Act, 1897 (Act X of 1897) may be referred to with advantage.

Equitable Construction :

"The scope of the Income-tax Act cannot be extended by analogy nor can a beneficient or equitable construction be placed upon it in order to prevent a real or supposed anomaly because such a construction is not admissible in a taxing Act. Hence if the Crown cannot bring the subject within the letter of the Statute, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be :" *In the matter of Bhagat Jiwan Das* v. *Income-tax Commissioner, Lahore*, 117 I. C. 637 : A. I. R. 1929 Lahore, 609. This Act must be read and interpreted according to its natural constructions as laid down in the case of *Raja Prabhat Chandra Barua*, 31 C. W. N. 765 : A. I. R. 1929 Cal. 432 : 102 I. C. 845 : 54 Cal. 863 : 45 C. L. J. 323. For details see Mis. chapter.

Income :

The Act deals with the taxation of income under several heads. So far as properties are concerned "National Income" is taken while in other cases it means actual income as is reported in the case of *Rajendra* v. *Commissioner of Income-tax*, 118 D.C. 593 : A.I.R. 1929 Patna, 449.

Liability to Taxation :

The liability to taxation arises on the place where income is received or is accrued : *In the matter of Bhagat Jam Das*, 117 I.C. 157 : A. I. R. 1929 Lahore, 609. All that the law requires is that an assessee is entitled as of right to circumvent in any legal manner the incident of a taxing statute, it is not proper for the authorities to "take motive of the assessee :" *In the matter of Ebrahim Saha & Co.*, 110 I.C. 207 : A.I.R. 1928 Mad. 543. Similarly an assessee is justified to take recourse to any device lawfully to avoid tax : *In re Gungasagar*, 120 I.C. 435 : A.I.R. 1929 All. 919 : *Makunda Swarup*, 107 I C. 683 relied on, and in the case of *Rajniti Prasad Singha*, 123 I.C. 617 : A.I.R. 930 Pat. 33, the same principle was observed. If any of His Majesty's subjects are clever enough to avoid taxation by legal means, they are at liberty to do so, and there is nothing wrong in so conducting one's affairs within the law as not to attract taxation— *In re Bai Sakina Boo*, A.I.R. 1932 B. 116. The mere fact that the transaction is a device to escape income-tax ought not to prejudice the assessee.

Validity of Assessment :

When assessment has been arrived at for a year in which source of income, which existed in previous year, does not exist in the assessment year, it is not bad in law ; the income-tax is a single tax and not an aggregate of different taxes : *In the matter of Behari Lall Mallick*, 31 C. W. N. 557 : A.I.R. 1927 Cal. 553.

British-India :

Section 3(7) of the General Clauses Act, 1897, defines "British India" thus :

'British India' shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India " And in the Government of India Act, 1935, the term has been defined "in sec. 311(1) which says : " 'British India' means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces."

Position of Burma :

The India, Burma and Aden Taxation order, 1937, had the effect that Burma was no longer within "British India."

Section 3 of the said order runs thus :

"**3.** In this order—

'Separation' means the separation of Burma and Aden from India ; 'the three countries' means India, Burma and Aden ;"

British Subject :

The British Nationality and Status of Alien Act provides that a British subject is "a person who is a natural born British subject, or a person to whom a certificate of Naturalisation has been granted or a person who has become a subject of His Majesty by reason of any annexation of territory."

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 officers of Government as such ;

(*b*) any income derived from such land by—

(*i*) agriculture, or

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

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no

process has been performed other than a process of the nature described in sub-clause (*ii*) ;

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

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

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

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

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

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

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

*(*6*) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter

* Substituted by Act XL of 1940.

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 purpose of this Act ;

"(*6A*) 'dividend' includes—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(*b*) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not ;

(*c*) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company :

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

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

Provided that 'dividend' does not include a distribution in respect of any share

issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assests, when such distribution is made in accordance with paragraphs (*c*) and (*d*) of this sub-section.

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

(*6B*) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932 : provided that the expression 'partner' includes any person who being a minor has been admitted to the benefits of partnership ;

"(*6C*) "income" includes anything included in 'dividend' as defined in clause (*6A*) and anything which under *Explanation 2* to sub-section (*1*) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (*viii*) of sub-section (*2*) of section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule ;

(*6D*) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5 ;

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

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

(*9*) "person" includes a Hindu undivided family and a local authority ;

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

(*11*) "previous year" means in respect of any separate source of income, profits and gains—

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

Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression 'previous year' as then applicable to him expect with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit ; or

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

(*c*) where a business, a profession or vocation has been newly set up in the financial year preceding the year for which the assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of

March next following or to the last day of the period determined under sub-clause (*b*), or, if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (*b*), then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date :

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year ; and

when the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm ;

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

(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association, or

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

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

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

(*15*) "total income" means total amount of income, profits and gains computed in the manner laid down in this Act ; and "total world income" includes all income, profits and gains, wherever accruing or arising, except income to which, under the provisions of sub-section (*3*) of section 4, this Act does not apply ;

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

Definition of Agricultural Income :

(*i*) Agricultural income is exempted from tax under the provisions of section 4 (*3*) (*viii*) of the Act and any income to be exempted must fall within the words of this definition. The definition was amended in the Act of 1933 in order to make it clear that rent or revenue derived from land used for agricultural purposes [clause (*a*)] is exempt from tax only in cases where the land is assessed to land revenue by an authority in British India or is subject to a local rate assessed and collected by an authority in British India, and that the exemption does not apply to cases where the land pays revenue or local rate to authorities outside British India. Clauses (*b*) and (*c*) were also amended at the same time in order to make it clear that the limitations in clause (*a*) apply also to the incomes specified in clauses (*b*) and (*c*) so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India.

(*ii*) A further amendment was also made by the Act of 1922 in clause (*b*) (*iii*). Under the previous Acts profits from the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him were included under "agricultural income" only in cases where the cultivator or receiver of rent-in-kind did not keep a shop or stall for the sale of such produce. Under the present Act profits derived by a cultivator from the sale of the produce raised by him are included in the term "agricultural income" where the produce is sold in its raw state, that is, if no process has been performed in respect of the produce other than a process of the nature described in sub-clause (*ii*). The tax therefore is now not leviable on the profits derived by a cultivator or receiver of rent-in-kind from the sale of the

raw produce raised or received by him even if he keeps a shop for the retail vend of such raw produce.

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

(*iv*) Assignment of land revenue to a Jagirdar is not assessable to income-tax in the hands of the Jagirdar.

(*v*) Interest on arrears of rent of land used for agricultural purposes is part of the rent derived from the land and is therefore not liable to income-tax, subject to the exception that if the arrears are secured by a bond and are therefore recoverable by civil suit such interest is taxable.

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

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

the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business expense even although the expense is not in bearing. As regards the question as to what is capital or revenue expenditure in respect of tea gardens see paragraph 64.

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

(*viib*) The following principle should be adopted in calculating the net dividends and regulating refunds on dividends, paid from profits that are only partly taxed in the hands of the

company, *e.g.*, companies a part of whose income arises or accrues outside British India and is not received in British India or part of whose income is derived from tax-free securities :—

> If x *per cent.* of the profits pay tax in the hands of the company, the gross dividend is to be calculated (taking company rate of income-tax as 2 annas and $4\frac{1}{8}$ pies, or 169/1152) by applying to the net dividend the fraction $\frac{1152}{1152-169 \times \frac{x}{100}}$.

(*viii*) Illegal *abwabs* are taxable since they do not come within the definition of "agricultural income". So also are the following items, *viz.* :—(*a*) fees received from land used for storing purchase of crops (*Paiali*), (*b*) *punyaha nazar* or *nazar* paid by tenants of agricultural holdings at the beginning of the *zemindari* year (*c*) *nazar* for petitions presented to the *zemindars* dealing with questions of successions, settlement and partition : *Raja Prabhat Chandra Barua* v. *King Emperor*, High Court of Bengal, Reference No. 1 of 1926, II, Srinivasan Tax Cases, page 392, and Privy Council Appeal in the same case. On the other hand, the ruling in the Bengal High Court Case No. 40 o. 1920, *Birendra Kishor Manikya* v. *Secretary of State for India*, I, Srinivasan Tax Cases, page 67, in which it was held that though the premium paid for the settlement of waste lands or abandoned holdings might reasonably be regarded as "rent or revenue" derived from land, as used in this definition, the same consideration did not apply to the *salami* or premium paid to a land-holder for recognition of a transfer of a holding from one tenant to another, has been over-ruled in respect of the *Salami* in question by a Full Bench of the High Court of Bengal in Reference No. 1 of 1925, *Nawabzadi Mehar Bano Khanum* v. *Commissioner of Income-tax, Bengal*, 11, Srinivasan Tax Cases, page 99 ; this Full Bench decision was followed by the Patna High Court in Case No 47 of 1926, *Maharajadhiraj of Darbhanga* v. *Commissiner of Income-tax, B. & O.*, III, Srinivasan Tax Cases, page 158 and again maintained (by way of *obiter dictum*) in the High Court's subsidiary decision in the Reference case, already quoted, of *Raja Probhat Chandra Barua*.

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

(*xi*) Again, in the Patna High Court Case No. 76 of 1919, in the matter of *Bhikanpur Sugar Concern*, I, Srinivasan Tax Cases, page 29 (53 I. C, 501), and in the Bengal High Court Case No. 13 of 1920, *Killing Valley Tea Company, Limited* v. *Secretary of State for India*, I, Srinivasan Tax Cases, page 54, (48 Cal. 161), it has been held that the profits of sugar factories and profits derived from the manufacture of tea as a marketable commodity from the green leaves are liable to assessment.

Agricultural Income after the Amendment of 1939 :

The definition has not been amended by the Income-tax (Amendment) Act, 1939, and the following examples merely illustrate what is or is not agricultural income within the meaning of the definition :

(*1*) Income received by a land-owner from the sale of timber or leaf grown on his own land,

(*2*) Land revenue assigned to a Jagirdar,

(*3*) Interest or arrears of rent of land used for agricultural purposes, unless the arrears are secured by a bond and are, therefore, recoverable by civil suit.

Examples of income which is not agricultural income :—

(*1*) Profits from contracts taken for the cutting down and selling of timber,

(*2*) *Punyaha nazar* or *nazar* paid by tenants of agricultural holdings at the beginning of the zamindari year,

(*3*) *Nazar* for petitions presented to the zamindar for dealing with question of succession, settlement and partition,

(*4*) The profits of sugar factories and tea factories.

Example of income which is partly agricultural and partly non-agricultural :—Income derived from the sale of tea grown on a person's own estate in British India and manufactured by him into tea, (*see* rule 24). In respect of other cases of income derived in part from agriculture and in part from business, (*see* rule 23.)

Assessee : "Assessee" is defined to mean a person by whom income-tax is payable. Income-tax includes super-tax which is defined in section 55 to be "an additional duty of income-tax", The executor, administrator, or other legal representative of a deceased person is treated for the purposes of an assessment on the income of such deceased person as an assessee. If any person

who is required to deduct tax under section 18 does not deduct, or after deducting fails to pay it, he will be deemed to be an assessee in default in respect of such tax. (See notes on section 18.)

Person : Under section 3(39) of the General Clauses Act, 1897, a "person" includes any company or association or body of individuals whether incorporated or not, and this definition has for the purposes of the Indian Income tax Act been extended to include also a Hindu undivided family and a Local Authority.

Trading operations of Indian States and Dominion Governments :

Any trade or business in British India carried on by the Governments of Indian States or of any part of the British Empire other than the Government of India or a Local Government, and the property occupied and goods owned in British India for the purpose of such business are, under the provisions of the Government Trading Taxation Act (III of 1926) liable to taxation under the Indian Income-tax Act in the same manner and to the same extent as in a like case a company would be. Before attempting to assess the income of such Government, the Income-tax Officer should serve a notice under section (12) (*6*) of the Indian Income-tax Act upon some representative of the said Government in British India declaring his intention of treating such representative as the principal officer of such Government.

Nazar :

Punyaha Nazar is not agricultural income ; but mutation fees paid by the tenant to landlord as such on succeeding to the holding by inheritance are income derived from land used for agricultural purposes and as such are exempt from tax The fact that the realisation of these fees is illegal is immaterial : *In the matter of Rajendra*, 118 I. C. 593 : 4 I. T. C. 15.

Interest on arrears of Rent :

This is not liable to income-tax because it is purely agricultural income but it becomes taxable when the arrears are covered by bonds and are recoverable by civil suits. Thus it is evident that when a bond or a pro-note is taken in lieu of cash payment, interest which accrues on the bond or on the pro-note becomes taxable, irrespective of the fact that the capital invested is rent. When a landlord takes a promissory note from the raiyat for the rent, the interest which accrues on the

pro-note, is not an agricultural income—*In re Raja Inugenti Rajagopala Venkata Nara Singha Rajahem Bahadur*, 138 I. C. 289. (58 M. 830.)

Interest on arrears of rent realised under section 67, Bengal Tenancy Act :

Such interest is not agricultural income within the meaning of section 2 (*1*)(*a*) of the Indian Income-tax Act. It is neither "rent" nor "revenue" derived from land. The rent is payable to landlord by the tenant by virtue of a contract of tenancy of land. The cause of action in respect of rent arises out of contract. On the other hand the interest which is payable in respect of arrears arises out of a statutory provision of law which imposes a penalty upon the tenant for non-payment of his rent. Although both rent and interest on arrears of rent are payable by the tenant to the landlord, they are payable for different reasons. Rent is payable for the use of the land under a contract. Interest is payable for the use of money withheld by the tenant and it is payable not by reason of a contract but by reason of a statutory provision. In view of this, the interest cannot be said to be rent nor can it be said to be return, yield, or profit of the lands such as would make it revenue within the meaning of section 2 (*1*)(*a*) of the Income-tax Act.—*Manager, Radhika Mohan Roy Wards Estate, in Re*, 8 I. T. R. 460.

Jalkar and Hatkar in Permanently Settled Area :

Hatkar is always taxable but income from Jalkar is held not liable, provided the assessee can prove that such incomes were included on the asset at the time of the settlement with him or his predecessor in interest : *In the matter of Probhat Chandra Barua*, 51 Cal. 504 : 1 I. T. C. 414, 57 I. A. 228 : 106 I. C. 353 : A. I. R. 1930 P. C. 209 and also in the case of *Indu Bhusan Sarkar* v. *Commissioner of Income-tax, Bengal*, A. I. R. 1926 Cal. 819 : 30 C. W. N. 529. The Patna High Court arrived at a similar decision in the case of *Maharajadhiraj Durbhanga*, reported in 28 C. W. N 49. *But the Privy Council decision in the case of Probhat Chandra Barua has finally set at rest the theory.* There it has been laid down that Jalkars are taxable and that Regulations do not exempt Zamindars from any general exemption. A. I. R. 1930, Privy Council, 209. In their Lordships' opinion, "while the regulations contain assurances against any claim to an increase of the jama based on an income of the Zamindary, they contain no provisions that a Zamindar shall in respect of the income which he derives from his Zamindary, shall not be subjected in respect of other income to any future general scheme of property taxation or that the income of a Zamindary shall not be subjected with other incomes to any

future general taxation of incomes." Their Lordships agree with the views expressed by Justice Ghosh in the following passage from his judgment : "There was no promise or engagement of any description whatsoever by which the Government of the day surrendered their right to levy a general tax upon incomes of all persons irrespective of the factor whether they are Zamindars with whom the permanent settlement was concluded or not. (A. I. R. 1925 Cal. *affirmed*). The income derived from leasing the right to fish in a tank does not constitute agricultural income —*In re V. T. S. Sevuga P. Thaver*, 140 I. C. 451 : 56 Mad. 251 : A. I. R. 1932 M. 757.

Similarly, maintenance allowance derived by a widow from an agricultural estate is not an agricultural income—*In re Rani Sultanat Begum*, A.I.R. 1933 (O) 475 : 146 I.C. 651 : 7 I.T.C. 255.

In the case of *Radha Mohon*, reported in 104 I. C. 841 : A. I. R. 1928, Pat. 58 : 2 I. T. C. 453, it has been laid down that a conquered Raja cannot claim any exemption for Jalkar.

Profits from the working of quarries and sale of stone :

Such profits cannot be said to be agricultural income and are therefore assessable : *In the matter of Shiva Lal Gangaram*, 103 I. C. 417 : 2 I. T. C. 425 : 50 All. 98.

Toddy :

Income from toddy becomes agricultural when it is received by the actual owner or the lessee of the land on which the trees grow, otherwise such incomes are not agricultural : *In the matter of Yagappa Nadar*, 105 I. C. 489 : 50 M. 923.

Manufacture of Salt :

In the case of *Lingya Reddi*, 104 I C. 703 : 50 M. 763, it was held that the manufacture of salt is not agricultural.

Income from Mortgaged Land :

The assessee, whose main source of income is from money-lending businsss, lends money on usufructuary mortgage of agricultural land without any stipulation for interest, instead of interest the produces of the land to be taken and enjoyed by him. The Income-tax Officer while making assessment decided that it is really a part of the profits and gains of his business and as such is not agricultural income exempt from the assessment. The Madras High Court held, Justice Jackson dissenting, that "the income sought to be assessed was rent derived from land used for agricultural purposes and hence exempt from assessment" : *Shubramanya Sastri Gopal* v. *Commissioner of Income-tax*, 57 Mad. 455 : 2 I. T. C. 152. Similarly, when there is a grant of loan on usufructuary mortgage with simultaneous lease back, the

income thereform is agricultural, pure and simple (107 I. C. 683). The case of *Shubramanya Sastri Gopal* was distinguished and dissented from. Similarly also in the case of *Mukunda Swarup*, A. I. R. 1928 All. 81 F. B. : 50 All. 495, it was held that where usufructuary mortgagee leases mortgaged property to the mortgagor on fixed annual payments, such payments are purely agricultural and should be excluded.

Agricultural income is exempt from the operation of the Indian Income-tax Act ; but section 2(*1*) is also applicable to mortgage with possession of lands, whether the mortgaged lands are leased back to the mortgagors or to strangers, irrespective of the motive.

The money which actually goes into the pocket of a pure usufructuary mortgagee is nothing short of rent or it may be profits of cultivation, pure and simple. The natural corollary therefore is that either it is derived from land used for agricultural purposes or it is income derived from land by agriculture, in any view of the case it is agricultural income.

If one may be permitted to draw an analogy, it will appear that such a mortgagee stands on the same footing with the proprietor—he can sue for arrears of rents and eject tenants; he is also liable to pay Government Revenue etc. It is therefore clear that in the case of a pure usufructuary mortgage there is no liability to pay income-tax.

The above principle applies to pure usufructuary mortgage ; but it seems reasonable that this privilege should be extended to cases where such a mortgagee leases back the mortgaged land to the mortgagor. To hold the case to be not of a usufructuary mortgage, is to misconstrue the subsequent lease. In the words of Justice Sulaiman in the case *Mukunda Swarup*, 31 I. C. 33 : "He has under the lease the right to recover rent through the revenue court which very often is a speedy remedy. He has also the security of the fixed amounts being paid to him regularly year after year with the option of entering into possession on the default of such payment. If he enters into possession after the ejectment of the mortgagor he is entitled to cultivate lands himself or to let the lands to tenants and receive profit from them. Under these circumstances it seems impossible to hold that the position of the assessee is that of a purely simple mortgagee who is liable to pay income-tax."

In *Muhammad Yakub Khan* v. *Commr., Income-tax*, 31 I. C. 308, the principle enunciated is that when a mortgage, though described as with possession, is really a simple mortgage with right to appropriate fixed sum for the money lent and nothing more, the amount thus received is not agricultural income.

In the case of *Rajniti Prosad Singha*, 9 Pat. 194 : 4 I. T. C. 264, the Patna High Court held that although the parties called the mortgage usufructuary it was really a simple mortgage. Of course tax can be avoided lawfully, but the procedure adopted does not constitute it an usufructuary mortgage and therefore it is chargeable to income-tax, cases of *Mukunda Swarup*, 50 All. 495 and *Inahimsa Rowther*, 58 M. 455, are thus technically distinguished.

The Patna High Court in the case of *Commissioner of Income-tax, B. & O*, v. *Maharajadhiraj Sir Kameswar Singh of Darbhanga*, A. I. R. 1934 Patna 178 (*vide* Income-tax Law Reports), made a judicial pronouncement. The assessee lent money on two bonds, the first was a zuripeshgi lease with a usufructuary mortgage and the latter was a *thica* lease. The bonds provided for annual appropriations towards the principal of the loan. If at the end of 15 years the whole of the principal had been paid off the estate was to be handed back to the lessor mortgagor, otherwise it was to continue until satisfaction of the whole loan. It was held that the assessee lessee was in possession of both the properties, and, in his relation to the cultivators of the soil, he is in the position of a landlord dealing directly with them and collecting rents. In short, the assessee is in a position to take all proceedings which the mortgagor would have been able to take in the ordinary course if the lands leased and mortgaged had remained in her *khas* possession.

The estate is in every sense in the possession of a landlord and used for agricultural purposes and the assessee is in the position of a landlord with respect to the actual cultivating tenants within the meaning of the term under the Bengal Tenancy Act and the income derived from the land must be agricultural income within the meaning of the Act and is, therefore, exempt from taxation.

The source of income must be considered in its proximate rather than in its ultimate significance. The intention of the assessee in making the investment is immaterial. It is conceivable that the assessee may have intended ultimately to purchase the mortgaged property in order to add it to the rest of his zemindari rather than to obtain the repayment of his loan in the ordinary way—as per Chief Justice Courtney Terrel.

Patni Lease, if Agricultural :—If an assessee want to bring himself within the exemption from taxation provided by the Act in the case of agricultural land it is for him to show that the income is derived from land which is used for agricultural purposes. The question whether the rent recieved by the assessee in the year in question was derived from land which was used for agricultural purposes is entirely a question of fact and has to

be determined not with reference to the nature of the lease by which the lands were let out but by reference to the use to which the land had been put.....*Maharajdhiraj Sir Bejoy Chand Mahatab Bahadur of Burdwan, In re,* 8 I. T. C. 378.

Thikadari Lease : Where Thikadari lease is granted to a person in consideration of services rendered, the income is no doubt agricultural, but if the lessor declines to make any fresh settlement or a new lease to his successor, but gives an annual allowance of Rs. 4500/- instead, the allowance in question cannot be regarded as an agricultural income—it is rather an annual *ex gratia* payment for past services and is taxable.....*C. I. T., B. & O.*, v. *Pandit Dhaneshwardhar Misra,* 8 I. T. R. 416.

Coffee grown in Indian State but cured and sold in British India :

In the Privy Council appeal of *C. I. T., Madras,* v. *Diwan Bahadur S. L. Mathias,* 7 I. T. R. 48 : 43 C.W.N. 225 it was held that the assessee was carrying on a 'business' within the definition of the word given by section 2, sub-section (*4*). The mere circumstance that income is to be placed under the head business has no effect to negative its being 'agricultural income' as defined by section 2(*1*).

Manufacture of Biris : The Calcutta High Court in the case of *Moolj Sicka & Co.,* 7 I. T. R. 493, delivered a very reasonable judgment. The assessers were manufacturers of Biris, a kind of cigarette, consisting of tobacco wrapped in Tendu leaves. The tendu plant is of entirely wild growth and propagates itself without human agency in jungle and waste lands. The assessees took lease of several villages for plucking the leaves of such plants and the works done by the assessees consisted in pruning the trees and burning the dead branches and dried leaves lying on the ground.

The High Court held that the profits accruing by the sale of tobacco leaves was not exempted as agricultural income, but to the extent to which pruning of the tendu shrub occurred, there was in a technical and legal sense a cultivation of the soil in which the shrub grew and therefore so much of the income as was shewn by the assessee to be profit derived from the collection and preparation, so as to make them fit to be taken to the market, of tendu leaves produced by the pruning of the tendu shrubs was exempt as agricultural income within the meaning of section 2 (*1*) and section 4(*3*) (*viii*) of the Act.

Income from Dairy : Where cattle are wholly stall-fed and not pastured on the land at all, there is no doubt it is trade and

no agricultural operation is carried on. But where cattle are exclusively or mainly pastured and are nonetheless fed with small amounts of oil cake or the like it may well be that the income derived from the sale of their milk is agricultural income. But between the two extremes there must necessarily be a number of varying degrees and the task of the Income-Tax Officer is to apply his mind to the two distinctions and to decide in any particular case which side of the fence the matter falls. He has to see whether the cattle derived sustenance to a material extent from the produce of the ground. But whether they did so or not is a question of fact which depends on the circumstances of each case : *Commissioner of Income Tax Burma* v. *Kokina Dairy, Rangoon*, A. I. R. 1938 (Rang.) 260 (F. B.)

Rent or Revenue : The case of *Birendra Kishore Manikya*, reported in 48 Cal. 766 : 6 I.T C 67, lays down that the premiums paid for settlement of waste lands are not liable to tax, but premiums paid for recognition of a transfer of holding from one tenant to another is taxable, and as such is not agricultural income. On the other hand the case of *Nawabzadi Meher Banu Khanum*, reported in 53 Cal 34 : 29 C.W N. 969, held that Nazar or Selami paid by a tenant to landlord for the recognition of a non-transferable holding is rent or revenue within the meaning of section 2(*1*) and it is exempt from assessment to income-tax by virtue of the provision of section 4 (*3*) (*iii*). This practically overrules the decision in the case of *Birendra Kishore Manikya*, 48 Cal. 766 : 1 I. T. C. 67. It was also followed in the case of the *Maharajadhiraj of Darbhanga*, reported in A. I. R. 1928 Pat. 463 : 7 Pat. 550.

Under Rent or Revenue :

The Income-tax Act does not define the term "Rent". In the absence of any definition, we shall have to look to other Acts for its proper definition.

In the T. P. Act, Rent has been defined in s. 105 thus :—

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions to the transferor, who accepts the transfer on such terms.

"The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

Section 3(*5*) of the Bengal Tenancy Act gives the definition thus : "Rent means whatever is lawfully payable or deliverable

in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant."

"In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII, Chapter XIV and Schedule III of the same Act, 'rent' includes also money recoverable under any enactment for the time being in force as if it was rent"—as per S. C. Sen in his Bengal Tenancy Act.

In Madras Act I of 1908, "Rent" has been defined in s. 3(*1*)—"Rent means whatever is lawfully payable in money or in kind or in both to a landholder for the use or occupation of land in his estate for the purpose of agriculture and includes whatever is payable on account of the use and enjoyment of water supplied or taken for cultivation of land where the charge for such water has not been consolidated with the rent payable for the land.

"(*a*) Any local tax or cess, fee or sum payable by a raiyat as such in addition to the rent due in respect of land according to law or usage having the force of law and also money recoverable under any enactment for the time being in force as if it was rent.

"(*b*) Sums payable by a raiyat as such on account of pasturage fees and fishery rents."

Thus rent or revenue derived from agricultural land is not taxable.

Landlord's Fees :

An important question arises whether landlord's fees payable by tenants are "income" within the meaning of the Act or are rent or revenue derived from the land.

In the Bengal Tenancy Act, with reference to sec. 26A, the following objects and reasons occur in the *Notes on clauses* "...In most cases, the transferee secures recognition by going to the landlord either immediately after the sale or at a later period and paying him a salami and the arrears of rent due from the old tenant. The amount of salami is not fixed, and in some cases the landlord is unwilling for some reason or other to accept the transferee as his tenant and the result is litigation on which no positive law can be applied. The remedy proposed is to recognise the existing widespread practice of transfer and to admit transferability of occupancy holdings subject to payment of a fixed rate of salami (called landlord's transfer fee) at the time of the transfer and to other safeguards necessary to protect the interest of the landlord and to secure the general welfare of the agricultural community. The salami or landlord's transfer fee has been fixed

at 25 p. c. of the consideration money or six times the rent, whichever is greater....."

I think it is better to put both sides of the shield to come to a definite opinion.

It is said that at all events in the cases of fees paid by the transferee, these are in no sense of the words, "Rent" or "Revenue" derived from land; they do not arise out of the creation of a new tenure. It is said that the money is something in the nature of damage for a breach of contract or as stated in the judgment of Justice Mukherjee in *Birendra Kishore Manikya* v. *Secretary of State*, 48 Cal. 766, money paid to secure peace and therefore are not to be regarded as revenue derived from land.

On a careful perusal of sections 26C, 26D, etc. it appears that landlord's transfer fee so far as occupancy holdings are concerned, has been fixed at 25 p. c. of the consideration money or six times the rent, whichever is greater.

The use of the term "Rent" is rather significant. In my humble opinion, there is nothing in the Act to hold that landlord's fees are not rent. It is submitted that the decision in the case of *Maharaja of Darbhanga* v. *Commr. of I. Tax, Bihar & Orissa*, A. I. R. 1928 Pat, 468, represents the correct view of the law.

In that case, Chief Justice Dawson Miller observes :

"The real question, I think, for determination upon this part of the case is, whether these fees paid by the tenants are to be regarded as income or revenue derived from land. Whether they be something in the nature of damages, although that clearly is not an appropriate term to use in this connection, or whether they may be regarded as something paid for the purchase of peace, seems to me to be altogether besides the question."

"It may just as appropriately be said that the rent itself when it is in arrears, or when there is any dispute about the liability to pay it, may be paid to purchase peace and so here it is undoubtedly the fact ; just as in the case of rent, the sum is payable by a tenant to his landlord solely by reason of their relationship as tenant and landlord of land and whether it has the effect of purchasing peace or not seems to me to be entirely immaterial to the question under consideration. It arises by reason of the tenant being given the use and occupation of the land which, without it, he could not acquire. The term "Revenue" as given in the Oxford Dictionary, has been set out at length in the judgment of the Full Bench of the Calcutta High Court to which reference has just been made. It is unnecessary to repeat

it, as it seems that it clearly includes payments of this nature and according to the ordinary general use of the term. I think also that it must include payments by the tenants of land owned by the landlord for the transfer to them of holdings or tenures in view of the conclusions arrived at by the majority of the Court in the case of *Meher Banoo Khanum* v. *Secy. of State,* 53 Cal. 34 (Full Bench). That this particular class of revenue is derived from land, I do not think for a moment can seriously be disputed. These payments are so intimately connected with the ownership of land and are payable by the tenants in the same way as rent is payable, that to my mind it is impossible to come to any other conclusion than that they are revenue derived from land."

The Law of Benami Transactions :

The law of *benami* transactions is traceable to the principle of equity that, when a person purchases property in the name of another and does not intend that other to take beneficially under the purchase, there is a resulting trust in favour of the person who has paid the purchase money—*De Silva* v. *De Silva,* 5 B. L. R. 784. It is a maxim of law 'that equity looks to the intent rather than to the form'. Mr. Snell observes : "When the intention of parties is that some other person than the one whose name appears on the title deed must take the benefit of the property, equity will give effect to such intention."

Test of Benami Intention : The true test to determine whether the transaction is *benami* or not is to see the intention of the parties, *e. g.* whether it was intended to operate as such or whether it was only meant to be a colourable one. If the parties meant it to be merely colourable, the transaction is only *benami.* If, on the other hand, it was their intention that it should take effect, the transaction is not *benami.*

Application of the principle to Hindu undivided family : When property is purchased by a Hindu in the name of his son or daughter or any member of the joint family of which he is a member, the presumption is in favour of its being a *benami* purchase and the burden would lie on the party in whose name it was purchased to prove that he or she was solely entitled to the legal and beneficial interest in such purchased estate—*Gopeekristo Gossain* v. *Ganga Prasad Gossain,* 6 M. I. A. 53.

Sons, daughters, wives and mothers of the members of a Hindu undivided family, so long as they are presumed to be joint in interest, a purchase made with the family funds in the name of any such person would be presumed to be for the benefit of the family to which the purchase money belonged.

Purchase in the name of son or wife : When the father of a joint Hindu family purchases property in the name of his minor son, the presumption is that it is a *benami* purchase by the father and on his death it becomes the property of the family—*Bhagabat Ch. De* v. *Harogobindo Pal*, 20 W. R. 269.

A Hindu wife, while a member of a joint family, is, as regards property held in her name, in the same position as her husband with respect to property acquired in his name and subject to the same presumption in favour of the joint family.—*Nobin* v. *Dokhobala*, 10 C. 686.

The mere fact of a conveyance being taken by the father in his son's name jointly with his own, would not raise a presumption in India, as in England, of an advancement in favour of the son—*Gulam Zafar* v. *Mashedan*. The mere circumstance that he has opened in his books an account in the name of his son crediting some money to the latter, cannot give rise to the presumption that the father creates or intends to create in favour of the son a trust in respect of the sum so credited.

Doctrine of Advancement :

In the English Courts a presumption is made in cases when the person in whose name the property is purchased is the lawful wife or child of the purchaser or some person towards whom he stands in *loco parentis*, that the purchaser intended the ostensible grantee to take beneficially under the purchase—*Dyer* v. *Dyer*, *Kishen* v. *Stevenson*, 2 W. R. 141.

But this presumption does not apply to cases arising either among Hindus or among Mahomedans in this country—*Gossain* v. *Gossain*, 6 M. I. A. 53 ; *Uzahar Ali* v. *Ultaf Fatima*, 13 M. I. A. 232.

Firm, Partnership—Defined :

The Indian Income-Tax Act depends for the meanings of "Partnership" and 'Firm' on the Indian Contract Act of 1872.

Section 239 of the Contract Act runs thus :—

"A partnership is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profit thereof between them.

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

A firm cannot be legally a partner of another firm : *In re Jaydayal Madangopal*, 6 I. T. C. 226, 54 All. 846.

Before the Amendment Act, the expressions "Firm" and "Partnership" had the same meanings as in the Indian Contract Act of 1872. But owing to the amendment, we shall have to refer to section 5 of the Indian Partnership Act of 1932, which runs as below :

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

"Persons who have entered into partnership with one another are called individually 'Partners' and collectively 'a firm', and the name under which their business is carried on is called the 'firm name'."

Elements of Partnership :

The definition of 'partnership' contains three ingredients (*a*) there must be an agreement entered into by all the persons concerned : (*b*) the agreement must be to share the profits of a business ; and (*c*) the business must be carried on by all or any of the persons concerned, acting for all. All these criteria must be present before a group of associates can be held to be partners.

Agreement between Persons :

Partnership is a relation which subsists between persons. Strictly speaking, there cannot be a partnership when the relation subsits between persons and firm or firms and firms—*Basanti* v. *Babulal*, 124 I. C. 19 = 1931 All. 225 A firm cannot be legally a partner of another firm—*Jaydayal Madangopal, in re*, 61 I. T. C. 226 : 54 All. 846. Similarly a registered firm consisting of two joint families cannot in law be a partner of an unregistered firm : *Ram Ratan Das Madangopal* v. *C. I. T.*, 11 T. L. R. 213 : 8 I. T. C. 69. Chief Justice Derbyshire of the Calcutta High Court in the case of *S. Lalchand* v. *C. I. T., Bengal*, 1 I. T. L. R. 221, relying on the decision of *Jaydayal Madangopal*, 6 I. T. C. 226 : 54 All. 846 has laid down that one firm in its corporate capacity cannot be a partner of another firm.

Agreement to Share Profits :

A partnership is a contract of some kind undoubtedly—a contract, like all contracts, involving the mutual consent of the parties. To constitute a partnership, the parties must have agreed to carry on business and to share profits in some way in common. There must be a business of some kind. Thus a mere agreement between several persons to share the income of a certain property does not constitute a partnership when there

is no business carried on by all or any of them acting for all—*In re Bai Sakinaboo*, 34 B. L. R. 100 : 6 I. T. C 13. Further, the business must be carried on with a view to sharing its profits. Thus a society for religious or charitable purposes is not a partnership. Although an agreement to share profits is essential to the constitution of partnership, it is not necessary that the profits should be shared at any particular time. Partners can leave their profits in the business.

The real test is whether each could withdraw his share, if desired—*C. I. T.* v, *Kikabhai*, 121 I. C. 38 : 4 I. T. C. 178 : A. I. R. 1930 Nag. 6.

Agreement to Share Losses, if Essential :

To constitute a partnership it is not essential that the partners should agree to share losses—*Raghunandan* v. *Hormasjee*, 51 Bom. 342 : 29 B. L. R. 207. The element of sharing losses may be regarded as consequential upon the sharing of profits, as a firm may be created in which losses are not contemplated or provided for by the sanguine partners. Every man who has the share of profits of a trade, ought also to bear his share of losses.

Joint Capital or Stock :

As a rule, each partner contributes either property, skill or labour but this is not essential. Hence, there need not be any joint capital or stock. If several persons labour together for the sake of gain, and of dividing that gain they will not be partners the less on account of their labouring with their own tools. When three persons were to get a share of the profits for their contribution to the capital of the business, while the fourth was to get a share of the profits for his labour, the fourth was also a partner—*Ghulam Ram* v. *Mahomed Yusuf*, 1928 All. 549 : 111 I. C. 696.

Company or not :

A company not registered under the Companies Act or under the Indian Income-tax Act, which is a partnership of 13 unregistered firms composed in turn, of individual members, exceeding an aggregate of 20, is not a company as defined in section 2 (6) of the Act, but is a firm or other association of persons as contemplated by section 3 of the Income-tax Act—*Sri Gopalji Co.* v. *C. I. T.*, A. I. R. 1931 Lahore 376 : 5 I. T. C. 257.

Process Ordinarily Employed by a Cultivator :

The process ordinarily employed by a cultivator must mean one in ordinary use amongst cultivators generally. The I. T.

Act, so far as agricultural income is concerned only relieves the producer from liability to tax, so long as he is a *bonafide* agriculturist carrying on the business in the ordinary course of good husbandry. When cotton is first ginned and then sold in market, then although it may be directly advantageous even from the point of view of transport to do so, that ginning is essential in order to enable the producer to be taken to market —*In re Sheonal Ramlal*, 139 I. C. 316 : A. I. R. 1932 N. 61, 4 I. T. C. 375.

Under sec. 2(2) where the cultivator or the receiver of rent-in-kind employs ordinary process, *e. g.*, natural process for consumption in the market, such process exempts him from any liability In the case of *Bhikanpur Sugar Concern*, 53 I C. 309 : A. I. R. 1919 Pat. 377 F. B. : 1 I. T. C 29 it was held that the process of manufacture is one not ordinarily employed by cultivator and hence income received is not agricultural. Chief Justice Dawson Miller observes : "The truth is, in my opinion, that the Bhikampur Concern was really acting in a dual capacity. In so far as they were cultivators of sugarcane their operations ceased when they handed over the raw materials to their factory branch. In so far as they were manufacturers of refined sugar they were carrying on a business which required the adoption of manufacturing process not ordinarily used by cultivators before disposing of their produce in the market. In fact there is no evidence to show that any other sugar factories of this nature convert into refined sugar produce grown on their firms ; but even assuming that there may be a few isolated instances in which this is done, it cannot in my opinion be said that this process of manufacture is one ordinarily employed by cultivators".

In the *Killing Valley Tea Company* v. *Secretary of State*, 48 Cal. 161 : 32 C. L. J. 421 : 61 I. C. 107, 1 I. T. C. 54 the Calcutta High Court observes : "The manufacture of tea as a marketable commodity from the green leaves, cannot be held to be the performance by a cultivator of a process ordinarily employed by a cultivator, to render the produce raised by him fit to be taken to market." (Judgment of Sir Ashutosh Mukherjee, acting Chief Justice) ; "The earlier part of the operation where the tea bush is planted and the young leaf is selected and plucked may well be deemed to be agricultural. But the latter part of the process is really manufacture of tea and cannot without violence to language be described as agriculture."

Cultivator :

The term denotes any person who applied the process of agriculture ; thus any person who cultivates himself or through others comes within the category of cultivator.

Buildings in the immediate vicinity of the land :

All agricultural buildings, provided they are in the immediate vicinity of the land, are exempt from tax simply because such buildings are essential to the receiver of rent or the cultivator by reason of his connection with the land. What is or is not in the immediate vicinity is a question of fact.

Buildings occupied by the Zamindars : Under s. 2 sub-sec. (*1*) (*c*), the annual value of any building occupied by the Zamindar for collection of rent (*cutchery* or bungalow) is purely agricultural. The income-tax officer is only to determine whether such building is necessary for his connection with the land. Income-tax authorities have no jurisdiction to determine what portion of the building is, as a matter of fact, required by the assessee in his capacity of receiver of rent. Thus the receiver of rent is within his rights to claim the entire annual value as agricultual income : *In the matter of Rajendra*, 118 I. C. 593 : 4 I. T. C. 15. This decision comes after the reported case of *Maharajadhiraj of Darbhanga*, 111 I. C. 638 : A. I. R. 1928 Pat. 468. The word market implies a real centre of economic exchange and the purchase by Tails is merely an artificial condition having no relation to a market for agricultural produce, *In re J. M. Casey*, A. I. R. 1930 Pat. 44.

Definition of Company :

This definition includes all company constituted in the dominions of the Crown, while the latter part of the definition is confined to such foreign association as the Central Board of Revenue may desire to treat as companies for the purpose of the Act. The object of this latter part is to include associations such as the French Societies Anonymes which, though incorporate bodies, have many characteristics in common with the companies recognised by our law, if the Central Board of Revenue thinks that they should be treated as companies for the purpose of the Act (I. T. Manual, para 4).

"Person includes A Hindu Undivided Family" :

Tax can be levied on individual, unregistered firm, registered firm, association of individuals, limited company and on undivided Hindu family. The word "person" clearly includes a firm as provided by the General Clauses Act and when the Return is made on behalf of the firm, it is the firm that is the person who makes the return and any proper service on the firm will be valid service.

Assessment of Hindu Undivided Family :

Hindu Undivided Family is considered as a single unit for income-tax purposes and the assessment is mainly connected with

trading families. Profits of a trading family venture are taxed as H. U. F., but this must not include separate or self-acquired income, if any, of any individual member constituting the H U F. Such a member can only be taxed for his personal income as an individual. The Act never contemplates that an earning member of the H.U.F., should be assessed along with the H U F. for his individual income. As for example *A*, *B*, *C* three brothers constitute a H. U. F. They carry on their ancestral cloth business. *B* is a medical practitioner and has got a busy practice but this income of *B* cannot be amalgamated with the profit of the cloth business and any such amalgamation is an abuse of power not vested in the Income-tax officer.

Joint Family Partition :

As a matter of fact a joint family can be partitioned in several ways, *viz.*, by a private deed of partition, by a decree of Court in a suit for partition or even by an agreement ; but question of partition is a mixed question of law and fact. The Hindu undivided trading family may exist, the business may continue, still the members may not belong to Hindu undivided family. For their benefit the joint business is continued but the family is separated. In such cases the income-tax authorities must treat them as unregistered firm, as has been laid down in the case of *Hari Singh Santokchand*, 2 I. T. C., 80. As to the disruption of joint family, section 25A contains how assessments are to be made in the case of Hindu undivided family claiming partition.

Stridhanam :

Instances are not rare when assessees declare that a particular building belongs to his wife or that his son is the real owner of the building by virtue of purchase with the money received by him during his *Annaprasanam*. The income-tax authorities are often beset with these questions and they are the sole judges of facts. Where the assessee can prove to the satisfaction of the authorities that the particular investment really belonged to his wife or son, the income-tax authorities are bound to accept the statement ; but where no clear explanation is forthcoming, circumstances should be the guiding factor in as much as *benami* transactions are so very common and rampant that no statement can be accepted without proper proof. The assessee can make a declaration in a verified petition or can file an affidavit.

Dividend :

The definition of "dividend" for the purposes of the Indian Income-tax Act was introduced by the Indian Income-tax (Amendment) Act, 1939, and covers several classes of distri-

bution which are not regarded as dividends for the purposes of other Acts.

To prevent the avoidance of super-tax which would otherwise be payable by the shareholders by the device of distributing the profits in the form of bonus shares, bonus debentures or some other form which, as the law stands at present, are capital receipts and not income in the hands of the shareholders, dividend is defined in such a way that wherever the shareholders receive profits in any of such forms it can be treated as income for tax purposes. The definition also covers the case where a Company goes into liquidation and the accumulated profits are distributed by the liquidator to the former shareholders. Income is defined in section 2, clause (*6C*), to include any dividend as defined in section 2 clause (*6A*), and also to include distributions from unrecognised Provident Funds.

This definition of the word "Dividend" has been inserted primarily to counteract the effect of the decision of the Privy Council in *C. I. T.* v. *Mercantile Bank of India, Ltd.*, A. I. R. 1936 P. C. 219 : 40 C.W.N. 1157, regarding the estate of late Sir David Yule.

When a company makes a profit, the whole or part of it may be divided amongst shareholders as provided by the Articles. The amount of profit so payable to shareholders is called a "Dividend" in common parlance. But the term has a wider meaning and includes, for instance, the sums which are paid to shareholders on liquidation. It has been defined as the sum paid and received as the quotient forming the share of the divisible sums payable to the recipient—*Lamp* v. *Kent Water Works* (1904), A. C. 27, and see also *Harvey* v. *Great Northern Rly. Co.*, 1 D. E. G. and J. 606.

Thus the dividend is ordinarily payable in cash and is not satisfied by any other equivalent payment such as the issue of debentures bearing interest unless so authorised by the Articles. A common mode is the capitalisation of profits by the issue of paid up shares in lieu of dividend

Normally a debenture is a promise by the company to pay a debt with interest which is one of a series of like debentures ranking *pari passu*, generally carrying a charge or security on the company's undertaking. Mr. Buckland defines it thus : "It is a very wide term, but it is now generally used to signify a security for money called on the face of it a debenture, and providing for the payment of a specified sum at a fixed date."

Thus a debenture means a document which either creates a debt or acknowledges it and any document which fulfils either of these conditions is a debenture.

Previous Year :

Section 2, Clause (11),—The definition of "previous year" is amended so as to—

(*1*) allow an assessee to have separate previous years for each separate source of income ;

(*2*) to prevent double assessment of the same profits when the assessee exercises the option to change his "previous year" for the first time after his first year of assessment ;

(*3*) to prevent double assessment of the same profits in the case of a newly set up business ;

(*4*) to prescribe the "previous year" of the firm as the partner's "previous year" in respect of his share.

The substituted proviso in sub-clause (*a*) is an improvement. It lays down that when an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression "previous year" as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit.

Previous year : This definition has been amended, but the power given to the Central Board of Revenue to determine, or to authorise some other authority to determine, the previous year for any person, business or company, or class of persons, business or company, has been retained The Central Board of Revenue has authorised the Commissioner of Income-tax in each Province to determine as the "previous year" in the case of any person, business or company, or class of persons, business or company :—

(*a*) a commercial year which may consist of more or less than 12 months provided that no commercial year which extended to less than 11 months or more than 13½ calendar months in any one year shall be so determined ; and

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

The orders of the Central Board of Revenue have to be obtained for the recognition as a "previous year" of any period which does not come within these limits.

In the case of those Insurance Companies and Provident Societies which have to change their accounting year to the calendar year in order to comply with the requirement of sub-section (*1*) of section 11 or sub-section (*3*) of section 82 of the Insurance Act, 1938 (IV of 1938), the Central Board of Revenue has determined the following period as the "previous year" for the purposes of the assessment for the financial year commencing next after the year for which the assessment was made on the basis of a previous year other than the calendar year, namely :—

(*a*) In the case of Companies whose accounting year ends on any date between the 1st January and the 31st March (both days inclusive).	The period from the end of the previous accounting year to the end of the calendar year in which the change is made.
(*b*) In the case of Companies whose accounting year ends on any date between the 1st April and the 31st December (both days inclusive.)	The period from the end of the accounting year for next previous assessment to the end of the calendar year next preceding the year for which the assessment is to be made.

Under the amended definition, an assessee has the option to have his "previous year" *in respect of any separate source of income, profits and gains* either the 12 months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if his accounts are made up to a date within the said 12 months, in respect of a year ending on any date other than the said 31st March, the year ending on this other date, *provided that if he has once been assessed in respect of a particular source of income, profits and gains* he cannot in respect of that source exercise this option, except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit. The Income-tax Officer will not permit the assessee to exercise the option if that proviso applies, unless he is satisfied that the change of "previous year" in respect of any source of income, profits and gains is sought on substantial grounds other than the avoidance of tax.

When the Income-tax Officer does give his consent under the proviso, the full period from the end of the "previous year" for the preceding year's assessment to the end of the new accounting date will be taken as the "previous year", whether such period is greater or less than a year. In no circumstances, however, will the rate of tax be adjusted so as to apply a rate to an income of a period greater or less than 12 months which would have been applied had the "previous year" been exactly 12 months. On this matter the instructions given to Income-tax Officers under the Act before amendment have been withdrawn. In future, therefore, the fact that a "previous year" may be greater or less than 12 months will be ignored and tax computed in the normal way on the full income of the "previous year" at the rates applicable to such total income.

Special provision is made for the case of a business, profession or vocation new set up in the financial year preceding the year for which the assessment is to be made. In such a case the preceding year is 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 specially determined for any person, business or company, or class of persons, business or company, 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 specially determined by the Central Board of Revenue, then at the option of the assessee the period from the date of the setting up of the business, profession or vocation to this other date. If, however, this other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it will be deemed that there was no previous year. Thus, if a business is set up on the 1st day of June, 1939, and the accounts are made up to the 31st day of May, 1940, the assessee can elect to have the year ended 31st May as his "previous year", and in such circumstances there will be deemed to have been no previous year for assessment for the year 1940-41, the profits for the year ended 31st May, 1940, being taken as profits of the previous year for assessment for the year 1941-42. If, however, an assessee sets up a business on the 1st June, 1939, and makes up his accounts up to the 31st December, then, if he elects to have the year ended 31st December taken as his "previous year" for this source of income, the profits of the period from 1st June, 1939, to 31st December, 1939, will be taken as the profits of the "previous year" for assessment for the year 1940-41. If the assessee makes up his first accounts for the whole period from 1st June, 1939, to 31st December, 1940, however, as the date 31st December falls between 1st June and 31st March, the proviso does not operate and there is a "previous year" for the assessment for 1940-41. If the assessee make no election, the "previous year" for assessment for the year 1940-41 will be the period from 1st June, 1939, to the 31st March, 1940.

Where the assessee is a partner in a firm, the "previous year" in respect of his share of the income, profits and gains of the firm is the "previous year" as determined for the assessment of the income, profits and gains of the firm and he cannot himself elect to have any other "previous year" in respect of that part of his income, although he may have a different previous year for other parts of his income.

New Business :

But when a business has been newly set up, the period from the date of the setting up of the business to the 31st day of

March next following, or if the accounts of the assessee are made up to some other date than the 31st day of March, then, at the option of the assessee the period from the date of the setting up of the business to such other date.

But it must be understood that when such other date does not fall between the other setting up of the business and the next following 31st day of March, it shall be deemed that there is no previous year.

Previous Year of Assessee having Partnership Business :

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.

In *Mela Ram Shib Dayal* v. *C. I. T., Punjab*, A. I. R. 1937 Lahore 308 : 101 I. C. 126 : 1937 I. T. R. 329, it was held that the assessee is entitled to have two previous years, one for the head office and one for the branch, but in his assessment he must add the results of the two each year and make his return on this basis He cannot accumulate the results of two years of the branches and account for them in one year's results of the main office.

If an assessee closes his accounts on different dates for different business or different sections of the same business or different sources of income, his income should be calculated separately for each business, section of business or source, according to the accounting year adopted for it and the aggregate of the incomes thus computed should be treated as the income of the 'previous years.'

The amendment of this clause was due to the decision in the case of *C. I. T., Bombay* v. *Abubaker Abdul Rahaman*, 9 I. T. C. 102 : 163 I. C. 351 : 1935 B. 225. There it was held that there is nothing in the definition of "previous year" to suggest that an assessee can fix more than one date which determines the previous year ; if an assessee has two businesses with different accounting periods for the two, he cannot fix two different dates, which will give him two separate previous years for the purpose of income-tax. But on the other hand, it does not stand to reason why an assessee should not fix one date for himself, and for the firm of which he is a member with others, another date.

The amended proviso to the sub-clause (*a*) now allows different accounting years for different and distinct businesses.

Previous year :

Under section 2 (*11*) all that the law requires is that the tax must be levied on the income of the previous year.

no matter whether it consists of 12 months or not. There cannot be any valid objection by the assessee on the ground that his previous year is incomplete in the sense that it is less than 12 months. Thus there cannot be any question of non-liability on the ground that a particular business has not been conducted for 12 months. An assessee who had no business for the whole year is nevertheless liable to tax for his incomplete previous year : *In the matter of Nanakchand*, 96 I. C 368 : A. I. R. 1926, Lahore, 421. But this does not mean that the Income-tax authorities can make an assessment in 1931-32 where the business has its accounting year from Agrahayan, 1337. Thus a proper meaning of the previous year is a matter of great importance and leave to appeal to His Majesty in Council was allowed : *In the matter of M. M. I. Raja Melek*, 35 C. W. N. (*Notes*) : 139 I. C. 295 : A. I. R. 1932 N. 68.

Several Branches :

A person may have several branch businesses with altogether different previous years : *e.g.*, *A* has got a business at Calcutta with the accounting year as per Bengali calendar. He subsequently starts a business with Rathjatra year and another business from Kartick. In the return under section 22 (*2*) he shall have to declare his previous year. In 1930-31 he is asked to file his return for the previous year. He must show that such income arose during the previous year ending 1336 B. S., Rathjatra year 1985-86, and from Kartick to Aswin 1336 B. S. Unless all the different accounting periods are shown in the return, it may be declared invalid or incomplete and an assessment under section 23 (*4*) will stand. On the other hand the Income-tax authorities are not entitled to reject the books of account on the ground that different accounting periods have been adopted. It is beyond their jurisdiction to reject the books of account or to make an estimated assessment on the ground that different accounting periods have been adopted.

Succession under Section 26 :

Naturally and equitably the successor-in-interest must be allowed to have his own accounting year, irrespective of the accounting years followed by his predecessor. Of course the successor is liable for the tax of his predecessor but that does not cripple the assessee of his power to follow an accounting year, not followed by his predecessors nor does this entitle the income-tax authorities to reject the account or to proceed on an estimated assessment on a turn over basis under Sec. 13 of this Act. But where no method of accounting has been employed assessment on estimate is justified.

Changes in the Constitution of Firm :

There may be cases when a firm may be dissolved or new partners may be incorporated. The firm which is considered as an assessee is bound to follow the same previous year unless there has been a wholesale change of the partners resulting in the formation of a new and distinct business.

Definition of Principal Officer :

Income-tax Officer should treat as the principal officer of a local authority or company or other public body or association in the first instance the official specified in clause (*a*) ; it is only in case where the I.T.O. has no informatian regarding the persons who discharged the function of the officers mentioned in clause (*a*) or where such person cannot be found, that he should use the power conferred by clause (*b*) of treating as the principal officer any other person connected with the company, public body or association. (Para 7, Income-Tax Manual). The Official Liquidator of a company can be treated as its principal officer and if he is managing the business he comes within the definition of the "Principal officer" – *In re Agra Spinning and Weaving Mills Co., Ltd.*, A. I. R. 1934 All. 170.

Meaning of the term 'Local Authority' :

"Local Authority", a phrase used in sections 2(*12*), 4(*3*) (*III*), 7 and 21 is defined in section 3(*28*) of the General Clauses Act as "A Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund" (Para 8 of I. T. Manual.)

Registered Firm :

Any firm constituted under an Instrument of Partnership specifying the individual shares of the partners may, under the provisions of section 26-A of the Indian Income-tax Act, 1922, thereinafter in these rules referred to as the Act, register with the Income-tax Officer, the particulars contained in the said Instrument on application made in this behalf.

Such application shall be signed by all the partners personally and shall be made—

(*a*) before the income of the firm is assessed for any year under section 23 of the Act, or

(*b*) if no part of the income of the firm has been assessed for any year under section 23 of the Act, before the income of the firm is assessed under section 34 of the Act, or

(*c*) with the permission of the Appellate Assistant Commissioner hearing an appeal under section 30 of the Act, before the assessment is confirmed, reduced, enhanced or annulled, or

(*d*) if the Appellate Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such assessment is made.

The application referred to in Rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted, together with a copy thereof ; provided that if the Income-tax Officer is satisfied that for some sufficient reason the instrument cannot conveniently be produced, he may accept an original copy of it certified in writing by all the partners to be a correct copy, and in such a case the application shall be accompanied by duplicate copy.

FORM 1

Form of application for registration of a firm under Section 26-A of the Indian Income-tax Act, 1922.

To

The Income-tax Officer,

Dated *19* .

Income-tax year 19 /19 .

1. We beg to apply for the registration of our firm under Section 26-A of the Indian Income-tax Act, 1922, for the assessment for the income-tax year 19 /19 .

2. **The original** / **A certified copy of the** Instrument of Partnership under which the firm is constituted specifying the individual shares of the partners, together with a **copy** / **duplicate copy** is enclosed. The prescribed particulars are given in the Schedule below.

3. We do hereby certify that the profits (or loss if any) of the previous year were divided or credited as shown in Section B of the Schedule and that the information given above and in the attached Schedule is correct.

(Signatures)

(Address)

NOTE.—This application must be signed personally by all the partners in the firm as constituted at the date on which the application is made.

SCHEDULE

Name of partners.	Address.	Date of admittance to partnership.	(1) Interest on capital or loans (if any).	(1) Salary or commission from firm.	(2) Share in the balance of profits (or loss) (annas and pies in the Rupee).	Remarks.
1	2	3	4	5	6	7

(*A*) *Particulars of the firm as constituted at the date of this application.*

(*B*) *Particulars of the apportionment of the income, profits or gains (or loss) of the business, profession or vocation in the previous year between the partners who in that previous year were entitled to share in such income, profits or gains (or loss).*

NOTE.—If the interest, salary and/or commission is payable (or allowable) only if there are sufficient profits available this fact should be noted by marking the items in the appropriate columns with the letter "R". (In other cases the interest, salary and/or commission may exceed the total profits so as to leave a balance of net loss divisible in column 6).

(2) If any partner is entitled to share in profits but is not liable to bear a similar proportion of any loss this fact should be indicated by putting against his share in column 6 the letter "P".

4. (*1*) If, on receipt of the application referred to in Rule 3, the Income-tax Officer is satisfied that there is a firm in existence constituted as shown in the instrument of partnership and that the application has been properly made, he shall enter in writing at the foot of the instrument or certified copy, as the case may be, a certificate in the following form, namely :—

"This $\frac{\text{instrument of partnership}}{\text{certified copy of an instrument of partnership}}$ has this day been registered with me, the Income-tax Officer for ..... . in the Province of... ....under Section 26-A of the Indian Income-tax Act, 1922, and this certificate of registration shall

have effect for the assessment for the year ending on the 31st day of March 19 ."

(*2*) If the Income-tax Officer is not so satisfied, he shall pass an order in writing refusing to recognise the instrument of partnership, or the certified copy thereof, and furnish a copy of such order to the applicants.

(*3*) The certificate referred to in paragraph (1) above shall be signed by the Income-tax Officer, who shall thereupon return to the applicants the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or the duplicate copy thereof.

5. The certificate of registration granted under Rule 4 shall have effect only for the assessment to be made for the year mentioned thereon.

6. Any firm to whom a certificate of registration has been granted under Rule 4 may apply to the Income-tax Officer to have the certificate of registration renewed for a subsequent year. Such application shall be signed personally by all the partners of the firm and accompanied by a certificate in the form set out below. The application shall be made within the time and subject to the conditions, if any, which are specified in clause (*a*), clause (*b*), clause (*c*), or clause (*d*), as the case may be, of Rule 2.

FORM OF APPLICATION FOR THE RENEWAL OF REGISTRATION OF A FIRM UNDER SECTION 26-A OF THE INDIAN INCOME-TAX ACT, 1922.

To

The Income-tax Officer,

Dated *19*

Assessment for the Income-tax Year 19 /19

1. We..... beg to apply for the renewal of the registration of our firm under Section 26-A of the Indian Income-tax Act, 1922, for the assessment for the income-tax year 19 /19 .

2. The instrument of partnership / certified copy of the instrument of partnership was registered by the Income-tax Officer for ..... in the Province of ... . on the..... of ..... . 19 and we hereby certify that the constitution of the firm and the individual shares of the partners as specified in the instrument of partnership / certified copy of the instrument of partnership so registered on .. .. remain unaltered.

(Signatures)

(Address)

NOTE.—This application must be signed personally by all the partners in the firm.

6-A. On receipt of an application under Rule 6 the Income-tax Officer may, if he is satisfied that the application is in order, grant to the assessee a certificate signed and dated by him in the following form :—

"The registration of the firm of..... granted on..... is renewed by me and will remain effective for the assessment for the year ending on the 31st day of March 19 ."

If the Income-tax Officer is not so satisfied, he shall pass an order in writing refusing to renew the registration of the firm.

6-B. In the event of the Income-tax Officer being satisfied that the certificate granted under Rule 4, or under Rule 6-A, has been obtained without there being a genuine firm in existence, he may cancel the certificate so granted.

Application for registration by Agent :

Having regard to the effect of the registration of a firm upon the incidence of super-tax, it is essential that an application for registration should be signed by at least one of the partners. An application by the agent does not amount to a compliance of the statutory rules and no effect should be given to such application —*In re C. T. A. C. T. Nachiappa*, A. I. R. 1933 (*R*) 230 : 7 I. T. C. 1.

Registered and Unregistered Firms :

Rules 2 to 6-B prescribe the method of registering a firm. A firm to be registered must be constituted under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm. The deed of partnership to be registered both for purposes of assessment to incometax and super-tax if that is in force in the year in which assessment is made. An application for registration may be made at any time before the assessment of the income of the firm is made but

it is desirable that the application should accompany the return under section 22(2) of the Act. If an application is made after the assessment of the firm, it should be returned to the person presenting it as out of time. Even if such an application is accepted it can have no effect on the assessment for the year, *vide* Case No. II (in Volume II) decided by the Allahabad High Court. Thus the old theory that the application for registration must be made on or before filing the return as reported in 86 I. C., 851 : in the case of *Purusattum Bhanji & Co.*, 1 I. T. C. 399 : 86 I. C. 85, is no longer a good law in view of the amendment in 1930.

The distinction between a registered and unregistered firm for the purposes of this Act is :—

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

The profits of a registered firm are liable to tax at the maximum rate even if they are less than Rs. 2,000, while an unregistered firm is not liable to income-tax, if its profits in any one year are less than Rs. 2000. But where the profits of an unregistered firm are not assessed to income-tax, they are liable to tax in the hands of the individual members of the firm, that is, they are included in the assessable income of the individual member [*see* Finance Act and section 14(2)(b)].

(2) A registered firm is not liable to super-tax, the share of individual members in the profits of such a firm being included in the income of each individual member for the purposes of super-tax. An unregistered firm is, however, liable to super-tax (like an individual) on that amount of the profits of the firm which is in excess of Rs. 30,000 (*see* Finance Act and section 55 of the Income-tax Act). Super-tax is not payable by an individual having a share in an unregistered firm in respect of the profits of the unregistered firm except in cases where the profits

of the unregistered firm have not been assessed to super-tax (*see* section 55 proviso). (Para 10 of the I. T. Manual).

Registration Under Sec. 34, if Permissible :

When a notice under section 34 is served on an assessee who is said to have concealed his source of income at the time of assessment, the right to apply for registration is forfeited ; but if it is a case where notice under section 34 has been issued for the first time before any assessment was attempted, the assessee is entitled to have registration at any time before assessment is made and the income-tax authorities have no jurisdiction to refuse registration.

Joint Family :

The registration of brothers as a firm is defined under section 2(*12*) of Act 7 of 1918 and it precludes the assessment of the family as an undivided family to super-tax on the income derived from business of the firm unless the firm so registered has been shown to carry on its business for the benefit of the joint family : *In the matter of Doraiswami*, 74 I. C. 22 : A. I. R. 1923 Mad. 682.

Refusal to Register Firm,—if Appealable.

The Income-tax authorities are entitled to refuse registration if they are convinced that the instrument of partnership is bogus and not genuine and is meant to hoodwink the department. And once this finding is arrived at, the High Court cannot interfere as the findings of fact are to be considered valid. The amendment Act of 1930 empowers the I. T. O. to cancel registration where assessment is made under section 23(*4*). It is not open to the High Court to go into the facts of the case and to determine whether the I. T. O. was right in his finding of facts, 121 I. C. 332 : A.I R. 1929 Pat. Section 30 does not empower an assessee to prefer an appeal against refusal by the I. T. O. Where an individual partner or partners are affected, the appellate authorities should consider the matter in appeal When registration is allowed, assessment is not annulled but is remanded for proper re-computation of the tax.

As a matter of fact appeals are now allowed against any decision refusing to register. Under section 33, the Commissioner of Income-tax has also jurisdiction to entertain and adjudicate on the point if raised before him. An erroneous decision by the Commissioner of Income-tax may result in a reference to the High Court under section 66.

Section 30(*1*) definitely allows an appeal against an order refusing registration.

Partnership :

There may be a valid partnership between husband and wife, as reported in *In the matter of Ambalal Sarabhai*, 77 I. C. 699 : A. I. R. 1924 Bom. 182 : 1 I. T. C. 234. But in the case of *Bulchand Keshav Das*, A. I. R. 1930 Sindh 301, it was held that the execution of the partnership deed by the managing partners (*gomosta*) is to be regarded as an instrument of partnership within the meaning of section 2(*14*). A firm may be composed of the same partners as in another firm and partners may be interested in the same shares but it may be an entirely different firm : *In the matter of Martin & Co.*, 50 C. L. J. 300 : A. I. R. 1929 Cal. 753 : 124 I. C. 519.

Oneman Company :

Under the law as it stands, an one-man company can also be registered under it. In the case of *Sir Dinshaw Maneckjee Petit, Bar-at-Law*, 102 I. C. 49 : 29 B. L. R. 447 : 2 I. T. C. 255 it has been held that "the Court can go into the question as to whether the so-called one-man company is really a business carried on by the assessee himself for the purpose of avoiding payment of tax. The company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited liability company. The company was formed by the assessee purely and simply as means of avoiding super-tax and that the company was nothing more than the assessee himself. It did no business but was created purely and simply as a legal entity to ostensibly receive the dividend and interest and hand them over to the assessee as pretended loans."

Power of I. T. O. at the time of Registration :

Where an application is made by a member of the Hindu undivided family for registration as firm with deed of partnership attached, the I. T. O. has power to call for evidence of dissolution of joint family over and above the partnership deed : *In the matter of Bisseswar Lal Brijlal*, 34 C. W. N. 363 : A. I. R. 1930 Cal. 449. In cases where income-tax is levied at source, *e.g.*, at the time of encashment of the G. P. Notes, bank interest, etc., the assessee can apply for a certificate of exemption. Grant of certificate to a firm enures for the year of which it is stated in the certificate to take effect : *In re Hosenbhai Bhori*, 89 I C. 92 : A. I. R. 1925 Nag. 415. "Where a body of persons purporting to be a firm as described in section 2(*1*) apply to get themselves registered as a registered firm, the I. T. O. has power to investigate whether they really do constitute a firm and to call for evidence as to the reality of the instrument of partnership produced by the applicant. Therefore where the members of the joint family who had been formerly assessed as such apply to be regis-

tered as a firm the I. T. O. has power to call for evidence of dissolution of joint family for the purpose of registration under section 2, over and above the documentary evidence by the partnership deed in support of the application." *In the matter of Bisseswar Lal Brijlal*, 128 I. C. 327 : 34 C. W. N. 363 : A. I. R. 1930 (Cal.) 449.

Under section 2(*14*) the Income-tax Officer cannot refuse to recognise a firm for registration where the deed of partnership has got specification of shares and all particular details. It is beyond his competence to refuse registration ; but in the case of *Tikabhi*, 121 I. C. 38 : A. I. R. 1930 (Nag.) 6, it is stated that the certificate to be given in the form prescribed in the income-tax rules is not that the profits are to be allocated and credited within a specified period. So where a certificate is issued in good faith and the persons constituting a firm want to allocate the assets whenever it may be necessary or convenient to do so, that firm is entitled to have registration. H. U. F. members applying for registration as firm under a partnership deed, cannot be so registered when the finding is against separation and as such registration cannot be allowed. The mere execution of the deed does not discharge the onus of establishing that the Hindu family stands divided—*In re Ghanshyam Das Ramkumar*, 6 I. T. C. 198. The I. T. O. has power to enquire whether a person or persons is or are what he or they represent themselves to be for the purpose of taking advantage of a provision of the Act. Where persons claim to constitute a partnership firm for the registration of which they make an application, the I. T. O. may call on them to prove by evidence that they are what they claim to be before he proceeds further with the application—*In re Jattu Shah*, A. I. R. 1932 (*L.*) 575.

In re Bai Sakinaboo, 137 I. C. 903 : 6 I. T. C. 13 : 34 B. L. R. 100, it was held that there was no partnership within the meaning of section 239 of the Contract Act, (*vide* also *Haridas Premji*, A. I. R. 1930 Cal. 409), 4 I. T. C. 475.

Change in Partnership between Registration and Assessment :

Where there is a change in the constitution of a firm as to partners between the date of registration and the date of assessment, complication arises whether the new partnership should be treated as a separate entity or should be regarded as the same entity. Where the change in the constitutions practically results in the dissolution of partnership the income-tax authorities are bound to treat them as a separate assessee and are bound to call for a fresh return and fresh application for registration. The fact that return has been filed and application for registration has also been filed by the old partners will have no effect.

Who can present Application for Registration :

Before the Amendment, any partner could file an application for registration. But after the passing of the amendment, the rules have been considerably changed and such application shall be signed by all the partners personally and shall be made—

(*a*) before the income of the firm is assessed for any year under section 23 of the Act, or

(*b*) if no part of the income of the firm has been assessed for any year under section 23 of the Act, before the income of the firm is assessed under section 34 of of the Act, or

(*c*) with the permission of the Appellate Assistant Commissoner hearing an appeal under section 30 of the Act, before the assessment is confirmed, reduced, enhanced or annulled, or

(*d*) if the Appellate Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such fresh assessment is made. *See* Application by agent, *ante*.

Unregistered Firm, when can be treated and assessed as a registered Firm :

Under section 23(*5*) (*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.

As to procedure, it has been elaborately dealt under section 23 of the Act. The result is that duplication of work has been avoided and at the same time, this brings better revenue with cross-checkings.

Individual Partnership with Joint Hindu Family :

Where a deed of partnership is drawn up between *A* in his individual capacity, of the one part, and the Joint Hindu Family (consisting of *A* and his two sons) of which *A* is the Karta, of the other part, and an application is filed under section 26(*1*) of the

Income-tax Act for registration of the partnership, the Income-tax Officer can rightly refuse to register the firm on the ground that no firm as defined in section 2(*6-A*) of the Income-tax Act exists : *Rai Bahadur Lokenath Prasad Dhandhania* v. *C. I. T., B. & O.*, 8 I. T. R. 369.

Shares specified, but amounts receivable dependent on a variable contingency, if registrable :

Where the partnership is genuine and the shares are specified, registration cannot be refused on the ground that the ultimate receipts are made to depend upon the time devoted by the partners to the business. The law looks into the shares in the partnership and not the receipts from it : *C.I.T., Burma*, v. *Seth Mangoomal Landusingh*, 7 I. T. R. 201.

Definition of Total Income :

Under the previous Act, the phrase "total income" is used in sections 3, 15(*3*), 16(*1*), 17, 22(*1*) and (*2*), 23(*1*) and (*3*), 48, 55 and 56. The necessity for the definition and for the use of the phrase is due to the fact that, as stated in paragraph 3, tax is payable not only by individuals but also by firms, companies and Hindu undivided families ; that is, the Act provides for taxation at the source in certain cases and for taxation in the hands of the individual recipient in others. Whether, however, tax is deducted at the source or in the hands of the individual recipient, it is the total income of the individual recipient from all sources to which the Act applies that determines his liability to income-tax (that is, whether his total income amounts to Rs. 2,000), and the rate at which he has to pay income-tax on the whole of his income. The solitary exception is in the case of Hindu undivided families income from which [under section 14(*1*) read with section 16(*1*) of the Act] is not included in the total income of the individual recipient. Again, there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7(*1*), the sums paid on account of insurance premia under section 15, securities issued income-tax free by the Government of India or by local Governments under the provisos to section 8, on which income-tax is not payable, but all such sums are included in the total income of the assessee for the purpose of determining his liabtlity to income-tax and the approximate rate at which the tax shall be levied. There is, however no taxation at the source in the case of super-tax, nor are there any portions of income (other than income derived from a Hindu undivided family by a member or from an unregistered firm in the special case mentioned in the proviso to section 55) which are exempted from payment of super-tax and it is upon the total income that

super-tax is chargeable in the hands of the individual (I. T. Manual.)

Complications in determining "what is agricultural income and what not" [section 2(*1*) and 2(*1*) (*a*)] :

In *H. T. Conville* v. *C. I. T., Punjab*, 9 I. T. C. 238 : 41 C. W. N. 33 : 66 C. L. J. 194 : A. I. R. 1936 P. C. 269 : 164 I. C. 18, their Lordships held that section 2(*1*) applies to the case of a person who gets agricultural income from the use of the land by direct operation. It is not applicable to person who gets certain fees which constitute his remuneration for the collection of land revenue.

Agricultural income is defined in section 2(*1*) of the Act. The rent of the site of a flour mill cannot be regarded as rent or revenue derived from land which is used for agricultural purposes.

In *C.I.T., B. and O.*, v. *Sir Kameswar Singha*, 137 I. C. 289 : 39 C. W. N. 1255 : A. I. R. 1935 P. C. 172, their Lordships of the Privy Council held that '*Thica* profits were agricultural income" and hence not liable to tax.

Similarly "*Dharat*" which means weighing charges, levied by the landlord on the tenants in addition to rent, is an agricultural income, not liable to tax—*Probynabad Stud Farm* v. *C. I. T., Punjab*, A. I. R. 1936 L. 602 : 8 I. T. C. 439.

In *C. I. T.* v. *Kyauktaga Grant, Ltd.*, 10 I. T. C. 438, it was laid down that the Income-tax Officer was not entitled to write down the price paid by the company for the crop and the company was not entitled to treat the rent it received in kind.

In *C. I. T., Madras* v. *S. L. Mathias*, A.I.R 1937 Mad. 745 : 7 I. T. R. 48 : 43 C. W. N. 225, it has been decided that the statutory definition of "agricultural income" involves no artificial extension but merely embodies the significance attaching in a business sense to the word "income" when applied to agriculture.

When cattle are wholly stall-fed and not pastured upon the land at all, doubtless it is trade and no agricultural operation is being carried on ; where cattle are being exclusively or mainly pastured and are nonetheless fed with small amounts of oilcake or the like, it may well be that the income derived from the sale of their milk is agricultural income. But between the two extremes there must be a number of varying degrees—*C. I. T., Burma*, v. *Kokina Dairy Rangoon*, A. I. R. 1938 R. 260 F. B.

Hindu Undivided Family :

'Hindu Undivided Family' in the Income-tax Act, means a Hindu coparcenary and not a Hindu joint family in the wider sense of several members living together, irrespective of the existence of any coparcenary property. Consequently, when there is property in the hands of a Hindu assessee, but he has no coparceners, there is no Hindu undivided family within the meaning of the Act. A declaration in an affidavit in the course of the assessment proceedings that the property is joint cannot be sufficient to create a coparcenary and warrant assessment on the footing of the Hindu undivided family—*In re Moolzi Sicka and others*, 40 C. W. N. 517.

Jains, if governed by the Hindu Law as to Joint Family :

The Jains are governed by Hindu Law relating to Joint Family and the ordinary Hindu Law is applicable, provided there is no custom or usage contrary to it. (*Ambabar* v. *Govinda*, I. L. R. 23 Bom. 257, *Buchebi* v. *Makhanlal*, I. L. R. 3 All. 55 discussed) ; *Seth Nathusa Pasusa* v. *C. I. T., U. P.*, 7 I. T. C. 129 (*Staples and Neogy*,—Judicial Commissioners).

Total World income :

Under section 2(*1*) 'total world income' means 'total amount of income, profits or gains from all sources to which the Act applies and from whatever places derived". Owing to the amendment of section 4 from remittance basis to accrual basis, the expression 'total income' has been replaced by 'total world income."

"Total income" has been defined in *Bengal Coal Co., Ltd.* v. *Sri Jonardan Kishore Pal*, 50 C. L. J. 293.

Renewal of Registration :

Under rule 2 of the Rules made by the Central Board of Revenue, the Appellate Assistant Commissioner himself is not competent to order the registration of an application. Where the deed of partnership is not in accordance with facts, registration can be reasonably refused.—*Chiranji Lal & Sons* v. *C. I. T.*, A. I. R. 1937 L. 415 : 7 I. T. C. 42.

Where registration has once been allowed, the Income-tax Officer cannot refuse renewal if there is no change in the constitution of the firm applying for renewal. Section 26-A may be conveniently referred to.

CHAPTER I

Charge of Income-tax

3. Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of total income, profits and gains of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually.

Charge of income-tax.

Scope :

Section 3 is the charging section in the Act. In the amended Act of 1939, the expression "applicable to total income of an assessee" as existed in the previous Act, stands omitted with a view to compute tax according to the "slab system" in place of the hitherto followed "step system". "All income" has been substituted by "total income".

The object of this section is to enable the assessment to be made on individual partners of firms or on individual members of association of persons. Section 23(*5*) provides direct assessment of partners. Throughout the Act the words "Association of persons" are substituted for "Association of Individuals" in order to cover all cases of associations of persons.

The word "person" under section 3(*39*) of the General Clauses Act, 1897, shall include any company or association or body of individuals, whether incorporated or not. Section 2(*15*) defines "total world income".

Basis of Taxation :

The Act referred to in section 3, is the annual Finance Act. Unless the Finance Act enacts the rate, no tax can be imposed —*Bowles* v. *Governor of the Bank of England* (1913), 1 Ch. 57.

Under the law in the United Kingdom income is taxed when it accrues to a person *in the year of assessment*, whereas under the Indian Act, assessee's income in the previous year is taken only as the basis, thus making the assessee's income in the previous year taxable. Unlike the United Kingdom law, it is not necessary under the Indian Act, that the assessee should have in the assessment year, the source of income which he had in the previous year, or any income whatever—*C.I.T.* v. *Karuppa Kangani* : 55 M. L. J. 844 : A. I. R. 1929 M. 35 : 3 I. T. C. 282 ; *in re Behari lal Mallik*, 54 Cal. 630, A. I. R. 1927 Cal. 553 ; *Brown* v, *National Provident Institution*, 1921. 2 A. C. 222.

Thus a person, who is a bankrupt in the year of assessment, is liable to tax on his previous year's income—*Fitzerald* v. *Commr. In. Revenue*, 1919, 2 K. B. 154 : 7 T. C. 284 It therefore follows that bankruptcy, insolvency etc. in the year of assessment cannot absolve an assessee from liability, if he had assessable income in the previous year.

Definition of Income :

Section 3 of the Act of 1918 provided that the Act should apply to "income". Difficulties were experienced in regard to the assessment of business profits owing to a High Court ruling that the word "income" in that section meant income actually or constructively received and that the use of the word in that sense in the said section restricted and limited any interpretation to be placed upon the following sections of the Act which specified the different classes of income liable to tax. This interpretation would, if strictly followed, have caused considerable inconvenience in assessing business profits to those assessees who keep their accounts not on the basis of sums actually received and sums actually paid out but on the principles of mercantile accountancy, by the preparation of a profit and loss account and the comparison of the value of the stock in hand at the beginning and at end of each year, since such assessees would have been required to recast the whole of their accounts on a cash basis for income-tax returns. There were other directions also in which so strict an adherence to the interpretation placed on the word "income" would have caused difficulties. For this reason the phraseology in section 3 and in other sections of the present Act has been re-worded The plan adopted has been not to attempt a general covering definition of "income" but to prescribe that the tax shall be chargeable not upon "income" whether "income" be deemed to mean actual receipts and expenditure or any other general definition, but in respect of "all income, profits or gain" as set out and defined in section 4 and sections 6 to 12 of the Act. If there is any class of income that does not fall

within the words that impose the charge in those section, that class of income is not within the scope of the tax.

Assessable Income :

Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made ascertained. This system has been abolished in the present Act which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the "previous year" (*see* paragraph 6) and for the abolition of the adjustment system except in the cases specially provided for in section 25 and in the provisos to section 68 of the Act. The provisos to section 68 of the Act are merely temporary provisions providing for the transitional period in the year 1922-23 and the only exception to the general rule that assessments are made finally on the profits of the previous year is contained in section 25 of the Act. Under the first two sub-sections of section 25, in order to guard against a possible loss of revenue owing to delay in making assessment on the profits of business that closes down during the course of a financial or commercial year, it is provided that in such case, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in which a business, profession or vocation is closed down on the income of that year. This is merely a discretionary and not an obligatory method of assessment to be adopted in exceptional case where delay in making the assessment might lead to a loss of revenue.

The other class of cases provided for in sub-section (*3*) of section 25 is confined to those particular business, professions or vocations on which tax had been charged under the provisions of the Act of 1918. Since the abolition of the adjustment system meant that in the case of those particular business the tax would, unless special provision had been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses, professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made. (Para 14 of the I. T. M.)

Income and Capital :

The Act nowhere defines what "income" is. On a reference to the Oxford dictionary we find that "income" is a periodical receipt from one's work, business, lands or investments ; whereas

the New Standard dictionary says that "income" implies coming in to a person within a specified time and regularly from services, investment, etc.

The Privy Council in the case of *Commissioner of Income-tax, Bengal*, v. *Shaw Wallace Co.*, 136 I. C. 743 : 36 C. W. N. 683, holds that the object of the Indian Income-tax Act is to tax "income," a term which it does not define. It is expanded, no doubt, into "income, profits or gains" but the expansion is more a matter of words than of substance. Income, their Lordships think, in this Act connotes a periodical monetary return "a coming in" with some sort of regularity or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to fruits of a tree or the crops of a field. It is essentially the produce of something, which is often loosely spoken of as "capital". But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production.

The term "income" when contrasted with "capital" means and includes not only income in its strict meaning, but also profits or gains. Income as contrasted not with capital but with profits or gains in the Income-tax Act means "a periodical monetary return coming in" and accruing to the assessee independently and not as the net proceeds of a business carried on by the asseessee as defined in section 2(*4*) of the Act. Income in this sense connotes incomings with regard to outgoings. On the other hand "profits" in this connection are the surplus by which the receipts from the trade or business exceed the expenditure, necessary for the purpose of earning these receipts.—*Commissioner of Income-tax, Burma*, v. *Bengal Urban Co-operative Society, Limited*, A. I. R. 1934, R. 27.

The Judicial Committee of the Privy Council, in the case of *Bijoy Sing Dudhuria*, 143 I. C. 145 : 60 Cal. 1029 : A. I. R. 1933 P. C. 145, has made a judicial pronouncement. The Raja succeeded to the family ancestral property on the death of his father. Subsequently the step-mother brought a suit in which a consent decree was passed by which a fixed monthly sum was sanctioned to the step-mother and declaring the maintenance allowance as "charge" on his estate. The Calcutta High Court held that the payment did not fall under any of the exemptions ; but the Privy Council reversed the decision holding that the amount is not income. Their Lordships observe : "when the Act by section 3 subjects to charge 'all income' of an individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the Court by charging the appellant's whole resources

with a specific payment to the step-mother has to that extent diverted his income from him and has directed it to his step-mother ; to that extent what he receives for her is not income. It is not a case of the application by the appellant of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it became income in his hands."

English and Indian Cases of "Income and Capital" :

In *Hudson Bay Co.*, 25, T. L. R. 709 : 5 T. C. 424, it was held that lands sold by the company in lieu of prices did not constitute profits earned in course of business but amount to realisation of capital. In *Tebran Rubber Syndicate* v. *Farmer*, 5 T. C. 658, a company was started to purchase lands and to develop the lands by rubber plantation. The said company purchased two estates and made plantations but in course of a year had to wind up the business. Subsequently the company sold the estates for the cash and shares. As the company was not formed to deal in lands, it was held to be a case of appreciation capital.

Ordinarily, profits made in an isolated transaction are not taxable—*Virappa Chettiar*, A. I. R. 1930, Mad. 123 : 4 I.T.C 204 But where a money-lender takes lands in satisfaction of his debts and sells them at profits later on, profits are taxable income—*Chetiappa Chettiar*, A. I. R. 1930, Mad. 119 : 4 I.T.C. 188.

Where a liquidator of a company distributes profits, so long undistributed, such profits are not income—*Commissioner of Inland Revenue* v. *Burrel*, 9 T. C. 27.

Annual royalty for a copyright or patent right is "income" ; but where such rights are sold outright for consideration, the amount received is a capital receipt—*Curtis Brown, Ltd.* v. *Jarvis*, 14 T. C. 744. A sum paid as royalty for the use of a patent is not capital payment but is income—In *Re*: *Constantines Co.*, 11 T. C. 730.

Income and Capital :

Where unclaimed balances are distributed to the partners, it can be contended that these did not at any time become profits or trading receipts, but were always to be considered as liabilities. Consequently, as the unclaimed balances, when first received, were obviously liabilities, no subsequent operation could turn them into trading receipts. They are not, therefore, assessable to income-tax. *Morley* v. *Tattersall*, 7 I. T. R. 316 : 22 T.C. 51.

Where owing to premature termination of contract, an agreed sum as compensation is paid to the Company, the amount of

compensation is not a receipt but rather is an Income Receipt, *Bush, Beach and Gent, Ltd.* v. *Road*, reported in : 8 I. T. R. 36.

In *Cameron* v. *Panderghurst*, 8 I. T. R. 75, it was held that where a Director is paid a lump sum for not resigning directorship, the amount attracts tax. The transaction involves an agreement to continue to render services, and the money paid is a profit arising from the assessee's directorship.

In the case of *Commr., Inland Revenue* v. *British Salmson Aero Engines, Ltd.*, 7 I. T. R. 245, it was laid down that it is always a question of fact in each particular case whether any royalty or other sum paid in respect of the user of a patent is a capital payment or income payment. But in the case of *Hughes* v. *Utting & Co., Ltd.*, reported in 8 I. T. R. 57, it was held that payment of premiums for long leases of Built Houses, was trading receipt.

When a person invests profits in bonds and no question of remittance of profits arises, the bonds will constitute capital assets : *C. I. T., Madras, v. J. M. Md. Ismail Rowther*, A. I. R. 1940, Mad. 433.

Release from debts :

In the *British Mexican Company* v. *The Commissioner of Inland Revenue*, 16 T. C. 570, it was held that where a Company is involved heavily in debt and the creditor company releases the previous company from its liability to pay the balance due and the debt thus released is shewn in the Balance Sheet, the amount of debt thus released is not a trading receipt. Similarly in the case of *Morley* v. *Messrs Tattersall*, (1938) 22 T. C. 51 : 7 I. T. C. 316, Sir Wilfred Greene, M. R. relying on *Jackson* v. *British Mexican Petroleum Company, Limited*, 16 T. C. 570, observed. "It has been settled by authority that binds us that where a liability which was properly entered into accounts in a previous year is released by the creditor in a subsequent year, that does not justify either reopening the accounts for the previous year or treating that release as creating a trading receipt in the year in which it took place."

Mutual Concerns : Benefit Societies :

It is a recognised principle of law that a man cannot make a profit "out of himself" and it is for this reason that mutual profits are not chargeable to income-tax. Under this heading may be mentioned "dividends received from co-operative societies in respect of purchases" (but not in respect of shares), profits of mutual insurance associations and of clubs where the only income is received from members, who are at the same time proprietors.

The mutual benefits societies are formed with the express object of affording mutual help to the members of such societies. No portion of the income is taxable, mutuality being the essence. When the society is incorporated it does not become a separate legal entity—*New York Life Insurance Co.* v. *Styles*, 2 T. C. 460 : *Jones* v. *Lancashire Coal Owners Association*, 1937 A. C. 827. Where the members of the club are identical with those of the company, the principle of mutuality will not be considered as being disturbed.

But when it carries business with outsiders, the essence of mutuality vanishes and the profits become taxable—*Last* v, *London Assurance Corporation*, (1885), 10 A. C. 438 ; *Equitable Life Assurance* v. *Bishop*, 1 Q. B. 177 ; *Liverpool Corn Trade Association* v. *Monks*, 2 K. B. 110 : 10 T. C. 442 and *Dibrughar District Club*, 55 Cal. 971 : 32 C. W. N. 691.

This is clear that income is what a person gets from another and not what he gets from himself—*In Re Glassgow Corporation Water Commissioner* v. *Miller*, 2 T. C. 131.

It has already been stated that in the case of of *New York Life Assurance Co.* v. *Styles*, 14 A.C. 381 : 2 T.C. 460, it was held that person contributing to a common fund for mutual insurance would not be regarded as carrying on business for the purpose of earning profits.

In the case of *Royal Calcutta Turf Club*, 48 Cal. 844, Justice Sanderson observes : "the income of a turf club consists of moneys paid by the public as (*1*) Entrance fees to the stand, paddoks, and (*2*) Enclosure or entrance fees paid by owners of race horses, (*3*) Book-makers' license fees and (*4*) percentage on totalisations, besides moneys paid by ordinary members . .. In my judgment, upon the facts submitted to the Court, it must be held that the Royal Calcutta Turf Club is carrying on an 'adventure' and concern in the nature of trade and consequently carrying on a business within the meaning of section 3 of the Act, in respect of sums received under the first 4 heads mentioned in the case, from persons other than members of the club."

The above was decided on the basis of the English case *Carlisle and Silloth Golf Club* v. *Smith*, 2 K.B. 177 : 6 T C. 198, which is quoted to some extent below :

"The Appellant, an ordinary members' golf Club, acquired land under lease from a railway company and laid out a golf court and erected a club house thereon In addition to the members of the club, who are entitled on payment of an annual subscription to play on the links and two other privileges for the current year, a considerable number of visitors were permitted to use the club premises and to play on the links, in accordance

with a provision, contained in the lease which required the club to allow such visitors to play on payment of certain green fees. The total expenditure incurred by the club in maintaining the links in a proper condition for play, exceeded the total amount of fees received from visitors ; it was held by the Court of Appeal that the appellants were carrying on an enterprise which was beyond the scope of ordinary functions of the club and as to which separate accounts might be kept, so as to ascertain whether there were any profits derived from green fees, and were therefore taxable under Schedule D of the Income-tax Act."

The learned Master of the Rolls observes : "it seems to me that there is real difference between money received from members by the club and from strangers. I cannot draw any distinction between the gate moneys, which might be, I believe, and sometime are, received by a Golf Club and green moneys ; in each case the club would be assessable,"

Clubs and Societies :

In the *United Service Club* v. *Crown*, 2 L. 109, the observations of Lord Macnaghten in the case of *New York Life Assurance Co.*, v. *Styles*, 2 T. C. 460, were quoted thus : "I do not understand how persons contributing to a common fund in pursuance of a scheme for their mutual benefit, having dealings or relations with any outside body, cannot be said to have made a profit when they find that they have overcharged themselves and that some portions of the contributions may be safely refunded".

Justice Martineau observes : "I see no essential distinction between the case of such an association and that of a club whose members subscribe for their mutual benefit and I do not think that the money received by a club from the members composing it, can properly be regarded as income, a word which in itself seems to imply something received from outside."

The Calcutta High Court in the case of *Dibrughar District Club Limited*, 32 C.W.N. 691 : 55 Cal. 971 came to the conclusion that the company was liable to tax on the profits inasmuch as, it was not a mutual trading society, making *quasi* profits, by trading with its own members and returning such profits to other members.

In *Mohideen Sahib*, 2 I.T.C. 472 : A.I.R. 1927 M. 1052, it was held that where a body of individuals worked and shared profits in toddy shop, such combined profits were liable to tax. In *Lucknow Ice Association*, 92 I. C. 257, it was to be a separate entity liable to tax on its profits. Similar views were also expressed in the case of the *Mahanj Bag Club.—unreported.*

In *Trichinopoly Hindu Permanent Fund Limited*, 107 I. C. 291 : A. I. R. 1938 M. 148 : 1937 I. T. R. 703, the society was held not "mutual" and the entire profits were liable to assessment. The essence of mutuality was found lacking. But in *Mylapore Hindu Permanent Fund*, 1 I. T. C. 217, it was held that income of the fund is derived from interest paid by borrowers to shareholders and from outsiders and is divided among shareholders. The interest paid by members is not liable to tax as it does not come from outside, but the interest received from outsiders is liable to tax.

Life Assurance Company :

Life Assurance Companies may or may not be mutual societies, even though the assured participate in profits, for the income is derived not from the share-holders but from other person—*Equitable Life Assurance Society* v. *Bishop*, 1 Q. B. 177.

Chit Fund :

In the *North Madras Mutual Benefit Co., Ltd.*, 1 I. T. C. 172, a chit fund was conducted by the assessee as stake holder, where the amount received in the auction was distributed amongst the chit holders. It was held that the sums were not taxable.

An exhaustive list of associations cannot be given but the following associations are generally established for mutual benefits : *e. g.* Bar Association, Trade Association, Chamber of Commerce, etc.

Taxable Persons :

"Individual" has not been defined in the Act. The term includes within its purview, adults and minors even. An individual is not assessed on his income derived from the Hindu undivided family, because the income of the Hindu Joint family is excluded in computing the total income of the individual members under section 14 (*1*). An individual is thus not liable to pay income-tax and super-tax upon any sum which he receives as a member of the Hindu undivided family ; nor is this sum taken into consideration in computing the total income, either for income-tax or for super-tax purposes, no matter whether the family is taxable or not. A corporation is an individual within the meaning of section 3—*Trustees of Sir Currimbhai Ibrahim Baronetcy*, A. I. R. 1936 P. C. I. : 40 C. W. N. 199.

Individual

Hindu Undivided Family :

A Hindu undivided family is a group of persons, having a common ancestry, who owns properties or carries on business

in common, sharing the profits jointly. There cannot be any specific appointment of profits and losses to any member and no coparcener can claim any specific share.

Under the Dayabhag system of Hindu Law, father and son do not constitute a Hindu undivided family as the son has no interest in the property or in the trading concern during the life time of the father.

Under the Mitakshara school, a Hindu undivided family includes only those persons who have by birth an interest in undivided family. The interest of a coparcener is a flactuating interest, which can increase or decrease by deaths and births in the family—*Sudarsanam Mistry* v. *Narasingha*, 25 Mad. 149 ; so long as the family remains undivided, no question of specific share can arise.

Division in a status can be effected by various ways, *e. g.*, by mutual agreement or by the expression of an unequivocal intention of separation. Whether there has been a separation or not is a question of fact, pure and simple, to be determined by the Income-tax Officer.

Once an erstwhile coparcener expresses his desire to divide the family, the status becomes divided either by act of parties or by an express declaration. A formal declaration by a member before the Income-tax Officer about the separation of the Hindu undivided family is sufficient to effect a partition—*Jaharmal Ladhuram* v. *Harising*, 28 I. C. 538. But separation in food, mess or worship does not tantamount to a separation of the family.

Under the Indian Income-tax Act, 1922, a Hindu undivided family is regarded as a separate legal entity and individual coparcener of such family is not assessed in respect of his income from such family.

Company :

"Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent.

Company has got no taxable minimum as regards income-tax. The powers of a company are limited by the Articles of Association—*Liverpool and London Globe Insurance Co.* v. *Bennet*, 6 T. C. 327.

There is such a legal fiction as "one-man company", *i. e.* an individual who enjoys practically all the shares, while a small portion of shares are allotted to few others. When the small portion of shares allotted to others really belongs to the individual

who in fact is in sole control having power to determine rights and liabilities, then he alone is liable to income-tax on the entire amount at the rate applicable to his individual income—*Dinshaw Maneckji Petit*, 51 Bombay 370 : 2 I. T. C. 255. But if on the other hand the few others are quite independent of the individual, the microscopic shares of them, cannot affect the company being recognised as "company" in the real sense of the term.

A company that is wound up may not be assessable to income-tax—*Tebru* v. *Farmer*, 5 T. C. 658.

In *Agra Spinning and Weaving Mills Co., Ltd.*, A. I. R, 1934 All. 170 : 1934 I. T. R. 79, it was held that a company in liquidation is a "company" within section 3, and the official liquidator of a company can be treated as its principal officer within the meaning of section 2(*12*).

Association of Individuals :

The Act does not define it, but it is also a legal entity distinct from a company or a firm.

The term "other association of individuals" includes within its net, clubs, associations or unions. Where a body of individuals, working and sharing profit in a certain toddy shop, makes some profit, it is chargeable under section 3 as association of individuals—*In re* : *Mohiuddin Sahib*, 53 M.L J. 719 : 2 I.T.C. 472 : A.I.R. 1927 M. 1052. Similarly a body of Trustees comes within the meaning of section 3, as association of individuals—*In re* : *Hotz Trust, Simla*, A. I. R. 1929 L. 929 : 5 I. T. C. 8.

Association of persons :

Before the amendment, the terms "Association of individuals" occurred in section 3 of the Act, but after the amendment the term "Association of persons" has been substituted in order to cover all cases of association of persons.

It will be seen that the word 'person' has been defined in section 3 clause *39* of the General Clauses Act, 1897, as including a company or association or body of individuals whether incorporated or not, and this definition has for the purposes of the Indian Income Tax Act been extended to include also a Hindu undivided family and a local authority.

In the previous Act, there is a reference of "Association of Individuals" and not to association of persons ; but as there is practically no difference between the two, the following decided cases under the old Act may be construed as referring to "Association of Persons".

It has been held that under section 3, those who are liable for income-tax are also liable for super-tax—*In re*: *Trustees of Sir Karimbhai Ibrahim Baronetcy*, A. I. R. 1936 P.C.I. : 40 C. W. N. 199.

In the case of *Commissioner of Income-tax* v. *J. V. Saldhana*, 138 I. C. 1 : A. I. R. 1932 M. 378, it has been held that the term association of individuals in section 3, has no technical meaning. It merely means a group and when properties of a number of individuals are put together within the meaning of section 3, in such a case the whole group of individuals can be assessed through the person who carries on the business.

The words "Association of Individuals" in section 3 of the Income-tax Act should be construed *ejusdem generis* with all the other groups of persons mentioned in the section, namely, Hindu undivided family, Company and Firm and not with the firm alone.—*C. I. T., Burma*, v. *M. A. Baperia and others*, 7 I.T.R. 225. But in *C.I.T. Bombay*, v. *Ahmedabad Millowners' Association*, 7 I. T. R. 369, it was held that "Individual" in section 3 means a human being and does not include a company, and the expression 'other association of individuals' does not therefore include an association of companies and the assessee could not be charged to income-tax as an association of individuals under section 3 of the Act.

In the *Commissioner of Income-tax, Bombay*, v. *Ibrahimji Hakimji and others*, 8 I. T. R. 501, assessment was made as "association of individuals".

Firm :

Though a firm cannot legally be a partner of another firm, not being a legal entity, yet where two firms enter into a larger partnership, the larger partnership is in law a partnership between the members of the two firms and is not invalid. *Chandrika Prasad Ram Swarup* v. *C. I. T., U. P. & C. P.*, 7 I. T. R. 269.

Impartible Estate :

The income of impartible estate to which the assessee has succeeded by the rule of primogeniture prevailing in his family which is governed by the Mitakshara law is not chargeable to income-tax in his hands as that of an "Individual": *C. I. T., Lahore* v. *Diwan Bahadur Kishan Kishore*, 7 I. T. R. 427.

Damages :

Where damages are received for wrongful detention of movable properties and not under any contract to pay interest, it cannot be income within the meaning of section 3 of the Act. *C.I.T., B. & O.* v. *Rani Prayag Kumari Debi*, 8 I. T. R. 25.

Hindu Undivided Family :

Where a Hindu governed by the Mitakshara law dies leaving some property to his only son, income from such property must be treated and assessed in his hands as his individual income even though he has a sister and mother still alive : *C. I. T., Burma*, v. *Ved Nath Singh*, 8 I. T. R. 222.

For any Year :

The Indian Income-tax Act, 1922, provides that tax can only be levied in respect of the income of the "previous year" and not in respect of the "assessment year". Consequently it follows that where a person has no source of income in the year 1933-34 (previous year), he cannot be assessed in 1934-35, although he might have sources of income in that year. The underlying principle is to assess the income of the previous year"—See the case of *Beharilal Mallick* v. *Commissioner of Income-tax, Bengal*, 2 I. T. C. 328 : 54 Cal, 630 : 31 C. W. N. 557 : A. I. R. 1927 Cal. 553.

The intention of section 3 is not to treat the income of the previous year merely as a measure of the unascertained income of the year of assessment, but to tax the assessee in the year of assessment upon the income received by him in the previous year—(*In re Beharilal Mallick*, 54 Cal. 630, *App.*) *In the matter of Tehari Garahawal Estate through Ram Prosad, principal officer*, 1937 I. T. R. 1 : A. I. R. 1934 P. C. 34.

Minimum Income :

It has been stated that the compapy has got no taxable minimum, whereas other taxable persons, *e.g.*, individuals, association of persons or firms have got a taxable minimum—*Market Harborough Advertising Co.*, 5 T. C. 95 and *Old Mankind Conservative Association*, 5 T. C. 189.

Non-residence :

In the case of non-residence, income which neither accrues nor arises, nor is received, within British India, may be liable to tax under the combined operations of sections 3, 4 and 42. Profits of a company outside British India on premiums of participating policies, collected and sent by its branch in India, by investment outside India are profits or gains which can be taxed in India (relying on the case of *Rogers Pratt Shellac & Co.*, 52 Cal. 1 ; *Messrs. Steel Brothers & Co. Ltd.*, A. I. R. 1926 R. 97). *In the matter of Commissioner of Income-tax, Bombay* v. *National Mutual Association of Australasia*, 1933 I. T. R. 350, 6 I. T. C. 426, A. I. R. 1933 B. 427.

Bonus Shares :

Where a company virtually makes a distribution to shareholders under the guise of a loan or similar pretence, it may be held to be income for super-tax purposes in the hands of the recipient—*Jacob* v. *C. I. R.*, 10 T. C. 1. Much depends on the particular circumstances of the case, as to whether the loan is genuine or not—*C. I. R.* v. *Samson*, 8 T. C. 20 and *Hall* v. *C. I. R.*, 5 A. T. C. 154.

Many cases have been before the Courts on the matter whether bonus distributions by companies are income for the purposes of liability to super-tax. The decisions indicate that where the bonus is in some form other than cash, *e.g.*, shares, debentures etc., and there is no option to take it in cash, whether exercised or not, the amounts in question will not be liable to assessment to super-tax (see *C. I. R.* v. *Fisher's Executors*, 42 T. L. R. 340 ; *Whitmore* v. *C. I. R.*, 5 A. T. C. 1 ; *C. I. R.* v. *Wright*, 5 A. T. C. 525 and *In re* : *Bates*, Ch (1928) L. J. N. 456).

These decisions do not apply where the bonus takes the form of the distribution of the stock etc. in another company—*Pool* v. *Guardian Investment Trust*, 8 T. C. 167 ; or where a dividend is returned to a company in payment for shares—*Roe* v. *C. I. R.*, 8 T. C. 613.

A surplus on liquidation, even when consisting largely of accumulated profits is not income for the purposes of super-tax in the hands of the share-holders—*C. I. R.* v. *Burrel*, 9 T. C. 27. This would not apply, however, to current trading profits distributed by a liquidator.

A dividend paid without deduction of tax out of funds which are not liable to assessment to income-tax will not be liable to super-tax in the hands of the recipients—*Gimson* v. *C. I. R.*, 9 A. T. C. 170.

Where dividends or interest are declared after the sale of shares or other securities, the whole dividend, including any arrears from previous years, is regarded as income in the hands of the transferee—*C. I. R.* v. *Forest*, 8 T. C. 704 ; *Wigmore* v. *Summerson*, 9 T. C. 577 ; *C. I. R.* v. *Oakley*, 9 T. C. 582 and *In re Leigh*, 6 A. T. C. 514. (*Trustees of the Estate of the late Sir David Yule.*)

To give a detailed idea about dividends converted into bonus shares or debentures, I propose to deal with the Calcutta High Court cases in detail, touching the other connected cases along with it.

The Commissioner of Income-tax, Bengal, made a reference under section 66 (*1*) to the High Court at Calcutta to the effect whether the issue of debentures by way of bonus, constituted "income" for the purpose of super-tax under section 55.

The Calcutta High Court negatived the reference holding that the issue of such debentures by way of bonus does not constitute income for the purpose of super-tax.

Swan Brewery Case (30 T. L. R. 199) :

It was a decision on an Act known as Dividend Duties Act of Western Australia which, to put it shortly, taxed dividends and contained a definition of "dividends," including within it every profit, advantage or gains intended to be paid or credited to or distributed among any member of any company. Admittedly a distribution of a bonus share is an advantage and necessarily the Privy Council had no other alternative than to hold that is was a dividend within the meaning of the Act. It is clear that a shareholder in the above case was receiving bonus shares which were an advantage within the meaning of a highly artificial definition of the word "dividend" in a Colonial Act notwithstanding that his proportionate share remained the same after the transaction as it had been before.

Blott's Case (1921 A. C. 171) :

In this case, the decision of *Swan Brewery Case* was discussed threadbare by the House of Lords and it was held that the decision in the Swan Brewery Case turned upon the meaning of local statutes and it was a decision upon a particular Act and is not of general application.

Fisher's Executors' Case (10 T. C. 302) :

The above case stands rather on the same footing with *Blott's* case. It was a case where a limited company capitalized a part of its undistributed profits by using debentures of stock in satisfaction of such bonus, there being no option on the part of the share-holders to receive such bonus in cash. It was held that the bonus paid was not a distribution of profits and did not constitute income in the hands of the assessee.

Trustees of the Estate of the Late Sir David Yule :

Where in a meeting the share-holders of a company desire to capitalize a part of the amount standing to the credit of the reserve fund by declaring a special capital bonus by issue of debentures it has been held that the point submitted before the High Court

is completely covered by the decision in *Fisher's Executors*, 10 T. C. 302, and that the issue of debentures by way of bonus does not constitute income in the hands for the purposes of super-tax.

The Calcutta High Court approved the decision of the Madras Case of *Binny & Co.*, 82 I. C. 17, and relied on the definition of "income" as enunciated by their Lordships of the Privy Council in the case of *Commissioner of Income-tax, Bengal*, v. *Shaw Wallace & Co.*, 136 I. C. 743 : 6 I. T. C. 178. I may be permitted to add that the Privy Council Case of *Raja Bijoy Singh Dudhuria*, 6 I. T. C. 450 : A. I. R. 1933 P. C. 145, is also to the point. When the Act by section 3 subjects to charge "all income" of an individual, it is what reaches the individual as income which it is intended to charge and necessarily the issue of bonus shares by way of debentures is not income.

I may be permitted to quote at some length the following observations in the case of *Fisher's Executors* :

"My Lords, the highest authorities have always recognised that the subject is entitled to arrange his affairs as not to attract taxes imposed by the Crown, so far as he can do so within the law, and that he may legitimately claim that advantage of any express terms or of any omissions that he can find in his favour in taxing Acts. In so doing, he neither comes under liability nor incurs blame. It may be a question, however, whether these considerations of justice and public policy apply equally to a limited-liability company, a creature of the law strictly controlled by statute, in a case where it has no interest in either payment of or escape from a tax that is not levied on it."

Conversion of Dividend, when Yields Income :

1. Conversion of dividend is income if received in cash.

2. Conversion of dividends as shares or debentures of the same company is capital.

The Companies Act makes a special provision by which a company can increase its capital by issuing bonus shares or debentures, the shareholders getting draft on the capital of the company alone ; it is a thing in the nature of an extra share certificate in the company. The company has power to do what it pleases with any profit in meal or in malt provided that the company violates no statute and also keeps within its Articles of association.

Association of Persons :

Although the Act nowhere defines, still we can fall back on the definition of the word "person" as given in the General Clauses Act, 1897.

Section 3(*39*) of the General Clauses Act, 1897, runs thus :

"Person" shall include any company or association or body of individuals whether incorporated or not."

The decided cases as detailed here, although referred to 'association of individual' cases, are practically not distinguishable, and hence these cases may be regarded as explaining where assessment is to be made as 'Association of persons'. The words should be construed *ejusdem generis* with all the other groups of persons mentioned in the section, namely, Hindu undivided family, company and firm and not with firm alone. By merely inheriting a share of property, however, no person can become a member of an association of persons unless there is some forbearance or act on his part to show that his intention and will accompanied the new status which he has been asked to recieve ; sub-section (3) to section 9 of the Act now categorically lays down that where shares of such persons are definite and ascertainable, such perons shall not be assessed as 'association of persons' .. .. *C. I. T., Burma*, v. *M. A. Baporia and others*, 7 I. T. R. 225. (Attention is drawn to the cases referred to, namely, *B. N. Elias* v. *C. I. T., Bengal*, 40 C. W. N. 476 : 9 I.T.C. 1 : 3 I T. R. 408 : 63 Cal 538 ; In re *Keshordia Chamaria*, 8 I. T. C. 472 : 3 I. T. R. 418 and *Muffti Mohamed Aslam Kalifa Manday* v. *C. I. T., C. P. & U. P.*, 4 I. T. R. 412 : A. I. R. 1936 All. 816 : 10 I. T. C. 26). In *C.I.T., Bombay* v. *Ahmedabad Millowners' Association*, 7 I.T.R. 369, it was held that an association of companies is not chargeable as an 'Association of Individuals' ; but as the word 'person' has been inserted in place of 'Individual', association of companies is now chargeable under section 3 as 'Association of persons'. In *C.I T., Bombay*, v. *Ibrahimji Hakimji and others*, 8 I.T.R. 501, it has been laid down that 'Trustees' without being owners may form an association. (Vide *C.I.T., Bombay*, v. *Abubaker Abdul Rehaman & others*, 7 I. T. R. 139 : 41 B. L. R. 232 : 182, I.C. 712 : A. I. R. 1939 Bom. 195 ; *C.I.T., Bombay*, v. *Dwarkanath Harish Chandra Pitale*, 5 I. T. R. 716 : A I.R. 1938 BOM. 353 ; *C. I T., Bombay* v. *Khemchand Ramdas*, 42 C. W. N. 873 : A.I.R. 1938 P. C. 175 . 40 B. L. R. 854 : 65 I. A 236 : 175 I C. 1, 6 I.T.R. 414 ; *Trustees of Sir Currimbhoy Ibrahim Baronetcy* v. *C. I. T.*, 58 Bom. 375 · A. I R. 1934 P. C. 116 : 7 I. T. C. 195 and *Umar Bakash* v. *C. I T., Punjab*, 5 I. T. C. 420 : A. I. R. 1931 Lah. 578 : 132 I. C 689)

The Madras High Court in the case of *C.I.T.* v. *Salem D strict Urban Bank, Limited*, 8 I. T. R. 269, held that an 'association' embraces an association of corporate bodies : (*C I. T., Bombay*, v. *Ahmedabad Millowner's Association*, 7 I. T. R. 369, not followed)

Where an association of persons resembling a Hindu undivided family manage property jointly and the actual shares of persons

are not proved, it should be assessed as an 'Association of persons'.....*C. I. T., Bombay* v. *Chhotalal Mohonlal*, 8 I.T.R. 114 (Vide *C. I. T., Bombay Presidency* v. *Laxmidas Devidas*, 1937 I. T. R. 584 : 5 I. T. R. 589.)

In re Mohiuddin Sahib, 53 M. L. J. 719 : 2 I. T. C. 472 : A. I. R. 1927 Mad. 1952, a body of individuals working and sharing profits was held liable under section 3 as "association of individuals". Trustees, Clubs, Associations and Unions etc. are included within "Association of persons" : *In re Hotz Trust*, A. I. R. 1929 L. 929 : 5 I. T. C. 8.

The expression merely means a group and when properties of a number of persons are put together, the entire group can be called to have formed an association of persons—*C. I. T.* v. *Saldhana*, 138 I. C. 1 : A. I. R. 1932 Mad. 378.

As there is no difference for practical purposes between the "association of indviduals" and "association of persons", although the latter expression appears to be an improvement, a reference to the case of *Mufti Mahamad Islam*, A. I. R. 1936 All. 817 : 107 I. C. 969 : 10 I. T. C. 26, will throw a flood of light as to its import.

There is no comma after the word "firm" and from this as well as from the fact that the words "Hindu undivided family" have been transposed to a higher position in the sentence it must be inferred that the expression should be *ejusdem generis* with the word immediately preceding, *i e.*, the word "Firm". Thus before there can be an "association of persons" within the meaning of section 3, it must first be shewn that the association has at least some of the attributes of a firm or partnership, though not in the strictly legal sense of the term (*C. I. T.* v. *Mohiuddin Sahib, Supra* ; *Hotz Trust of Simla*, v. *C. I. T., (supra)* ; *C. I. T.* v. *T. V. Saldhana, (supra)* 5 I. T. C. 8 ; *Trustees of Tribune Press* v. *C. I. T.*, I. T. R. 16 Lahore 829 ; *in the matter of B. N. Elias*, 40 C. W. N. 476 and *Mian Channu Factories Union* v. *C. I. T., Punjab*, A. I. R. 1936, Lahore, 598 referred to).

In *Messrs B. N. Elias*, 40 C. W. N. 476, it was held :

"These words...have to be construed in their plain, ordinary meaning...'Associate' means according to the Oxford Dictionary, 'to join in common purpose, or to join in action."

Persons who have joined themselves together in the purchase of a property and have remained joint as owners and for holding and using it in order to make gain, are association of persons.

In C. I. T. Bombay, v. *D., & L. Pitale*, A. I. R. 1938 B. 343 : 5 I. T. R. 716, it has been laid down that as soon as the persons

elected to retain the property and manage it as joint ventures producing income, they certainly formed themselves into an association of individuals or persons. This case is nearly governed by the decision in *C. I. T. Bombay*, v. *Laxmidas Debidas*. 39 B. L. R. 910 : 5 I. T. R. 584, on the principle laid down in the case of *B. N. Elias*. I. L. R. 63 Cal. 538.

Finance Act :

It is said that the Income-tax Act does not come into operation in any year until the Finance Act has been passed. But the Income-tax Act cannot be treated as being a statute which is passed annually. It is a permanent enactment but it may not be enforced in any particular year until the Finance Act has been passed.

Section 4 cannot be divorced from section 3, and as section 3 charges the tax on the income of the previous year, it must be charged on the income received in what was British India during the previous year—*vide C.I.T., Madras*, v. *Vallimai Achi*, decided on the 1st day of Nov. 1938 (O. P. No. 105 of 1938).

The Basis of Charge :

As a result of the Taxation Enquiry Committee Report of 1936, the time-honoured "step system" has been replaced by "Slab system". The report runs : "We are of opinion that the existing scale is defective in that the actual tax payable on various ranges of income is excessive as compared with that on incomes above and below". It goes on :

"In our search for a scale and a method of charge which would remedy the defects mentioned, we have considered the adoption throughout of "Slab" system *i.e.*, the application of progressive rates to successive slices of income, a system which is already in operarion for the charge of super-tax. This has the undoubted advantage, if the "Slabs" on rates of tax are carefully chosen, of providing effective rates that steadily increase, without sudden jumps, as total income increase".

If it is the genuine intention to reduce the burden of taxation, a straight way reduction of rates would have served the purpose better.

But as the Slab system has been definitely adopted now, rates will depend on the Finance Act annuallly.

It therefore stands undisputed, that, slab system or step system, the basis of charge is the rate. There is hardly any difference between the two—only difference is in calculation.

Step system was simpler, while the slab system is more round about. It is the annual rate which will give the relief and not the system. For details, *vide*, the Indian Finance Act.

Hindu Undivided Family :

The Indian Income-tax Act has not defined the expression "Hindu undivided family" anywhere in the Act. "Person" has been defined in the Act, in section 2(9) as including a "Hindu undivided family" and a local authority. Their Lordships of the Privy Council in the case of *Kalyanji Vithaldas and others* v. *Commissioner of Income-tax*, 10 I.T.C. 163 : 41 C. W. N. 385 : 1937 I. T. R. 90 : A. I. R. 1937 P. C. 36, have made a judicial pronouncement and the observations are quoted below :

"The phrase 'Hindu undivided family' is used in the statute with reference not to one school only but to all schools ; and it is a mistake in method to begin by passing over the wider phrase of the Act the words 'Hindu coparcenery', all the more that it is not possible to say on the face of the Act that no female can be a member". The Calcutta High Court in the case of *Moolji Sicca and Company*, 40 C. W. N. 517 : 1935 I. T. R. 123, held that "the expression 'Hindu undivided family' as used in the Act connotes a family restricted to the co-parcenery, *i e.*, a family having co-parcenery interest in income or property and not a joint family consisting of several members living together, irrespective of the existence of any co-parcenery property. A Hindu cannot be considered to be a member of a co-parcenery when he has no sons, and when the other members of the family living with him are females Even where there are male members who can be co-parceners with him, there must be ancestral or joint property or property thrown into the common stock, before there can be a co-parcenery of Hindu joint family as contemplated by the Income-tax Act. The income from property which is neither ancestral nor thrown into the common stock but which has been treated as separate property by the members of the family concerned cannot be treated as the income of the Hindu undivided family for purposes of Income-tax." "In *Raja Bhunesh Pratap Narayan Sinha* v. *C. I. T., U. P.*, 6 I. T. C. 175, it was held that "as a matter of law a Hindu joint family can consist only of male members, the female members not being taken into account at all" but their Lordships of the Privy Council did not agree with this view. The Bombay High Court in *Gomedalli Laxminarayan* v. *C. I. T.*, 8 I. T. C. 239 : 1935 I.T.R. 367, held that the expression 'Hindu undivided family' in the Income-tax Act has to be understood not as restricted to co-parcenery but in the wide sense in Hindu Law, as including females. On appeal to the Privy Council, their Lordships, on the principle of *Kalyanji Vithaldas's*

case decided that the assessment should be as 'Individual'. (1937 I. T. R. 416, (1937) P. C. 239.

The Madras High Court in the case of *Vedathanni* v. *C.I.T.*, 56 M. 1 : 1937 I. T. R. 70, held that the expression 'Hindu undivided family' for the purposes of the Income-tax and Finance Acts must be interpreted in a wider sense and not be confined to a co-parcenery. Similar views were expressed in the case of *Nathu Sao* v. *C. I. T., C. P.*, 1934 I. T. R. 463. The case of *Sukraj Ray* v. *C. I. T.*, 9 I. T. C. 166 and *C. I. T.* v. *Makanji Lalji*, A.I.R. 1937 Bom. 479 : I. L. R. (1937) Bom. 827 may also be looked into.

Members of a Hindu undivided family, if to be assessed as Individual or H. U. F :

It has already been stated that there is a conflict of authority on this point. High Courts have differed and differed widely. The Bombay High Court in the case of *Gomedah Laxmarayan* v. *C. I. T.*, 8 I. T. C. 239, held that an assessee, his wife and widowed mother constituted a Hindu undivided family ; but this decision was reversed by the Privy Council (1937 I. T. R. 416). The Allahabad High Court in *Nathusa Pathusa* v. *C. I. T.* 7 I. T. C. 129, held that where a Hindu lives jointly with the widows of the deceased coparceners, a Hindu undivided family is constituted for the purpose of Income-tax assessment.

The Calcutta High Court in the matter of *Moolji Sika*, 40 C. W. N. 517 : 8 I. T. C. 147, held that where the income is self-acquired and which has not been thrown into the common stock he cannot claim to be assessed as a 'Hindu undivided family' even though he has sons and they all live together as a Hindu joint family. Their Lordships of the Privy Council in *Kalyanji Vithaldas* v. *C. I. T., Bengal*, 10 I. T. C. 163 : 41 C. W. N- 385 : A. I. R. 1937 P. C. 36, laid down that the property which a Hindu son obtained from his father cannot be said to belong to the Hindu undivided family for purposes of assessment to super-tax by reason of his having a wife and daughters and that the income formed his separate and self-acquired property.

The Rangoon High Court in the case of *C. I. T., Burma*, v. *Ved Nath Singh*, A. I. R. 1940, R. 65 : 8 I. T. C. 222, lays down that according to the law of Mitakshara the property which a man obtains from his father cannot be said to belong to a Hindu undivided family. Hence when an estate belonging to the father is after his death derived only by his son, income from such estate should be treated and taxed as part of the son's personal income and not as income of a Hindu undivided family, even if he has a mother and sister still alive.

The Madras High Court in the case of *Vedathanni* v. *C. I. T., Madras*, 6 I. T. C. 270 : I. L. R. 56 Mad. 1 : 1937 I. T. R. 70, held that where a family consisted of a single male member and the widows of the deceased co-parceners, it constituted an undivided family. In the case of the *Commissioner of Income-tax, Madras*, v. *A. V. P. Mr. Lakshmanan Chettair*, subsequently represented by his legal representative *L. Deivenai Achi*, 8 I. T. R. 545, this very point was raised and the decision in the case of *Kalyanji Vithaldas* was also discussed. The Chief Justice observed as below :—

"If we had not to look beyond that case, there would be no doubt that in the present case the assessment would have to be regarded as an assessment made on the assessee as an Individual and not as presenting a joint family. Since the Judicial Committee pronounced judgment in that case, the Hindu Women's Rights to Property Act, 1937, has, however, been placed on the statute book. Section 3(*1*) of that Act says that, when a Hindu governed by the Dayabhag School of Hindu law dies intestate, his property, and when a Hindu governed by any any other School of Hindu law or by customary law dies intestate, his separate property, shall, subject to the provisions of sub-section (*3*) devolve upon his widow along with his lineal descendants, if any, in like manner as it devolves upon a son. Sub-section (*2*) says that when a Hindu governed by any school of Hindu Law other than the Dayabhag School or by customary law dies intestate, having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (*3*), have in the property the same interest as he himself had. It is not necessary to decide whether the effect of this section is to make the widow a co-parcener in the full sense of the word, but it is quite clear that she obtains an interest in the joint family property and, as she is a member of the joint family, the income of the property must be regarded as income of the family" So the decisions of the Madras High Court appear to be reasonable.

Firm :

For the definition of "Firm", section 2(*6*) may be looked into.

A firm may be registered or unregistered. Procedure for assessment of registered firm has been altered by the insertion of section 23(*5*), which, *inter alia*, is also applicable to the unregistered firm, if found expedient and convenient by the Income-tax Officer.

Local Authority :

General Clauses Act, 1897, defines the term in Section 3(*28*). Local Authority' shall mean a Municipal Committee, District

Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

The tax is now payable in certain circumstances by "Local Authority."

The words "legally entitled to or entrusted by the Government with" in the above definition should be construed to mean "entitled under the law of British India or entrusted by a Governmental authority in British India," There can thus be no "local authority" outside British India within the meaning of the Income Tax Act except in so far as the Act has been applied to other areas in India.

Rates of Income Tax :

The Income Tax Act deals merely with the basis, the methods and the machinery of assessment and does not contain rates at which Incomes Tax shall be charged. These rates are determined by the Finance Act which is passed annually by the Central Legislature. The same remarks apply to super-tax ; *see* section 55 of ths Act.

Exceptions to the general rule that assessments are to be made on the income of the previous year are contained in sections 24-A, 25 and in Chapter V-*A*. *vide* Income Tax Manual, 8th Edition.

Partners of the firm of members of the association :

The object of the amendment is to enable assessment to be made on individual partners of firms or on individual members of association of persons. Section 23(*5*), for example, provides for direct assessment of partners. In the case of a registered firm, 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. In the case of an unregistered firm, the Income-tax Officer may instead of determing the sum payable by the firm itself proceed in the manner laid down in clause (*a*) of section 23(*5*), 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 if the firm were assessed as an unregistered firm.

Application of Act.

4. (*1*) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—

(*a*) are received or are deemed to be received in British India in such year by or on behalf of such person, or

(*b*) if such person is resident in British India during such year—

(*i*) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(*ii*) accrue or arise to him without British India during such year, or

(*iii*) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year, or

(*c*) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year :

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of the income, profits and gains referred to in sub-clause (*ii*) of clause (*b*) and the amount of the income, profits and gains referred to in sub-clause (*iii*) of clause (*b*) but only the greater of these two amounts :

Provided further that, in the case of person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in British India by him during such year :

Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

Explanation 1.—Income, profits and gains accruing or arising without British India shall not be deemed to be received in or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance-sheet prepared in British India.

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

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

(*2*) For the purposes of sub-section (*1*), where a husband is 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*) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

(*i*) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(*ia*) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(*a*) the business is carried on in the course of the carrying out of a primary pupose of the institution, or

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution.

(*ii*) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(*iii*) The income of local authorities except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area.

(*iv*) Interest on securities which are held by, or are the property of, any Provident Fund to
XIX of 1925 which the Provident Funds Act [1925], applies.

(*v*) Any special allowance, benefit or perquisite specially granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(*vi*) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

(*vii*) Agricultural income.

(*vii*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 58-A.

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

Classes of assessee :

Far reaching changes have been made to this section by the Income-tax (Amendment) Act, 1939. Assessees now fall under three classes, *viz* :—

1. Persons ordinarily resident in British India.
2. Persons resident but not ordinarily resident in British India, and
3. Persons not resident in British India.

Persons ordinarily resident in British India—Such persons are chargeable—

(*a*) on all income accruing or arising or deemed to accrue or arise in British India in the previous year,

(*b*) on all income received or deemed to be received in British India in the previous year irrespective of whether it accrued or arose within or without British India,

(*c*) on all income accruing or arising without British India in the previous year even though it is not brought into British India, and

(*d*) on all amounts brought into British India during the previous year out of income which accrued before the beginning of such year and after the 1st day of April, 1933.

For the assessment year 1939-40 *only* the assessment is not to include both the income which accrued or arose without British India during the previous year and the amount brought into British India during the previous year out of income which accrued before the previous year, but only the greater of these two sums.

Persons resident but not ordinarily resident in British India—Such persons are chargeable—

(*a*) on all income accruing or arising or deemed to accrue or arise in British India in the previous year,

(*b*) on all income received or deemed to be received in British India during the previous year irrespective of whether it accrued or arose within or without British India, and

(*c*) on such an amount of income, profits or gains which accrued or arose without British India in the previous year as is derived from a business, controlled in or profession or vocation set up *in India* (including the Indian States) or as in brought *into British India* during the previous year.

Persons not resident in British India.—Such persons are chargeable—

(*a*) on all incomes accruing or arising or deemed to accrue or arise in British India during the previous year, and

(*b*) on all incomes received or deemed to be received in British India during the previous year.

Under an important proviso in this section a sum of Rs. 4,500 is to be deducted from the income arising abroad in the previous year, but not brought into British India. *It should be noted that income from agriculture arising or accruing in a State in India or elsewhere outside India is not exempt from tax.*

Total Income of Previous Year :

Under the previous Act, provisions of section 4(*1*) applied to income, profits or gains accruing, arising or received in British India or deemed under the provisions of the Act to accrue or arise, or to have been received in British India, and in addition, in the case of a resident, to income accruing or arising outside British India, if received in or brought into British India.

The Amendment Act of 1939 has enlarged the scope of the section by including—

(1) all income, profits and gains which are received or are deemed to be received in British India in such year by or on behalf of such person ; and in the case of a person resident in British India during such year,

(*a*) the whole of the foreign income whether brought into British India or not. This amendment takes away the exemption allowed by the previous Act of income from agriculture in an Indian State.

(2) In the case of a person not resident in British India,

(*a*) if it accrues or arises or is deemed to accrue or arise to him in British India during such year, but so far as the assessment of 1939-40 is concerned, the larger amount between accrual and remittance should be taken.

(3) In the case of a person not ordinarily resident in British India,

(*a*) income, profits and gains which accrue or arise to him without British India shall only be included if 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 during such year.

(*b*) The special feature of the proviso is, that so far as an individual is concerned, the first Rs. 4500 of income arising outside but not remitted in British India will not be included in his return of income for purposes of assessment to British Indian income-tax. In other words, the individual will not be taxed on this free allowance of Rs. 4500 nor will such income be taken into consideration when arriving at the rate at which he will be assessed to British Indian Income-tax.

(*c*) income in excess of Rs. 4,500 :

On any foreign income in excess of Rs. 4,500 *per annum*, an individual resident in British India will be required to pay tax in future, whether remitted in India or not. That is to say, such income will be added to his British Indian income for the purposes of determining the rate at which he will pay income-tax and super-tax in British India, and he will have to pay British Indian income-tax and super-tax in the United Kingdom, the double income-tax relief provisions in the Indian law will apply.

If however the individual's foreign income arises from a country that has no double income-tax relief from the Indian Government, to the extent of half of the amount he is due to pay in respect of income and super-tax on his British Indian income, whichever is less.

Foreign Investments :

Firms registered in India will be required to include the whole of their profit from business abroad and the whole of their income from foreign investments, though here also both in the case of profits from business and income from investments, the free-limit of Rs. 4,500 will apply.

Firms registered outside British India will be treated on the same basis as firms registered in British India, unless the control lies wholly outside British India, in which case they will be assessed on their British Indian profits ; though it is important to note here that the rates of income-tax and super-tax applicable to them will be determined by the total of their world income.

So far as companies are concerned, the free-limit of Rs. 4,500 *per annum* will also apply ; for the rest the position is as below :

When the control and management is not situated wholly in British India, such a company will be a resident and will be taxed not merely upon its British profits, but upon profits derived from any business it does elsewhere, including the income from investments outside British India.

Company whose control and management is not situated wholly in British India will be treated as resident in British India only if their income derived from British India exceeds their income arising outside British India. In all other cases of companies wholly controlled and managed outside British India they will be treated as non-resident.

"Salaries" in British India :

Owing to the amendment of section 7, "Salaries" which are payable in British India, shall be deemed to accrue or arise in British India, *wherever paid*, if it be earned in British India. Only pensions payable without British India are excluded.

Arising in British India :

It has the effect of making liable to super-tax, dividends paid outside British India in so far as they are paid out of profits subjected to income-tax in British India. It is also clear that refunds of income-tax can be claimed on such dividends.

In view of explanations, it is necessary to make administrative arrangements to obviate any hardship that might be imposed in consequence of the change to the accrual basis of taxation on persons prevented by laws in force in the country when their money may be lying from remitting money to British India as and when they wish.

Remittances to Wife :

Remittances received by a wife out of such part of her husband's income as is not liable to assessment in his hands, shall be deemed to be income accruing in British India to the wife.

Exemptions (Sub-section 3) :

Charities and other privileged institutions with a view to fostering institutions of a beneficial public character on the one hand and to administrative economy and convenience in dealing with the taxation on the income of certain other bodies and funds on the other, the Income-tax Act provides a number of special exemptions, reliefs and other privileges which in conjunction with other legal rules, extend to a very considerable number of actual or potential tax-payers.

Under the United Kingdom law, Finance Act, 1921, section 30, as amended by Finance Act, 1927, section 24 provides that exemption shall be granted in respect of the profits of a trade, carried on by any charity, where such profits are applied solely to the purposes of charity and either (*a*) the trade is exercised in the conduct of the main and primary purpose of the charity, or (*b*) the work in connection with the trade is mainly carried on by the beneficiaries of the charity.

The amended Act categorically embodies the following criteria :

(*a*) the business is carried on in the course of the carrying out a primary purpose of the institution,

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution.

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 enure for the benefit of the public.

Local Authorities :

Before this amendment, all income of local authorities was exempted. Under the amendment, if a "Local authority" make profits from supplying a commodity or service outside its jurisdiction, exemption should not be given to those profits.

Local authorities in the United Kingdom are exempt from tax only in respect of such profits as arise from public service within the area of the local authority. The liability to taxation of income arising from supply of commodities or service to areas outside the jurisdiction, has been recognised.

Capital Sum, Commuted Pension etc. :

As a result of the deletion of clause (*v*), specific exemption is superfluous, in view of the Privy Council case of *Messrs Shaw Wallace & Co.*, 6 I. T. C. 178 : 59 I. A. 206. It was held there that capital sums received in commutation of pension or as consolidated compensation for death or injuries or in payment of an insurance policy or as the accumulated balance from a Government Provident Fund could not in any scheme of taxation be regarded as income.

EXEMPTIONS NOTIFIED UNDER SECTION 60 OF THE INDIAN INCOME-TAX ACT, 1922, BY THE CENTRAL GOVERNMENT.

I

INCOMES EXCLUDED FROM TOTAL INCOME ALTOGETHER

[*Finance Department Notification No. 878-F., (Income-tax, dated 21st March, 1922, as amended or added to from time to time.*]

"The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income or salary of an assessee for the purpose of the said Act (1) [except for the purposes of sub-section (*4*) of section 48] :—

(1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or

(1) NOTE.—The reference to sub-section (*4*) of section 48 in the preamble of this notification is a reference to the *old* sub-section before the amendments of 1939. The whole of section 48 was replaced by a new one by section 55 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939) and the new sub-section (*4*) does not correspond to the old sub-section. The reference to the old sub-section is material only for the assessments up to and including the year 1938-39 and for certain cases for 1939-40 also where sub-sections (*4*) and (*5*) of section 6 of the Indian Finance Act, 1939, apply. For assessments after the year 1939-40, the words "except for purposes of sub-section (*4*) of section 48" will be obsolete.

State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State; and the official salaries and fees which a Consul-General, Consul, Vice-Consul or Consular Agent of a foreign State, whether '*de carrier*' or not, and whether a British or a foreign subject or a representative or consular employee of a foreign State, not being a British subject, receives in India from such Foreign State in his capacity of Consul-General, Consul, Vice-Consul or Consular Agent, representative or consular employee.

(2) Sums paid in pursuance of Article 3 of the agreement, dated the 17th August, 1825, between the British Government and the King of Oudh.

(3) Income derived from the *Bua* tax defined in clause (*c*) of section 2 of the Teri Dues Regulation, 1902.

(4) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.

(5) Scholarships granted to meet the cost of education.

(6) Such portion of the income of a member of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as is compulsorily payable by him under the orders, or with the approval of Government to a mess, wine or band fund.

(7) The allowances attached to—

The Victoria Cross.

The Military Cross.

The Order of British India.

The Indian Order of Merit.

The King's Police Medal.

The Indian Police Medal.

(8) The interest on Government securities held by, or on behalf of, Ruling Chiefs and Princes of India as their private property.

(9) 'Jangi Inams' awarded to Indian officers, Indian other ranks and followers in respect of services in the Great War.

(10) The yield of Post Office cash certificates.

(11) The interest on deposits in the Post Office Savings Bank.

(12) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.

(13) The income of "Thana Funds" administered by Political Agents in Kathiawar and of the "Secunderabad Local (Abkari, etc.), Fund" administered by the Resident at Hyderabad.

(13-A.) The income of the Rewa Kantha Mewas Administrations Fund, and of the Sankheda Mewas Road Fund administered by the Political Agent, Rewa Kantha.

(13-B.) The income of—

(*a*) the following funds controlled by the Resident for the States of Western India, namely :—

The Kathiawar Consolidatad Local Fund ; the Rajkot Civil Station Land Improvement Fund ; the Rajkot Civil Station Fund ; the Kathiawar Mounted Police Fund ; the Consolidated Local Fund, Mahi Kantha ; the Consolidated Local Fund, Banas Kantha, including the Palanpur Agency Educational, Sihori, Deodar, Varahi, Santalpur Dispensaries, and Survey Funds ; and the Sadar Bazar Fund ;

(*b*) the village Police Funds, Kankrej, Deodar, Suigam, Varchi, Santalpur, controlled by the Political Agent, Sabar Kantha Agency ; and

(*c*) the Wadhwan Civil Station Fund controlled by the Political Agent, Eastern Kathiawar Agency.

(13-C.) Deleted. (*Vide* Board's Notification No. 13-Income-tax : dated the 24th December, 1938.)

(13-D.) The income of Regimental Institutes derived from rebates payable by Institute Contractors.

(13-E.) The interest on securities held by the Kathiawar Education Provident Fund.

(13-F.) The income of recognised Regimental Thrift and Savings Funds, the assets of which consist solely of deposits made by members and the profits earned by the investment thereof.

(13-G.) The income of the Kolhapur Residency Area Fund.

(14) The salary of His Majesty's Trade Commissioners in India.

(15) The salary of the Canadian Trade Commissioners in India at Calcutta.

(16) The salary of the Trade Commissionors in India of the United States of America, and of any members of his staff who are citizens of the U. S. A. and have been detailed for duty with the said Trade Commissioner by the Government of the said States.

(16-A.) The salary of the Italian Trade Commissioner in India and of any member of his staff who is citizen of Italy and has been detailed for duty with the said Trade Commissioner by the Italian Government.

(16-B.) The salary of the Trade Commissioner for Ceylon in India and of any member of his staff who is citizen of Ceylon and have been detailed for duty with the said Trade Commissioner by the Ceylon Government.

(17) The salaries of the correspondent of the International Labour Office, New Delhi, and his staff.

(18) The salaries of the Organiser and Manager of the Branch Office of the League of Nations, Bombay, and his staff.

(19) The salaries of Khasadars, Levies and Badraggas employed in the tribal territory on the North-West Frontier and of all persons employed in the tribal levy service in Baluchistan.

(20) Deleted.
(21) Deleted.
(22) Deleted.
(23) Deleted.

(*Vide* Board's Notification No. 5-Income-tax, dated the 18th March, 1939.)

(24) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.

(25) The salaries of the light-house keepers of light-houses in the Red Sea.

(26) The pensions paid in the United Kingdom or in a Colony to officers of local authorities or employees or companies or of private employers, such officers or employees being resident out of India.

(27) The interest on Mysore Durbar Securities.

(28) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine in respect of wounds or injuries received in action or in the performance of their duties as members of such forces otherwise than in action.

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

(29) Pensions granted to members of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine, who have been invalided from service with such forces on account of bodily disability attributable to, or aggravated by such service.

(30) Value of rations issued in kind or money allowances paid in lieu thereof, to any officer or other rank in His Majesty's Naval, Military or Air Forces, British or Indian, or in the Auxiliary Force, India, or in the Indian Territorial Force, or in Royal Indian Marine.

(31) Value of rent-free quarters occupied by or money allowance paid in lieu thereof to, Indian officers, British Warrant and non-commissioned officers and men of His Majesty's Military or Air Forces, and British and Indian Warrant officers of His Majesty's Naval and Marine Forces ; in all cases irrespective of whether the individual concerned is married or single.

(32) Conservancy allowance granted in lieu of free conservancy to non-departmental Warrant and non-commissioned officers of the India Unattached List, departmental non-commissioned officers of the India Unattached List not in receipt of consolidated rates of pay and Warrant and non-commissioned officers of the permanent staff of the Auxiliary and Territorial Forces.

(33) The value of the free education provided for the children of British Warrant and non-commissioned officers and any grants-in-aid made to British Warrant and non-commissioned officers in lieu of the provision of free education for their children.

(34) The income of persons, other than persons in the service of the Government, residing in the district of Angul.

(35) Deferred pay within the meaning of paragraph 254, Pay and Allowance Regulations for the Army in India, Part II, paid to soldiers or non-commissioned officers of the Indian Army.

(35-A.) Shore Allowance granted to Warrant Officers of the Royal Indian Navy when employed on Marine Survey under paragraph 89(*c*) of the Regulations for the Royal Indian Navy, Volume I.

(36) The income of indigenous hillmen, other than persons in the service of Government residing in the following areas of Assam :—

The Naga Hills District.

The Lushai Hills District.

The Sadiya Frontier Tract.

The Balipara Frontier Tract.

The Lakhimpur Frontier Tract.

The Garo Hills.

The Jowai sub-division of the Khasi and Jaintia Hills District, and

The North Cachar Hills in the district of Cachar.

(37) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by the Central Government, the Crown Representative or the Provincial Government as the case may be.

List of officers :

The Governor-General.
The Commander-in-Chief.
The Governor of a Governor's Province.

The Chief Commissioner of any of the following Provinces, namely :—

British Baluchisthan,
Delhi,
Ajmer-Merwara,
Coorg,
The Andaman and Nicobar Islands, and

any first class Resident of the Indian Political Department Service.

(38) Such part of income in respect of which the said tax is payable under the head "property" as is equal to the amount of rent payable for a year but not paid by a tenant of the assessee and so proved to be lost and irrecoverable, where—

(*a*) the tenancy is *bona fide* ;

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

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

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

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

(39) The lump grants made by Government to the Indian Church—

(1) for the provision of episcopal supervision and ministrations ;

(2) for the payment of allowances to clergymen entertained in lieu of Chaplaincies reduced ; and

(3) in lieu of the grants-in-aid at present given for the entertainment of clergymen of the Additional Clergy Society under Articles 602 and 603 of the Civil Service Regulations.

(40) When in any year an assessee has ceased to be an employee participating in a recognised Provident Fund and has been declared by the employer maintaining the Fund not to be eligible to receive the whole of the accumulated balance due to him, so much of his income as is assessable for the year shall be exempted from income-tax and shall be excluded from the computation of his total income for the purposes of the said Act as is equivalent to so much of the accumulated balance due to him as has not been paid or is not payable to him, and if such amount exceeds the amount of his income in that year, so much of his income in the following year or years as is equal to the amount of such excess shall be so exempted and included in such year or years.

(41) Income of a Service Fund derived from interest on Government securities or interest on funds deposited with the Central or any Provincial Government.

For the purpose of this exemption, a Service Fund means a fund established under the authority of, or with the permission of, the Central or any Provincial Government for the purpose of securing deferred annuities to the subscribers, or payments to them in the event of their resignation or dismissal from the service in which they are employed, or provision for their wives or children after their death, or payments to their estate or their nominees upon their death, to which servants of the Crown are alone admissible as subscribers or members and the funds of which are either deposited with the Central or any Provincial Government or invested in Government securities.

II

INCOMES INCLUDED IN TOTAL INCOME BUT EXEMPT FROM BOTH INCOME-TAX AND SUPER-TAX.

The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, provided that the exemption shall apply only to interest on securities so held on account of any one assessee up to a face value of Rs. 22,500. (Finance Department Notification No. 878-F., dated the 21st March, 1922). [This shall cease to have effect in respect of interest paid after the 31st March, 1939—*vide* Central Board of Revenue Notification (Income-tax) No. 6, dated 18th March, 1939.]

(2) The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925, (Bombay Act VII of 1925), the Burma Co-operative Societies Act, 1927, (Burma Act VI of 1927) or the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), or the dividends or other payments received by the members of any such Society out of such profits.

Explanation.—For this purpose the profits of a Co-operative Society shall not be deemed to include any income, profits or gains from—

(1) investments in (*a*) securities of the nature referred to in section 8 of the Indian Income-tax Act, or (*b*) property of the nature referred to in section 9 of the Act,

(2) dividends, or

(3) the 'other sources' referred to in section 12 of the Indian Income-tax Act.

(F. D. C. R. Notification R. Dis. No. 291-I. T. 25, dated the 25th August, 1925, as amended by Notification No. 26, dated the 25th June, 1927, and by Notification No. 35, dated the 20th October, 1934.)

III

INCOMES INCLUDED IN TOTAL INCOME, BUT EXEMPT FROM INCOME-TAX AND NOT FROM SUPER-TAX.

The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) Sums received by an assessee on account of salary, bonus, commission, or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business.

where such sums have been paid out of, or determined with reference to, the profits of such business,

and by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head "business."

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax. (Finance Department Notification No. 878-F., dated the 21st March, 1922, as amended by Notification No. 8, dated the 24th March, 1928.)

(2) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if income-tax has at any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub-section (*1*) of section 25 of the Indian Income-tax Act, 1922 (XI of 1922). (F. D. C. R., Notification No. 21, dated the 12th October, 1929).

IV

INCOME EXEMPT FROM SUPER-TAX, BUT NOT FROM INCOME-TAX.

(*Notification No. 47, dated the 9th December, 1933.*)

The Governor General in Council is pleased to exempt from super-tax—

(*i*) so much of the income of any Investment Trust Company as is derived from dividends paid by any other Company which has paid or will pay super-tax in respect of the profits out of which such dividends are paid.

Explanation.—For this purpose an Investment Trust Company means a company in respect of which the Governor-General in Council is satisfied that :—

(*i*) it is a company having for its principal business the acquisition and holding of investments in the stocks, shares, bonds, debentures or debenture stocks of other companies or in securities issued by public authorities,

(*ii*) it is not a company formed for the purposes of, or engaged in, acquiring or exercising control over any other company or group of companies or enabling any other persons to acquire or exercise such control,

(*iii*) it is a company deemed under clause (*b*) of the Explanation to sub-section (*1*) of section 23-A, of the said Act, to be a company in which the public are substantially interested.

Allowances in assessing profits for Railway or Tramway business :

In exercise of the power conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to make the modification hereinafter defined in respect of income-tax in favour of the following class of income, namely, income derived from a railway or tramway business.

Modifications :

(*Notification No. 23, dated the 11th June, 1927.*)

An assessee deriving income from a railway or tramway business may at his option require that in computing the profits or

gains of such business the following allowance shall be made in lieu of the allowances specified in clause (v), clause (vi) and clause (vii) of sub-section (*2*) of section 10 of the said Act, namely, the actual expenditure incurred by the assessee during the previous year on repairs, replacements and renewals of plant, machinery, buildings and furniture which are the property of the assessee :

Provided that an assessee who in any year has exercised the option hereinbefore conferred shall not be entitled, save with the consent of the Commissioner of Income-tax, to withdraw that option in any subsequent year :

Provided further that nothing in this notification shall apply to an electric tramway.

(*Notification No. 12, dated the 4th April, 1931.*)

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to direct as follows :—

Where owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely :—

(*a*) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limt, and

(*b*) the amount by which his total income exceeds that sum.

Exemption of Provident Fund :

Under section 4(*3*) (*iv*) the interest on securities held by Provident Funds to which the Provident Funds Act, 1897 (now Act XIX of 1925), applies, is exempt from tax. Similarly under section 4(*3*) (*v*), capital sums paid as accumulated balances at the credit of subscribers to *such* funds are exempt from tax and are not included in computing their "total income". *The words "accumulated balance" include not only contributions but also interest thereon.* Under section 15(*1*), contributions paid by a subscriber to such funds are exempt from income-tax to the extent mentioned in section 15(*3*). Contributions by *employers* to such funds stand on a totally different footing and are dealt with in paragraph 49. For special privileges for "recognised" provident funds see paragraph 50-A *et seq.*

The exemption granted to Provident Insurance Societies which comply with the provisions of the Provident Insurance Societies Act, 1912, or which have been exempted from its provisions, were withdrawn by the Income-tax (Amendment) Act, 1924 (XI of 1924). Provident Insurance Societies to which the Provident Insurance Societies Act applies, or which have been exempted from its provisions and which were in existence before 1st April, 1924, will continue to enjoy the exemptions under sections 4(*3*)(*iv*) and (*v*) and section 15(*1*) to which they were entitled under Act XI of 1922 before it was amended by Act XI of 1924. These concessions cannot be claimed by any other Provident Insurance Societies.

A special exemption has been granted [*see* paragraph 17(*19*)] in respect of gratuities paid out of Railway Provident Funds on the retirement or death of the members.

Profits or Gains deemed to have accrued or arisen in British India :

Where a foreign company lends money in British India and receives interest in British India, such income accrues or arises in India : *In the matter of Bombay Trust Corporation Limited*, A. I. R. 1928 Bom. 448. In the case of *Syed Ali Imam*, 85 I. C. 164 : A. I. R. 1935 Pat. 281, it was held : "Money due to assessee from Native State and paid by being credited to his account in a bank in that State but afterwards transferred in his account with another branch of the same bank in British India, is not received in British India". But money sent from outside British India and spent on religious institution in British India must be impressed with such trust before it leaves for India for being exempted from tax, (A. I. R. 1928 Mad. 371). In the case of *C. Chettyer*, 122 I. C. 349 : A. I. R. 1930 Mad. 119, it was discussed whether partners in British India are liable to pay tax for profits outside British India.

In the case of *Arunachalam Chettiyar*, A. I. R. 1927 Mad. 769, it was decided that when a joint Hindu family is entitled to a share in a money-lending concern in Malaya Estate, the remittances to the family are taxable.

Claim in Capital :

If a man claims any interest in the capital of a business and in the end receives a sum in satisfaction of all claim he may have in the capital of the business, the income is not liable to income-tax. The sum of money is not "income, profits or gains within the meaning of section 4 at all", *in the matter of N. S.*

Mundy, A. I. R. 1930 Cal. 625 F. B. : 129 I. C. 411 : 34 C. W. N. 788 : 4 I. T. C. 370, the case of *Turner Morrison & Co.*, 117 I. C. 689 : 33 C. W. N. 1123 *distinguished.* Attention is invited to the decision in the case of *Messrs Shaw Wallace & Co.*, 36 C. W. N. 653 : 6 I. T. C. 178 by the Calcutta High Court where it has been held as a capital receipt.

"Accruing, arising or received in British India" :

The Privy Council disagreeing with the decision of the High Court held that the expression "accruing, arising or received in British India" connotes some variation in meaning and in a limited sense the terms may be antithetical, but they are not completely disjunctive or mutually exclusive : *Commr. of Income-tax* v. *Dewan Bahadur S. L. Mathias*, 7 I. T. R. 48.

It is only income which can be taxed under the Income-tax Act, whether it accrues or arises or is received in British India or is deemed to accrue or arise or be received by reason of being brought into British India.

If income arising or accruing without British India is spent or otherwise so dealt with that instead of being brought into British India it ceases to be income, it is not chargeable under the Act merely because the thing upon which it has been turned is subsequently brought there.

It is not necessary in order to attract tax that income derived from abroad should be brought into India in the exact form in which it was received, but the method of bringing it must be a method of transmitting money : *C. I. T.* v. *Ahmedabad Advance Mills*, 44 C. W. N. 379 (Privy Council).

Scope of section 4 (3) (i) :

Section 4(*3*) exempts two categories of income. First, income from property which is dedicated absolutely, and, secondly, in case of qualified dedication, so much of the income as is applied or finally set apart for application to religious or charitable purposes.

Religious or Charitable Trusts :

The word "property" used in section 4(*3*) (*i*) does not bear the restricted meaning that it bears in section 9 of the Act, but includes securities, a business, or share in a business. In the case of a property in which there is no absolute dedication and in which the trust reserves a secular interest to beneficiaries, Shebaits or heirs of the founder, etc., the secular interest is assessable to income-tax.

The maintenance of a Shebait may or may not come within the category of religious or charitable purpose. It depends on the circumstances of the case. If, for instance, a dedication is absolute and a small portion of the income is given to the Shebait for his remuneration for carrying out the trusts of the endowment, it would not be secular. If, on the other hand, a fixed sum is given to religious or charitable purposes and the residue of the income is given to the Shebait for his maintenance, the residue would be held to be secular. The test is whether a suit for partition lies for division of the residue. In any case, any portion of the income dedicated under the trust, which may be misappropriated would also be assessable.

To secure exemption under clause (*i*) or clause (*ii*) of section 4 (*3*) the income of religious or charitable institutions or the income derived from property held for religious or charitable purpose need not be actually spent for those purposes *in the year of receipt*. Where the property is held in part only for religious or charitable purposes, a proportionate share only of any expenses incurred on management is allowable.

Business income of a charitable or religious trust is specifically exempted when the income is applied solely to the purposes of the institution and either (*a*) the business is carried on in the course of the carrying out of the primary purpose of the institution or (*b*) the business in carried on mainly by the beneficiaries of the institution. (I. T. Manual).

Chariatable Purpose—defined :

Under this definition that part of the income of a private trust which does not inure for the benefit of the public is not exempt from tax. A trust in favour of a family deity is included in the expression 'private religious trust' and is therefore not exempt.

Property held under Trust etc. :

With a view to fostering institutions of a beneficent public character on the one hand, and to administrative economy and convenience in dealing with the taxation of the income of certain bodies and funds on the other, the I. T. Act provides a number of special exemptions, reliefs and other privileges, which in conjunction with certain other legal rules and departmental arrangements, extend to a very considerable number of actual or potential tax payers.

Religious and Charitable Purposes :

The term "charity" has a legal meaning considerably narrower than that in popular conception.

It implies a body or fund established under a definite and irrevocable trust for charitable purposes only : *In re Rank's Trustees*, 38 T. L. R. 603.

"Charitable purposes" include the relief of poverty, the advancement of education or religion, and similar activities beneficial to the community in general or to a large section of the community, as distinguished from any limited class of person : *Special Commissioners* v. *Pemsel*, 3 T. C. 53.

The promotion of education is not a charitable purpose : *In re Head Masters' Conference*, 10 T. C. 748, although its advancement may be included among the objects of charity to which exemption may be given.

Trust—defined :

Section 3 of the Indian Trusts Act, defines Trust thus—

"A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another, or another and owner."

A trust may be created verbally, but when the subject matter of Trust is above Rs. 100 affecting any immovable property, it must be duly registered, otherwise it will not be operative.

Hindu Law :—Although the Hindu Law does not permit a desire to an individual, at the time of death of the testator, there is nothing to prevent a desire or a charge in favour of the service of an Idol, or for the endowment of a temple or for the maintenance of private or public religious ceremonies or worship or for charitable purposes or an endowment for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any object beneficial to mankind.

Religious and charitable endowments :

The terms of an endowment will ordinarily be ascertained from the instrument of creation, or if the creation be by the word of mouth, by the statement of the endower at the time of creation ; where from lapse of time or for other reasons such evidence is not obtainable, the terms can be ascertained from the practice of the endowment or from the practice of similar endowments.

No writing is necessary to create an endowment (*Madanpal* v. *Konnel Bibee*, 8 W. R. 42 ; *Pallay* v. *Ramathan Lala*, 13 M. L. J. 364), except when the endowment is created by a will, in which case the will must be in writing and attested by at least two

witnesses, if the case is one to which the Hindu Wills Act, 1870, applies.

A Hindu, who wishes to establish a religious or charitable institution, may express his purpose and endow it. A trust is not required for that purpose. All that is necessary, is, that the religious or charitable purposes should be clearly specified, and that the property intended for the endowment should be set apart for or dedicated to those purposes.

Even in the case of a dedication to an Idol, which cannot itself physically hold lands, it is not necessary, though it is usual, to vest the lands in trustees. Nor it is necessary, that there should be any express words of gift to the Idol.

At the same time it must be noted that the mere execution of a deed, though it may purport on the face of it to dedicate property to an Idol, is not enough to constitute a valid endowment, for the real object of the executant may be to defraud creditors, or to defeat the provisions of the ordinary law of descent or to restrain alienations and keep the property in perpetuity in the family. It is absolutely necessary to the validity of a deed of endowment that the executant should divest himself of the property. Whether he has done so or not, is to be determined by his subsequent acts and conduct. Thus, if the profits of the property are to be appropriated by the executant to his own use, and not to the worship of the Idol, and his subsequent dealings with the property show that he did not intend to create an endowment, the dedication will be inoperative and the property cannot be treated as *Debutter i.e.* belonging to the Idol.

The Indian Trusts Act does not apply to public or private religious or charitable endowments : *Gope* v. *Swami*, 28 Mad. 517.

Charitable uses :

"Here its signification is derived chiefly from the statute of Elizabeth (Stat. 43 Eliz. C. 4). Those purposes are considered charitable, which that statute enumerates or by analogy are deemed within its spirits and intendment ; and to some such purpose every bequest to charity generally shall be applied" *per* M. R. in *Morice* v. *The Bishop of Durham*, 9 Ves. 399. This decision was affirmed by Lord Chancellor in 10 Ves. 522. We find that the preamble of the statute 43 Elizabeth, C. 4, expressly recognises the following :—

> "Relief of aged, impotent and poor people, maintenance of sick and maimed soldiers and mariners, schools of learning,

free schools and scholars in universities, repair of bridges, ports, havens, cause-ways, churches, sea-banks and high-ways, education and preferment of orphans, the relief, stock or maintenance for houses of correction, marriages of poor maids, supportation, aid and help of young tradesmen, handicraft men and persons decayed, relief or redemption of prisoners or captives, aid or ease of any poor inhabitants concerning payment of taxes."

"The general principle appears to be that a charitable purpose must be one for the benefit of the public or a section of the public, and not for the private benefit of the donor or his family or of certain individuals : *Colgan* v. *Administrator-General of Madras*, 15 M. 424".

"The Commissioner of Inland Revenue, until recently, construed them in the sense which the Court of Chancery would have attributed to them in construing a deed or will : that is, as including purposes coming within the thing or purview of State. 43 Eliz. C. 40—*per* Singer C. J. in *University of Bombay* v. *Municipal Commr. of Bombay*, 16 B. 217.

In *Pemsel's case* (1891) A. C. at p. 583, Lord Macnaughten said : "Charity in its legal sense comprises four principal divisions, trust for the relief of poverty, trust for advancement of education, trust for the advancement of religion, and trust for other purposes beneficial to the community."

Trusts for advancement of education :—Under this head comes gifts for the benefits, advancement, and propagation of education and learning—*Whicker* v. *Hume*, 7. H. L. 124 ; for the advancement and propagation of education in economic and sanitary sciences or law—*Smith* v. *Ker*, (1902) 1 Ch. 774.

To found a school for the sons of gentlemen—*A. G.* v. *Lord Lonsdale*, 1 Sim. 105, or to found prizes for essays on a given subject—*Briggs* v. *Hurtly*, 19 L. T. Ch. 416.

Trust for the advancement of religion :—Bequest for the advancement of Christian religion among infidels—*Att.-Gen.* v. *College of William & Mary*, 1 Ves. Jun. 245 ; for the building of church—*Att.-Gen.* v. *Ruper*, 2 P. Wm. 125 etc.

Trusts for other purposes beneficial to the community :—It is not every object of public utility that constitutes a good charity.

Religious uses :

It has already been said that in England it is a nice question whether gifts for religious institutions or religious purposes

generally are at the present day good charitable gifts. *Prima facie* it would seem that a religious institution or a religious purpose is not necessarily charitable : *Theobald*, 7th Edition 356-57. In India there is no such difficulty as we have in the words 'religious uses.'

The Court of Chancery makes no distinction between one kind of religion and another, nor between one sect and another : *Thornton* v. *Hewe*, 31 Bea. 14.

The Full Bench of the Lahore High Court held (Justice Tek Chand dissenting) that property in the Tribune case, was not held under Trust for charitable purposes as defined in section 4(3)(1) of the Income-Tax Act : *The Trustees of the Tribune Press* v. *C. I. T., Punjab*, 8 I. T. C. 353.

Criteria of Exemption :

The amendment takes away the exemption from income of private religious trust not inuring to the benefit of the public, apparently on the pretext that the income is not used in some cases for the purpopes of the trust and there is no check on the breach by the trustees.

There are innumerable trusts in India, from time immemorial both under Hindu and Mahomedan law, in which pious people endowed property for religious or charitable purposes and those trusts contemplate performance of purely religious observances and ceremonies for the future, which cannot be said to be inuring to the benefit of the public.

The main tests of exemption are :—

(*a*) the business is carrried 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.

But nothing shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not inure for the benefit of the public.

The proper construction of the words 'religious and charitable purposes" in the Income-tax Act is to be judged not by the personal law of the assessees but according to the general principles of construction applying to status (*Umar Baksh* v. *C. I. T.*, 5 I. T. C. 402 *approved*)—*Humayun Reza Chowdhury* v. *C. I. T.*, 10 I. T. C. 7. When bulk of the money is applied to propaganda work, which may or may not serve a useful public purpose, the profits made by the newspapers are not exempted :

Trustees of the Keshari and Marhatta Trust v. *C. I. T., Bombay*, 10 I. T. C. 65. In *C. I. T.* v. *The Grain Merchants' Association*, 176 I. C. 736 : 40 B. L. R. 1227 : 1938 I. T. R. 427 : A. I. R. 1939 B. 45.

It has been laid down that an object of general public utility means an object of public utility which is available to the general public as distinct from any section of the public, and where objects of the association are to benefit works of public utility confined to a section of the public, *i.e.*, those interested in commerce, exemptions do not apply.

Where payments do not justify a conclusion that the property is held in trust only for charitable purposes, the trust fails for want of certainty as to its objects : *Probynabad Stud Firm* v. *C. I. T.*, A. I. R. 1936 L. 602 : 168 I. C. 141. The word "charitable" has a technical significance other than the meaning which it bears in common parlance. Before an institution can be called 'charitable' there must be an element of altruism, that is to say, the beneficiaries must be able to claim the benefit. When the ostensible object of an association is to provide facilities of trade and to improve business and there is no priority between the association and outsiders, and it is a mutual concern of the members who compose the association, it cannot be said to be a 'charitable institution' : *In re Chamber of Commerce, Hapur*, A. I. R. 1936 All. 704 : 4 I. T. C. 393.

Trust—Wakf Property :

In the *C. I. T., Bombay*, v. *Abubaker Abdul Rehaman*, 7 I. T. R. 139, it was held that the properties, though validly given as wakf under the Mussalman Wakf Validating Act, were not held for charitable or religious trusts. (*C. I. T.* v. *Laxidas*, 1937 I. T. R. 584 referred to).

"Property held in Trust for Charitable Purposes" :—

In *re the Trustees of the 'Tribune'*, reported in 8 I. T. C. 353, their Lordships of the Privy Council, reversing the judgment of the High Court held :

(1) that the object of the settlor was to supply the province with an organ of educated public opinion and this was *prima facie* an object of general public utility. Though a trust for conducting a newspaper as a mere vehicle for the promotion of a particular political or fiscal opinion may not be within the exemption, where the object is to disseminate news and ventilate opinion on matters of public interest,

the fact that the paper may have, or may acquire, a particular political complexion would not take away its exemption ;

(2) that under the Indian Act the test of general public utility is applicable not only to trusts in the English sense but is to be applied to property held under trust 'or other legal obligation', a phrase which would include Moslem Wakf and Hindu Endowments ;

(3) that in determining whether an object is of general public utility in countries to which English ideas may be inapplicable the standard of the customary law and common opinion amongst the community to which the parties interested belong must be applied ;

(4) that if a trust is not to be carried on for the private profit of a settlor or any other person, it cannot be treated as an element necessarily present in any purpose of general public utility, that it should provide something for nothing, or for less than its costs, or for less than its ordinary price.

The following cases were referred to :—

Bonar Law Memorial Trust v. *Commr. Inland Revenue*, 17 T. C. 508 ; *Commissioners* v. *University College of North Wales*, 5 T. C. 408.

"Though the personal or private opinion of the Judge is immaterial, nevertheless for a charitable gift to be valid, it must be shewn (1) that the gift will or may be operative for the public benefit, and (2) that the trust is one the administration of which the Court itself could, if necessary, undertake and control. There is nothing in the I. T. Act to discharge the Court of its responsibility in coming to a finding as to the character of the object of a trust—a matter which bears directly upon its validity". *Trustees of the Tribune Press* v. *Commissioner of Income-tax, Punjab*, A. I. R. 1939 P. C. 208 : 43 C. W. N. 1065 : 7 I. T. R. 415. 8 I.T.C. 353.

Local authority—U/S 4(3) (iii) :

Although a local authority is now an assessee its liability to income-tax is limited to the income derived from a trade or business carried on by it of supplying commodities (including electricity and water) or services outside its own jurisdictional area.

Meaning of the word 'securities' as used in section 4(3) (iv) :

The words 'interest on securities' do not bear the same restricted meaning as in section 8 of the Act. In section 4(3) (*iv*) they cover, for example, interest on mortgage. Nor is the meaning restricted to the ordinary limited legal sense in which it must always have reference to a loan. Provident funds are entitled to invest in any trustee security, and it has not been the intention of Government to discriminate between the various classes of investments which are thus legally authorised. The word 'securities' in section 4(3) (*iv*) is therefore, to be interpreted as covering all securities mentioned in section 20 of the Indian Trust Act.

Provident Funds Act, 1925 :

This Act is applicable to Government and other Provident Funds including Railway Provident Funds and Funds of the Local authority. In the miscellaneous portion, the Act of 1925 has been inserted to show the respective position of the Funds.

Capital Sums :

Clause (v) of sub-section (3) of section 4 has been deleted. The deletion, however, does not make any general change in the law, and capital sums other than those which have been made specifically chargeable, *e.g.*, by inclusion in the definition of dividend, remain exempt from taxation. The position with regard to payments out of provident funds or similar funds, however has been changed—*vide* explanation 2 to section 7.

Perquisites or Benefits not capable of conversion in Money :

The provision in section 3(2)(*ix*) of the Act of 1918 that "any perquisite or benefit which is neither money nor reasonably capable of being converted into money" was not liable to tax, has been omitted in the Act, as the existence of that provision made it impossible to assess to income-tax, rent-free residences in cases where the assessee had not the power to sub-let, while rent-free residences were liable to the tax where the assessee had the power to sub-let. An explanation had been added to section 7(1) of the Act specifically providing for the taxation of perquisite in the form of rent-free residences.

Under section 7(1) of the Act, all perquisites received by an employee in lieu of or in addition to salary or wages are liable to the tax. House-rent allowances and the value of rent-free

quarters form additions to the remuneration of an employee, and even where residence in a particular town or building is necessary for the proper performance of the employee's duties, such allowances or perquisites cover expenses of a personal character which the employee would otherwise have to incur. They do not therefore "meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" and are therefore not covered by the exemption in section 4(*3*) (*vi*) of the Act and are taxable under section 7 or section 12.

Two conditions have to be fulfilled before the exemption specified in section 4(*3*) (*vi*) can apply. The expenses must be incurred in the performance of his duties as an employee ; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expense thus caused to the employee, and that extra expense only. It is thus a question of fact in each case whether house-rent allowance or the value of rent-free quarters is exempt from the tax, but the following examples will serve to indicate the lines on which the decision should be made :—

(*a*) A Currency Officer is granted rent-free quarters in his Currency Office. Even though his residence in that office is necessary for the proper perfomance of his duties, he will be liable to the tax on the value of his rent-free quarters, since he would in any case have had to provide himself with a residence and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties in an office or employment of profit.

(*b*) A firm in Calcutta makes a practice of providing its employees with rent-free quarters, and houses some of its employees in its business premises as resident clerks. The employees of the firm including the resident clerks, will, as in the previous case, be liable to income-tax on the value of their rent-free quarters.

(*c*) A Government office has its head-quarters in Bombay, but proceeds for some months in the year elsewhere, and grants its ministerial establishment house-rent allowance or rent-free quarters in the place to which it proceeds with the specific object of providing for the maintenance of a second and, from the point of view of the grantees, unnecessary residence in order that they may perform their duties there. The allowance or the value of rent-free quarters will be exempt from income-tax.

In all cases where rent-free houses form part of the perquisites of an employee, the cash value of such a house to the occupier should, in no case, be deemed to be more than 10 per cent. of the salary of the employee. Where an employee is provided with rent-free furnished quarters, no attempt should be made to split the value of this perquisite into its component elements, *i.e.*, rent-free quarters and rent-free furniture. The maximum of 10 per cent. of salary should be applied to the perquisite as a whole.

Such perquisites as (for example) tiffin, domestic services or the value of passages by rail or steamer provided by employers free of charge for their employees are not taxable because they are not convertible into money and there is no special provision in the Act and in regard to them as there is in regard to rent-free quarters ; but passage money paid in India by an employer to his employee to enable him to go on leave is liable to tax. If however, passage money is remitted by the employer to the United Kingdom or a Colony and paid thereto an employee, on leave in such country, it should be regarded as a leave allowance covered by the exemption (23) in paragraph 17.

"The Delhi moving allowance" and "the Delhi Camp allowance" which are granted to the members of the office establishment of the Army Head-quarters and of certain civil attached offices of the Government of India during the period of their stay at Delhi, and the Simla House Rent allowance granted under Rule 19 of the Simla Allowances Code and the value of rent-free quarters in lieu thereof fall under example (*c*) above and are exempt from the payment of income-tax. Special allowances granted solely to meet the higher cost of living in a station such as compensatory local allowances and the Cutch exchange compensation allowance are liable to the payment of tax.

Rewards granted to official for passing compulsory examinations must be distinguished from grants made to assist candidates to meet the expenses of preparing for such examinations. Such tuition rents fall under section 4(*3*)(*vi*) of the Indian Income-tax Act (XI of 1922) and are not liable to tax even if they are only paid to successful candidates. For example, sums of Rs. 150 and Rs. 200 paid to military officers who have passed the Urdu qualifying and Preliminary Urdu examination respectively are tuition grants—not rewards—and are therefore not liable to income-tax (*see* also paragraph 25).

In addition to the classes or portions of "salaries" drawn by officers and other ranks of the Army in India (British and Indian) mentioned in paragraphs 17 and 22, the following allowances are not liable to income-tax :—

Messing allowance ;
Syce allowance :
Forage allowance ;
Detention allowance ;
Meal Money ;
Quarterly kit and clothing allowance ;
Outfit allowance :
Tentage allowance whether separate or included in pay ;
Horse allowance ;
Travelling and conveyance allowances ; and

Any capital sum received in commutation of the whole or a portion of pension or in nature of consolidated compensation for death or injuries or in payment of any Insurance Policy or as the accumulated balance at credit of a subscriber to any such Provident Fund.

The emoluments drawn by the officers and other ranks of the army which are liable to income-tax are :—

1. Regimental pay, Command or charge allowance, Staff pay, P. S. C. pay and Separation allowance.

2. Ordinary pay.

3. Corps or Engineer pay, Batta or Field allowance.

4. Lodging allowance.

5. Value of rent-free quarters (officers).

6. Service or proficiency pay.

7. Extra duty pay.

8. Gratuities under Pay and Allowance Regulations, [paragraph 137 (I).]

9. Annuities under Pay and Allowances Regulations, [paragraph 137 (II).]

10. Bounty money.

11. Pension drawn in conjunction with pay.

12. Separation Allowance.

13. Furniture Allowance.

14. Pensions (except wound or disability) paid in India to British and Indian Officers and men, their widows, children and dependants.

15. Half-yearly gratuity paid to temporary nursing sisters.

The Marriage allowance is not taxable if paid to the wife of a soldier unless the total income of the wife including the allowance exceeds the minimum taxable limit. Similarly, Maternity

benefit is liable only if the total income of the soldier's wife including the benefit exceeds the minimum taxable limit.

As regards the liability of language rewards and examination fees, *see* paragraph 18. (I. T. M.)

4-A. For the purposes of this Act—

Residence in British India.

(*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 ;

(*b*) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India ; and

(*c*) a company is resident in British India in any year (*a*) if the control and management of its affairs is situated wholly in British India in that year or (*b*) if its income arising in British India in that year exceeds its income arising without British India in that year.

Ordinary Residence.

4-B. For the purposes of this Act—(*a*) an individual is not 'ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to, more than two years ; (*b*) a Hindu Undivided Family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India ; (*c*) a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India.

Residence in British India :

Section 4-A adopts the wordings suggested in the Taxation Enquiry Report of 1936, which is based on draft clause 6 of the draft Income-tax Bill, appended to the report of the United Kingdom Codification Committee, presented to Parliament in April, 1936. It runs as below :—

6(*1*) An individual shall be treated as being resident in the United Kingdom in a year of charge if he—

(*a*) is in the United Kingdom in the year of charge for a period or periods amounting in all to 182 days or more ; or

(*b*) maintains or has maintained for him a dwelling place in the United Kingdom, for a period or periods amounting in all to 91 days or more in the year of charge, and is in the United Kingdom for any time in the year of charge ;

(*c*) is in the United Kingdom for any time in the year of charge with the intention of setting up a dwelling place therein, and in that or the following year of charge sets up such a dwelling place ; or

(*d*) having within the 4 years preceding the year of charge been in the United Kingdom for a period of or for periods amounting in all to 365 days or more, is in the United Kingdom for any time in the year of charge otherwise than on an occasional or casual visit.

(*2*) An individual who in a year of charge is resident in the United Kingdom but is not resident solely therein—

(*a*) shall be treated as being principally resident in the United Kingdom, if in the year of charge—

(*i*) he maintains or has maintained for him a dwelling place of business in the United Kingdom but neither a dwelling place nor a place of business elsewhere ;

(*ii*) he neither maintains nor has maintained for him a dwelling place or a place of business in any country, but is domiciled in the United Kingdom ;

(*b*) shall in a case to which paragraph (*a*) does not apply, be treated as being principally resident in the United Kingdom if he appears in view of all the circumstances of his case to be so resident, regard being had in particular to his domicile, nationality and habits of life.

7. A Company shall be treated as resident in the United Kingdom in a year of charge, if it is controlled in the United Kingdom, or if it maintains in that year an established place of business in the United Kingdom and any substantial part of the activities of the Company, whether administrative or other, is conducted in the United Kingdom, but a Company shall not be treated as so resident by reason only of the fact that it has a registered office in the United Kingdom at which is transacted such administrative business only as is necessary to comply with the requirements of Companies Act, 1929.

On a reference to the Taxation Enquiry Report, 19 6, it is found that they were of opinion that sub-clauses (*b*) and (*c*) impose an invidious distinction between the newcomer who at once sets up a dwelling house and the newcomer who takes less permanent accommodation and they suggested that the sub-clause (*c*) be not adopted and that sub-clause (*b*) be adopted by the substitution of 182 days for 91 days. The Committee rejected the adoption of Section 6(*2*).

Under the Amendment Act of 1939, the criteria of residence were as below :

(*a*) (*i*) when an individual is resident in British India for 182 days or more ; or

(*ii*) maintains or has maintained a dwelling place for period amounting to 182 days or more and is in British India for any time in that year ;

(*iii*) having within the four years preceding been in British India for 365 days or more is in British India for any time in that year otherwise than on an occasional or casual visit.

(*b*) A Hindu Undivided Family, firm or association of persons, is resident in British India unless the control and management is wholly without British India.

(*c*) A company is resident in British India if the control and management of it is wholly in British India or if its income in that year exceeds the income without British India.

Occasional Visit Etc. :

To deal with the case of persons who pay occasional visits to India for purposes of business, pleasure or sports, the term "not ordinarily resident" has been introduced. An individual who spends 182 days in British India is resident in British India that year and is taxable on his world income less Rs. 4,500 for that year. An individual who visits India but does not spend periods amounting in all to 2 years in any seven, "is not ordinarily resident."

To maintain this status, the individual must not spend in British India in any one period of 182 days or more, such individual will be taxable only on income arising or received in British India and not on other world income.

The second and alternative qualification is one under which an individual becomes "not ordinarily resident" in British India in any year if he has not been resident in British India in nine out of ten preceding years—that is to say, if he has not maintained a residence and been in British India in any year or remained in British India for periods exceeding 182 days in any one year.

It must be understood that the conditions constituting residence should have reference to the "previous year" and to the year of charge.

Residence in the United Kingdom :

The question of residence in so far at least as income-tax practice is concerned, is a very thorny one. Each case depends on the facts and circumstances of that case.

A person shall not be regarded as resident in the United Kingdom for the purpose of computing the amount to be charged in respect of income from possessions and securities out of the United Kingdom by residence

(*a*) for some temporary purpose only ;

(*b*) not with a view to establish a residence in this country ;

(*c*) for a total period not exceeding six (calendar) months in the year of assessment in question.

These requirements are not alternative but simultaneous.

Temporary Purpose :

What constitutes a "temporary purpose" or "establishing a residence" are primarily questions of fact, and no definite criteria can be laid down with regard to the settlement of either. Where there is an intention of coming to and remaining in this country more of less frequently, however short the period of residence or irregular the visits, and whether for reasons of business, health or pleasure, residence may be found to have been established here. Particularly will this be the case when visitor has a recognised headquarters in this country, *e.g.* where he owns a house—*Lower Stein* v. *De Salis*, 5 A. T. C. 162, or where he holds a sporting or similar right—*Commissioner, Inland Revenue* v. *Cad Walder*, 5 T. C. 101.

With regard to the question of persons who had admittedly been resident in the United Kingdom in the past, the position, though similar, is affected by the Provisions of All Schedules Rule 3. According to this rule, a British subject, ordinarily resident in the United Kingdom shall be assessed and charged as a resident although he has left this country, if his residence abroad is of an occasional nature only. Thus where a definite purpose of remaining abroad permanently or indefinitely, is shewn, and a foreign residence is taken up, while that in the United Kingdom is definitely abandoned, and no regular visits are paid, the provisions of the rule do not apply.

Ordinary Residence :

Not only may a person be resident in more than one country, but he may also be "ordinarily resident" in more countries than one. From the decisions of the Courts, it would appear that where a person makes regular visits to this country and has an address, or business, family or similarities, a decision of the special Commissioner that on the facts of the case, an ordinary residence has been established, notwithstanding that the tax-payer is in the main living abroad, will not be upset as wrong in law—*Levene* v. *C. I. R.*, 44 T. L. R. 374.

"Ordinarily" in this connection does not mean continuously or even mainly, but rather habitually and in the customary course of events. A person who lives abroad for the greater part of his time, but makes a habit of returning to visit his friends, attends to his business interests and "keep in touch" generally, will be deemed an ordinary resident. When a person does not make any place or residence the subject of his visits, but moves about and lives in hotels, particularly where the person is accustomed to visit and live in such a manner continually,

whether here or abroad, both residence and ordinary residence in the United Kingdom may be established, although there may not be a stay of sufficient duration at any one place to establish residence there—*Reid* v. *C. I. R.*, 5 A. T. C. 537 and *Kinloch* v. *C. I. R.*, 5 A. T. C. 469.

Even when a person is ordinarily resident abroad, but visits this country more or less regularly for purely business reasons, *e.g.* to attend Directors' meetings, and does not prolong his stay beyond the time necessary to conduct his business duties, he may also by reason of such visits, acquire residence and ordinary residence in the United Kingdom for income-tax purposes—*C. I. R.* v. *Lysaght*, 44 T. L. R. 374: *C. I. R.* v. *Brown*, 6 A. T. C. 65 and *C. I. R.* v. *Zorab*, 6 A. T. C. 68.

When retired Indian Civil Servants visit the United Kingdom more or less regularly for private purposes, residence is not established.

Sea-faring Persons :

In the case of Sea-faring men, it often happens that though ordinary residents in this country, they may be away during the whole year of assessment. It has been held that when they maintain a residence, and, possibly, a wife and family here, the incident of their being away on duty throughout the year does not affect the fact of their residence here for tax purposes for any year of assessment—*Re Young*, 1 T. C. 57, *Rogers* v. *Commssioner, Inland Revenue Commissioner*, 1 T. C. 225.

In general it would appear that persons who maintain a residence, and a wife and family in this country, although they may not visit them during the year, are still ordinary resident—*Thomson* v. *Benstead*, 7 T. C. 137. It does not necessarily follow, however, that a tax-payer whose wife is resident in the United Kingdom, will himself be found to be resident here, even though he visits this country more or less regularly—*Derry* v. *C. I. R.*, 6 A. T. C. 754 ; *Turnbull* v. *Foster*, 6 T. C. 206.

Residence—Criterion of :

There is a diversity of opinion as to what constitutes residence. The person who gets the foreign business income may be either an individual, firm or a company or a Hindu undivided family, residence has to be examined both with reference to an individual and with reference to a firm or company or Hindu undivided family. The test of residence for the one is not exactly same as that for the other.

The view that a firm or a company can be said to reside in a country in which it is incorporated, even though no business or controlling or making the firm or company is done in that place, is no longer a good law.

The latest view is that the place of incorporation alone does not fix the residence but that there must be also some sort of business or management being done in the country of incorporation. But it is now admitted that a company resides in the place wherefrom business is actively controlled or in the place where it actively carries on business. Hence there may be one or more places of residence for a company.

But what is the test of residence for an individual. Residence is where he eats, drinks and sleeps, or where his family and servants do so. "Making a house, keeping an establishment, pursuing a settled object in or at a particular place are material factors for determining a person's residence. An individual may have more than one residence, a private residence and another his business residence. A business man is said to reside also in his place of business—*Commissioner, Inland Revenue* v. *Lysaght*, 44 T. L. R. 374.

If really there is no control of foreign business from British India, the question of residence and liability to taxation with regard to foreign business income does not arise—except to a limited extent with reference to remittance.

The onus of proving residence in a particular place is on the crown—*Attorney-General* v. *Alexander*, (1874), L. R. 10 Ex. 20.

Partnership Company :

In the case of a partnership carrying on business abroad, the share of the profits derived by a partner, resident in the United Kingdom, will usually be assessed under case I. When that partner is actively engaged in that business (unless such activities are exercised only when out of the United Kingdom) and under case V, when he is a sleeping partner—*Sully* v. *Attorney-General*, 2 T. C. 148 ; *Colquhonn* v. *Brooks*, 2 T. C. 490. The assessment of foreign firms with branches or activities in the United Kingdom follows the same lines as the assessment of Companies under similar circumstances. Where, however, the control of the business is situated abroad, the firm will be taxed as a foreign resident although one or more of the partners are resident in the United Kingdom. Any assessment on the profits of the firm may be made in the name of any such resident partner. If one or more of the partners of any firm is resident abroad, it is the practice to exclude his share of any foreign profits in computing the firm's liability. A similar concession eliminating share of profits applicable to partners resident abroad from any assessment on firms controlled here, is understood to have been secured in some cases, although the equity of practice is not clear.

CHAPTER II

INCOME-TAX AUTHORITIES

Income-tax authorities.

[1]**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 area, and to the exclusion of any Commissioner appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue.

(*3*) The Central Government may appoint as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit.

(*4*) Appellate Assistant Commissioners of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of

[1]This section was substituted for the original section by s. 6 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939).

such areas as the Central Board of Revenue direct, and, where such directions have assigned to two or more Appellate Assistant Commissioners of Income-tax, the same persons or classes of persons or the same incomes or classes of income or the same area, in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed.

(*5*) Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Commissioner of Income-tax may direct, and, where such directions have assigned to two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers, the same persons or classes of persons or the same incomes or classes of income or the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of work to be performed. The Commissioner may with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner, respectively.

(*6*) The Central Board of Revenue may, by notification in the official Gazette, empower Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax

Officers to perform such functions in respect of such classes of persons or such classes of income for such area as may be specified in the notification, and thereupon the functions so specified shall cease to be performed in respect of the specified classes of persons or classes of income or area by the other authorities appointed under sub-sections (*2*) and (*3*).

(*7*) Assistant Commissioners of Income-tax and Income-tax Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax for the area in which they perform their functions, or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner.

(*7-A*) The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

(*8*) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.]

The section has been materially recast and new provisions have been added to it by Act XLII of 1940.

Income-tax Authorities :

(*a*) The **Central Board of Revenue** is appointed by the Central Government, its specific powers are mentioned in various

sections, *e. g.*, 2(*6*), 2(*11*) (*b*), 5, 18 and 59. Rules for carrying out the purposes of the Act are made by the Central Board of Revenue, which also issues instructions regarding the interpretation of the provisions of the Act and the rules, and is entrusted with the general administration of the Act.

(*b*) **Commissioner of Income-tax.**

(*c*) **Appellate and Inspecting Assistant Commissioners.**

(*d*) **Income-tax Officer.**

Under section 5(*2*), Central Government may appoint Commissioners for defined area and also other Commissioners, not exceeding three in number, to function without reference to area and to the exclusion of any Commissioner of Income-tax, in respect of cases or class of cases assigned to them by the Central Board of Revenue.

The object of appointing Central Co-ordinating Commissioners is purely administrative convenience. Their function is not to "grab" case, but is mainly to co-ordinate, they will not deal with ordinary cases but with cases of special kind, such as those relating to insurance or suspected fraud, of assessment of concerns whose operation extends to more than one circle. It must be understood that so far as the appointment of Income-tax authorities is concerned, the Central Government may appoint them for any area and not the Commissioner as before.

Appellate Assistant Commissioners are under the direct control of the Central Board of Revenue and shall derive their powers from the Board. But under section 5(*7*), the Central Board of Revenue, may by notifications in the Official Gazette, empower the Commissioner, both classes of Assistant Commissioners, and Income-tax Officers to perform in respect to such classes of persons or income and for such area, as may be specified in the notifications and thereupon the powers and functions of the authorities appointed under sub-sections (*2*) and (*6*) shall cease.

Jurisdiction :

Both classes of Assistant Commissioners shall derive their powers from the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such area, as the Central Board of Revenue may direct ; but where two or more Appellate Assistant Commissioners have been appointed for the same area, allocation and distribution of work rests entirely with the Central Board of Revenue.

As to Inspecting Assistant Commissioners and Income-tax Officers, they shall derive their powers from the Commissioner under section 5(6) in respect of such persons or classes of persons and of such incomes or classes of incomes, but when two or more Inspecting Assistant Commissioners and Income-tax Officers have been appointed for the same area, allocation and distribution of works rest entirely with the Commissioner.

But the Commissioner with the previous approval of the Central Board of Revenue, may direct that powers conferred on the Appellate Assistant Commissioner and Income-tax Officers, be exercised by the Commissioner and the Inspecting Assistant Commissioner, in respect of any specified case or class of cases. Where such an order is given references in this Act to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner of Income-tax.

Commissioner of Income-tax :

The power of the Commissioner has been considerably curtailed by the amendment of 1939. Section 5 (5) places the Appellate Assistant Commissioners under the direct control of the Central Board of Revenue, but sub-clause (7) lays down that for the purposes of the Act, Assistant Commissioners of Income-tax and Income-tax Officers, shall be subordinate to the Commissioner, for the area in which they perform their functions—but where the said authorities perform their functions assigned to them by a Co-ordinating Commissioner, then to that Co-ordinating Commissioner. In the execution of the Act, all officers and persons employed, shall observe and follow the orders, instructions and directions of the Central Board of Revenue. But the direction of the Appellate Assistant Commissioners shall not be interfered with.

Appointment and Dismissal :

Under the previous Act, the Commissioner was the appointing authority and he could dismiss his subordinates. The Governor-General in Council is by way of appeal or veto and even under executive rules, only a referring or sanctioning authority. As regards dismissal there is no specific section in the Act, providing dismissal, but the rule which gives a right of appeal against orders of dismissal, to the Governor-General in Council, proceeds on the assumption that the dismissal of the Income-tax Officer is to be by the Commissioner of Income-tax. (*Neelu Megham Pillai* v. *Secretary of State*, 1937 I. T. R. 424 : 172 I. C. 244.)

Since the Amendment Act of 1939 has deprived the Commissioner of the power of appointment, he cannot possibly dismiss his subordinates, who, cannot be appointed by him.

General Powers :

Income-tax Officers, under section 5, are entitled to make assessment to a class of persons, or class or classes of income and within a specified territorial limit. They cannot usurp a jurisdiction not vested on them by law.

In *Lachiram Basantalal Nathani*, 5 I. T. C. 14) the Commissioner of Income-tax, Bengal, directed an Income-tax Officer to perform the functions of a special Income-tax Officer in respect of those persons in a certain area whose cases may be made over to him. Rankin, C. J., observed : "the question is whether these persons in Calcutta whose cases may be made over, are a class of persons within the meaning of section 5. I am clearly of opinion that it is not. It is not possible for any assessee or other persons by looking to the definition given in this order to ascertain whether or not his case is one which is affected by it. This order requires special direction to be given under it from time to time, assigning, not in classes but in individual cases, to the officers in question. There may or may not be objection, serious or otherwise, to such a course, but I am clear that it is not a course warranted by section 5 of the Act."

But the present Amendment Act of 1939 has removed the lacuna.

Similarly when the powers of an Income-tax Officer is taken by Notifications, notice issued by him under section 22 (*2*) is *ultra vires*. The fact that the assessee has received the notice issued by the Income-tax Officer and applied to him for extension of time cannot be treated as a waiver on his part, of his right to object to the jurisdiction of the Income-tax Officer, for no action of the Income-tax Officer can give the Income-Tax Officer jurisdiction that law does not give him.—*Ramkrishna Ramnath* v. *C. I. T.*, 4 I. T. C. 171 : A. I. R. 1932 N. 65.

In *Maharaja of Darbhanga* v. *C. I. T., B. & O.*, 4 I. T. C. 283 : 9 Pat. 240 : A. I. R. 1930 Pat. 81, the Commissioner acting under section 5(*4*), made an order in writing directing that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under the Act should be exercisable by the Assistant Commissioner acting as Income-tax Officer.

The Act nowhere mentions Additional Income-tax Officer and Examiner or Inspector of Accounts, although, as a matter of

practice, such officers are found in abundance for administrative convenience and expediency.

An Additional Income-tax Officer is entitled to make assessment when he derives his jurisdiction from Commissioner and must write his name as Income-tax Officer.

Consent cannot and does not give the Income-tax Officer any jurisdiction, neither the Income-tax Officer is competent to transfer a case of his jurisdiction to the file of another Income-tax Officer for heavy pressure of works etc., simply because the transferee. Income-tax Officer derives his jurisdiction from the Commissioner and a proceeding drawn or assessment made without jurisdiction amounts to an illegal assumption of authority.

The Act does not speak of Examiners or Inspectors of accounts but they have been retained for administrative convenience. These administrative officers practically examine all books of accounts of the assessee when produced on requisition by the Income-tax Officer and the results of their examinations are reported to the Income-tax Officer who, in his turn, examines books of accounts of the said assessee and may accept or reject the finding of the Examiner or Inspector of Accounts, and complete the assessment finally.

Generally the findings of the Examiner if not challenged by the assessee are approved by the Income-tax Officer. But the intention of the authorities may be to provide a system of double checking, once by the Examiner and then by the Income-tax Officer and if that be the intention, it is reasonable that the Income-tax Officer's assessment order should be independent of the results of the scrutiny made by the Examiner. In muffassil areas, 2 officers, 1 Income-tax Officer and the other an Additional Income-tax Officer are posted in each district, in some case 1 Income-tax Officer is posted to carry out the work with the help of an Examiner of Accounts who practically does the bulk of assessment works subject to the approval of the Income-tax Officer.

Concurrent Jurisdiction :

Income-tax Officers cannot exercise concurrent jurisdiction. Exercise of concurrent jurisdiction is against the spirit of law and there is bound to be a clash of findings when arriving at an adjudication. All Income-tax Officers derive their jurisdiction from the Commissioner and as such there is hardly any scope for overlapping. Moreover, section 64 of the Act, is a bar. The law and practice as they stand are that an assessee shall be assessed by the Income-tax Officer where he carries on his business, but where the business is in more places than one, then,

he is to be assessed by the Income-tax Officer of the principal place of his business and in other cases, an assessee shall be assessed by the Income-tax Officer of the area where he resides except in certain special cases.

Section 64, cl. 4 says that "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".

The clause, as it stands, seems to lend colour to the view that so far as the branch income is concerned the jurisdiction of the Income-tax Officer of the principal place of business is ousted and that the jurisdiction is apparently concurrent. But as a matter of fact, the jurisdiction of Income-tax Officer of the principal place of business is not ousted.

Under section 64, the Income-tax Officer of the principal place of business has the duty of assessing the whole of the income derived from the principal place of business as well as the various branches. Sub-section 4, no doubt, authorises every Income-tax Officer to exercise his powers as an Income-tax Officer with regard to the profits etc., accruing or arising in that area (*In Re* : *Lachman Das Baburam*, 88 I. C. 216).

But there is a fundamental difference inasmuch as, the branch Income-tax Officer is merely a reporting officer whereas the Income-tax Officer of the principal place of business is the assessing officer. The latter may or may not accept the finding of the Income-tax Officer of the area where the assessee has his branch business. The Act enjoins on the Income-tex Officer to call for branch accounts under section 22, cl. 4, and if the assessee does not comply with the requisition, he has no other alternative than to report an estimated income of the assessee to the Income-tax Officer of the principal place of business. Where, at the time of the final assessment by the Income-tax Officer of the principal place of business, the assessee makes a default by not producing the branch accounts he shall be assessed on the basis of the report as the branch Income-tax Officer is expected to know the local state of affairs best, but where compliance is made, there is absolutely no bar for an Income-tax Officer to proceed to make an assessment on the basis of accounts produced.

Though no simultaneous assessment should be made at different places on the same person, there is nothing illegal in an Income-tax Officer of the place giving an estimate of profits made by the assessee at that place and forwarding that estimate to the Income-tax Officer of another place. *Ram Khelwan Ugamlal* v. *Commissioner of Income-tax*, 144 I. C. 211 : 3 I. T. C. 225 : 7 Pat. 852.

Jurisdiction and transfer of cases :

The right to transfer cases or classes of cases under section 5(*2*) covers pending assessments but does not cover a case in which an assessment has been completed.

An order directing the Income-tax Officer or the Commissioner of Income-tax to forbear from doing something, which he believes wrongly to be his statutory duty cannot fall within section 226 of the Government of India Act, 1935, and the High Court has jurisdiction to entertain the matter.

The right to be assessed by a particular officer is a personal right within the meaning of section 45 of the Specific Relief Act. Section 64 of the Indian Income-tax Act was intended to ensure that as far as practicable an assessee should be assessed locally and the area to which an Income-tax Officer is appointed must so far as exigencies of tax collection allow, bear some reasonable relation to the place where the assessee carries on business or resides—*Dayaldas Kushıram* v. *C. I. T.* (Central), 8 I. T. R. 138 : 189 I. C. 844 : A. I. R. 1940 B. 234 : 42 B. L. R. 414.

Section 64 read with section 5 :

A plain reading of section 64 shows that the same is imperative in terms. It also gives to the assessee a valuable right. He is entitled to tell the taxing authorities that he shall not be called upon to attend at different places and thus upset the business. Section 5 has nothing to do with the assessee directly and does not prescribe the powers of the officers as regards the assessees. Thus there is no conflict between the two sections. Nor is section 64 controlled by section 5 so as to be read with a proviso that section 64 is applicable, except to cases which are transferred to the Commissioner of Income-tax, Central, or the Officers appointed by the Commissioner, Central, under him. The two sections can stand together without encroaching on each other.

Where an Income-tax Officer of the area in which the assessee's place of business is situate exists and existed before April 1st, 1939, the Officer appointed by the Commissioner of income-tax to dispose of the cases transferred to him under section 5(*2*) and described as Income-tax Officer, Central, has no jurisdiction to assess the assessee. The right to transfer cases or classes of cases under section 5 covers pending assessment but does not cover a case in which assessment has been completed : *Hazi Bibi* v. *Sir Sultan Mahomad*, 32 B. 599 ; *Dayaldas Kushıram* v. *C. I. T.*, 189 I. C. 844 : A. I. R. 1940 B. 234 : 42 B. L. R. 414.

CHAPTER II-A

APPELLATE TRIBUNAL

***5-A.** (*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.

The Appellate Tribunal.

(*2*) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(*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 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 adequate experience of a character which render him suitable for appointment to the Tribunal.

(*4*) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(*5*) The powers and functions of the Appellate Tribunal may be exercised and discharged by

Benches constituted from members of the Tribunal by the President of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members, 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 ; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the places at which the Benches shall hold their sittings.

*This section will not come into force earlier than 2 years from 1st April, 1939. The date of its operation will be notified by the Central Government.

Appellate Tribunal :

The speech of the Hon'ble Mr. S. P. Chambers in the Council of State will make the position clear :

"Then, in the machinery side, we have of course a very important change, an Appellate Tribunal is proposed, and that is dealt with in Part II of the Bill. The reason for putting it in a separate Part of the Bill, even though the amendments are spread throughout the Act, is that it would impose too heavy a burden upon the Department to have such a radical change made at a time when so many other changes were being made both in the organisation of the Department and the incidence of the tax. For that reason the provisions are put into Part II of the Bill and the intention is that they shall come into force two years after the Bill itself comes into force. Now, the main lines of the proposal were settled in Select Committee and they were

these. First of all, a Tribunal was to be set up consisting of not more than ten persons, half of whom would be judicial members, that is to say, persons of approximately the status of a District Judge—no less status than that—and half of them were to be what has been described as accountant members, that is to say, persons with experience in accountancy matters and business matters generally. The intention is to have appeals heard by Benches of two members drawn from the Tribunal which would be a kind of panel and one judicial member would sit with one accountancy member, so that when a case came up which dealt with difficult points of accountancy or of business generally, the experience and knowledge of the accountant member would be available, while of course, on points of law there would be experience and learning of the Judicial member. Provision is made for referring to the president of the Tribunal of any case in which there is a difference between two members hearing an appeal and the President can then refer the matter to other members and take a majority decision. The precise rules for determining the manner in which that should be done have not been laid down, they have been left for the President to make himself. Now, one big difficulty which was feared when these proposals were first mooted was that there will be hundreds and thousands of appeals, some of them very small, which would go from the Assistant Commissioner to the Appellate Tribunal. I may say at this stage that the intention is that the various Benches should sit at the same time in different parts of India, so that one will be sitting at Bombay, one in Calcutta and perhaps another in Madras. Thus, in various parts of the country these groups of two would be hearing appeals at the same time. It was felt that the Tribunal would be flooded out by these appeals and that something must be done to prevent that, otherwise the increase in the number of members necessary to hear the appeal would be so great as to make the scheme altogether too costly. To get over that, the proposal is to provide for a fee of Rupees One hundred for every appeal to be taken to the Tribunal. The assessee continues, of course, to have the right without any cost of going to the Assistant Commissianer, who in future will do nothing but hear the appeals and it is expected that he will be able to do substantial justice in all ordinary simple cases. That will mean that only those cases in which a very large point of substance or a very difficult point of law arises will, in fact, go to the Appellate Tribunal. That corresponds very largely, almost exactly, to the system of the special commissioners in the United Kingdom. There, the special commissioners are a full time body as here and they go on tours in twos all over the country and it is a practice for only fairly large and important cases to reach that stage. I think I have explained everything that need be explained on that Tribunal except possibly this that the Tribunal will not in any sense be under the control of the Commissioners as it is going to be an entirely separate judicial body and for that reason the right is given to the Income-tax Officer himself to lodge an appeal against the decision of either the present Assistant Commissioner or the Appellate Tribunal. His appeal against the Appellate Assistant Commissioner's decision would, of course, be on the instructions of his Commissioner of Income-tax and would follow the same course as that of an appeal by an assessee. The further stages will, of course, be nothing more than the reference to the High Court on a point of law in the same way as a point of law can now be referred by the Commissioner to the High Court. I think that is all I need say about the Appellate Tribunal."

Appointment of the Members of the Appellate Tribunal :

The following Press note has been issued relating to the establishment of the Appellate Tribunal :—

"Since it is not possible at this stage to gauge the volume of appellate work which is likely to come before the Tribunal, the Government have decided to appoint not more than six members in the first instance. With

regard to the appointment of the judicial members, the Hon'ble Judges of the various High Courts, Chief Courts and Judicial Commissioners Courts were consulted, and after a careful consideration, of all the recommendations, the Government have decided to appoint the following as judicial members of the Tribunal: Mr. Mahammad Monir, Assistant to the Advocate-General, Punjab, (President); Rai Bahadur Ram Prosad Varma, Advocate, Lucknow, and Mr. R. Satyamurti Ayyar, Acting Registrar, Madras High Court, (members).

The selection of the Accountant members will be made by the Federal Public Service Commission, which will shortly advertise the post.

It is expected that the Tribunal will begin to function early in December next. Apparently the Appellate Tribunal will come to function sometime in 1941.

Personnel of the Income-tax Appellate Tribunal:

It is announced that in consultation with the Federal Public Service Commission, Government have appointed the three Accountant Members of the Tribunal. They are Messrs (1) P. C. Malhotra, (2) A. L. Sahagal, and (3) P. N. S. Aiyar.

The judicial members of the Tribunal were appointed in August last year. They are :—

1. Mr. Mohammad Monir, Assistant to the Advocate General, Punjab as President.

2. Rai Bahadur Ram Prasad Verma, Advocate, Lucknow, as member.

3. Mr. R. Satyamurti Ayyar, Acting Registrar, Madras High Court as member.

The Tribunal is expected to start work early in January 1941.

It is proposed that it should be divided into three Benches, each consisting of one Judicial and one Accountat member, with headquarters at Calcutta, Delhi and Bombay. Each of the Benches would move to the capitals of the provinces and to principal towns within those areas to hear appeals.

Far-reaching effect of the amendments :

This amends section 5 which deals with appointments of Income-tax authorities. The amendments are designed to set forth more clearly and to supplement the powers of the Department in fixing jurisdictions, to minimise mere procedural difficulties and to prevent overlapping of jurisdictions. Some will have retrospective effect from the date on which Part I of the Indian Income-tax (Amendment) Act, came into force.

The insertion of section *7-A* will give authority to the Commissioner to transfer cases and in my opinion both the Department and the assessees can avail themselves of this section.

CHAPTER III

TAXABLE INCOME

Heads of income chargeable in income-tax.

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

(*i*) Salaries.

(*ii*) Interest on securities.

(*iii*) Income from property.

(*iv*) Profits and gains of business, profession or vocation.

(*v*) Income from other sources.

Amendment :

Under the previous Act, section 6, specified six chargeable heads, but the Amendment Act of 1939 has reduced the taxable heads to five, section 11 merges into section 10.

Scope :

As sources of income are different in character, it becomes necessary to have some groupings. The process of computation of income varies under each head, simply because allowable expenditures are different under different heads. Further, the basis of assessment is of necessity different and income from one source may bear deductions at source, whereas the income from other attracts liability when received or due.

Chapter I is entitled "Charge of income-tax" although it is obvious that the real charging section is section 6 in Chapter III under head "Taxable income"—*Provat Chandra Barua* v. *C. I. T.*, 57 I. A. 228 : 5 I. T. C. 1. : A. I. R. 1936 P. C. 209 : 34 C. W. N. 1017 P. C. It is common knowledge that these heads are mutually exclusive of one another.

The expression "save as otherwise provided by this Act" occurring in section 6, simply connotes that income-tax shall be

levied from income, profits or gains from one of the five sources mentioned therein, only if such income, profits or gains are not covered by the exemptions, *e.g.*, even though some income falls within one or more heads under section 6, if it falls within the purview of exemption clauses, the same will not attract liability—*Ibrahim etc. Rowther* v. *C. I. T., Madras*, 3 I. T. C. 33 : 51 Mad. 455.

Section 6, by imposing the tax on all persons in British India without specified exemption, by necessary implication, repealed the earlier exemptions. If there be any earlier legislation or treaty between the sovereign power and the subject for special exemption from future taxation, followed by the introduction by the sovereign power at a later date, of legislature which admittedly, but for the claim to the earlier exemption, applies to and includes the person who was originally exempted, it follows out by necessary implication that the later statute repeals the earlier statute or other Act under which the exemption is claimed (*Kutner* v. *Philips* (1891) 2 Q. B. 271 and *P. C. Barua* v. *C. I. T.*, 5 I. T. C. 1 : A. I. R. 1936 P. C. 209 : 34 C. W. N. 1017 (P. C.) : 57 I. A. 228.

Income, Profits or Gains :

There is no definition in the Act of "income, profits or gains". The words convey the same meaning as in section 3 of the Act. The words "Profits and gains" are an amplification and not a limitation upon the word, income. Moreover the words, 'other sources' in the Act, indicate that anything which can properly be described as income is taxable unless expressly exempted—*C. I. T.* v. *Gopal Saran*, 7 I. T. C. 257, A. I. R. 1935 P. C. 143.

Income-tax :

Income-tax is a single tax. It has been held that income-tax is one tax and not an aggregate of different taxes—*Beharilal Mallik* v. *C. I. T.*, 2 I. T. C. 328 : 1927 Cal. 553.

Illegal undertakings :

There is nothing in the Act to restrict the income to lawful undertakings. Profits from carrying on illegal undertaking *e.g.* smuggling, street book-making etc. are assessable and no deductions will be allowed therefrom on account of fines etc. incurred—*Canadian Minister of Finance* v. *Smith*, 5 A. T. C. 621 ; *C. I. R.* v. *Warnes*, 12 T. C. 227 and *C. I. R.* v. *Von Glehn*, 12 T. C. 232.

Immoral undertakings also attract liability. Prostitution is immoral, but nevertheless income therefrom is taxable.

Case Laws :

It has been held in the case of *T. Manavaden*, 126 I. C. 596, that income derived from sale of timber trees is taxable under section 6, (*vide* also A. I. R. 1930 Mad. 764). Under section 6 where interest stands unrealised but is credited in accounts such income is not taxable : *In the matter of S. M. Chitnavis*, 117 I. C. 258 : A. I. R. 1929 Nag. 60. Similarly annuity for maintenance is assessable as is reported in the case of *Bejoy Sing Dudhuria*, 51 Cal. 918 : A. I. R. 1930 Cal. 641.

Co-Operative Society :

Where a co-operative society invests fluid assets in Government Securities under Government order and such investment is not a part of their business, interest which accrues on those securities is taxable under section 6 : A. I. R. 1929, Pat. 387. Law as it stands is that income of a co-operative society is not taxable but when it functions such works which are no part of its business, income from such business is taxable.

Lump Sum Receipt :

Income of Capital—Where an assessee receives as *selami* a lump sum for granting a lease, such receipts are not "income" within the meaning of the Income-tax Act but are capital receipts, in view of the fact that it is an out and out sale as reported in the case of *Shivaprosad Singha*, A. I. R. 1926, Pat. 109. But where Royalties are paid to lessors, these are nonetheless income though they are paid for rights, the exercise of which involves a loss of capital.

Wagering Contract :

Justices Walsh and Ryves observe in *In the matter of Chunilal Kalyan Das*, 87 I. C. 95 : "There is no ground for saying that the profits arising from illegal business are not taxable. There is not a word in the Act to suggest anything of the kind and it is a fallacy to say because the taxing authority levies from a person who is carrying on profitable business, but improper and illegal business or profession, that therefore the authorities are countenancing such a profession. They are doing nothing of the kind. Their permission is not required and is not given and cannot be withheld to a person who choses to carry on an illegal business, but the tax upon the profits arising therefrom has to be paid in common with the tax paid by every honest trader. Section 6(4) provides the heads of income chargeable in respect of business The mere fact that the business is speculative or even gaming and wagering within

the meaning of that expression, does not make it any the less a business. This is in conformity with the ruling of *Patridge* v. *Mallandaine*, 18 Q. B. D 276 : 2 T. C. 179 where both the words 'business' and 'vocation' are used. It may be appropriate to describe a bookmaker's business as a vocation, but the greater includes the less, and it is clearly included in the word 'business' in our opinion. The same view seems to have been taken in the text-books on the subject with regard to the vocation of a singer or prostitute and the Calcutta High Court in the case of *Birendra Kishore Manikya*, 48 Cal. 766, held that the illegal cesses were assessable to income-tax". Thus "income" from illegal gratifications, abawabs and any income derived from unlawful means, is assessable.

Income from 'other sources' :

The words 'other sources' include anything which can be properly described as income attracting liablity, unless expressly exempted. In *C. I. T.* v *Gopal Saran Narain Singh*, 7 I. T. C. 257 : A. I. R. 1935 P C. 143 : 13 Pat. 661, it was held that where temporary houses and shops erected on leased lands were let out on rent, the income must be deemed to be income from 'other sources'

Section 12 is compendious and is an attempt to attract within the scope of a single section all taxable income which is not specifically provided in the Act. It is an omnibus section. It is wellnigh impossible to draw up an exhaustive list of income assessable under head 'other sources', but an attempt has been made in section 12 in this respect.

In the case of *P. S. Varier* v. *Commissioner of Income-tax, Madras*, 8 I. T. R. 628, that a dramatic troupe maintained by an Ayurvedic physician, may not be a business, but it was clearly a source of income within section 6 (*iv*) of the Income-tax Act and a set off could be claimed.

Salaries.

7. (*1*) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits in lieu of, or in addition to, any salary or wages, which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown, a local authority, a company, or any other public body or association, or any private em-

ployer ; and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received.

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties ;

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

Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction.

Explanation 1.—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

Explanation 2.—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, 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 porvident fund to which the Provident Funds Act, 1925, applies, or any payment from a recognised provident fund within the meaning of Chapter IX-A if such payment is exempted from payment of income-tax under the provisions of Chapter IX-A, or any payment from an approved superannuation fund within the meaning of Chapter IX-B 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.

IX of 1925.

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

Salary, Advance of :

An advance of salary is deemed to be salary due on the date the advance is received. It must be distinguished from other advances such as house building advances which are of the nature of loans.

Any portion of salary withheld under an order of the Court is liable to tax.

The notifications under sub-section (*1*) of section 60 of the Indian Income-tax Act, exempting from tax leave salaries and leave allowances paid in the United Kingdom and in any colony have now been rescinded. As regards classes or portions of salary which are still exempt by notification under section 60, see Part II of this Manual.

Tax is not payable in respect of any sum which the employee, by the conditions of his employment, is required to spend out of his remunerations wholly, necessarily, and exclusively for the

purpose of his duty. *The cost of travelling from a person's residence to his place of employment is not admissible, nor are any expenses of a private character allowable.*

All perquisites received by an employee in lieu of or in addition to salary or wages are liable to tax. House-rent allowances and the value of rent-free quarters form additions to the remuneration of an employee ; and even where residence in a particular town or building is necessary for the proper performance of the employee's duties, such allowances or perquisites cover expenses of a personal character which the employee would otherwise have to incur. They do not therefore "meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" and are, therefore, not covered by the exemption in section 4 (*3*) (*vi*) of the Act and are taxable.

Two conditions have to be fulfilled before the exemption specified in section 4 (*3*) (*vi*) can apply. The expenses incurred by the employee must be wholly and necessarily incurred in the performance of his duties as an employee ; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expenses only. It is thus a question of fact in each case whether house-rent allowance or the value of the rent-free quarters is exempt from the tax, but the following examples are given for the purpose of general illustration :—

(*a*) A currency officer is granted rent-free quarters in his currency office. Even though his residence in that office is necessary for the proper performance of his duties, he will be liable to the tax on the value of his rent-free quarters, since he would in any case have had to provide himself with a residence, and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties of an office or employment of profit.

(*b*) A firm in Calcutta makes a practice of providing its employees with rent-free quarters, and houses some of its employees in its business premises as resident clerks. The employees of the firm, including the resident clerks will, as in the previous case, be liable to income-tax on the value of their rent-free quarters.

Rewards for passing examinations are exempt under section 4 (*3*) (*vii*) of the Act, unless by the conditions of his employment the assessee is compelled to pass the examination. Such rewards granted to officials (for passing compulsory examinations) are distinguishable from grants made to assist candidates to meet

the expenses of preparing for such examinations. These tuition grants fall under section 4 (*3*) (*vi*) of the Indian Income-tax Act (XI of 1922) and are not liable to tax even if they are only paid to successful candidates. The so called "rewards" paid to Military Officers and other ranks for passing compulsory language examinations are all to be treated as tuition grants and not as rewards and therefore as not being liable to income-tax. If in any other case rewards for passing compulsory examinations are taxable they will be taxable as salaries and tax should be deducted at source.

Rewards paid to Army Officers for passing the examination for appointment to the Judge Advocate-General's Department which is not a compulsory examination are exempt under section 4(*3*)(*vii*) of the Act.

Such perquisites as (for example), tiffin, domestic services or the value of passages by rail or steamer provided by employers free of charge for their employees are not taxable, but passage money paid in India by an employer to his employee to enable him to go on leave is liable to tax.

Special allowances granted solely to meet the higher cost of living in a station such as Compensatory local allowances and the Cutch exchange compensation allowance are liable to the payment of tax.

In addition to items of "salaries" drawn by officers and other ranks of the Army in India (British and Indian) mentioned in Part II of this Manual, the following allowances are not liable to income-tax :

Messing allowance ;

Syce allowance ;

Forage allowance ;

Detention allowance ;

Meal money ;

Quarterly kit and clothing allowance ;

Outfit allowance ;

Tentage allowance whether separate or included in pay ;

Horse allowance ;

Travelling and conveyance allowances.

The following emoluments drawn by the officers and other ranks of the Army are liable to income-tax :—

1. Regimental Pay, Command or charge allowances. Staff Pay, P. S. C. Pay and Separation Allowance.

2. Ordnance Pay.
3. Corps or Engineer Pay, Batta or field allowance.
4. Lodging allowance.
5. Value of rent-free quarters (officers).
6. Service or proficiency pay.
7. Extra duty pay.
8. Gratuities under Pay and Allowance Regulations, paragraph 137 (I).
9. Annuities under Pay and Allowance Regulations, paragraph 137 (II).
10. Bounty money.
11. Pension drawn in conjunction with pay.
12. Separation allowance.
13. Furniture allowance.
14. Pensions (except wound or disability) paid in India to British and Indian officers and men, their widows, children and dependants.
15. Half-yearly gratuity paid to temporary nursing sisters.

The Marriage allowance is not taxable if paid to the wife of a soldier unless the total income of the wife including the allowance exceeds the minimum taxable limit. Similarly, maternity benefit is to be treated as the income of the soldier's wife and is thus liable only if her total income including the benefit exceeds the minimum taxable limit.

The "handling charges" granted to Station Masters are not liable to income-tax since they are intended solely to cover certain expenses that the Station Masters have to incur as such.

Explanation 2

The addition of this Explanation in 1939 renders ineffective for the future the Privy Council decision in the case of *B. J. Fletcher* (1937 I. T. R. 428). In future lump sum payments (other than payments made solely as compensation for loss of employment) received by an employee from an employer, or former employer, or from provident funds (which are neither provident funds to which the Provident Funds Act, 1925, applies, or provident funds approved under Chapter IX-A) are to be taxed, whether or not the employment is terminated or is to be terminated ; but any amount included in respect of the employee's own contributions or interest on those contributions is to be excluded from the assessment. Any payment from a superannuation fund approved under Chapter IX-B 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 is also exempt fromt axation.

Under sub-section (*2*) of section 7 all servants of Government including those whose services have been lent to a local authority established in exercise of the powers of the Crown representative or the Central Government are liable to pay tax on their salaries if they are employed in any part of India, irrespective of their nationality.

The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States is not chargeable to income-tax unless it is drawn or received in British India. The portion of salaries of Government officers serving in Indian States, which is paid in the first instance by the Central Government but is subsequently recovered from the State concerned is not liable to income-tax. Leave allowances not drawn or received in British India for leave earned during the period of service in Indian State is also not taxable as it does not fall within the purview of *Explanation 2* to section 4(*1*). (*Vide* I. T. Manual).

Scope :

Section 7 which deals with income under the head "salaries" is amended so as to make sums due under that head liable on the date when they are due whether paid or not. This is to counteract evasion by postponing withdrawal of salary and also by taking loans or advances.

Under the previous Act, salaries were taxable whenever received, but now the basis of taxation is changed.

Employees who by the conditions of their employment required out of their remuneration to incur expenses wholly, necessarily and exclusively, in the performance of their duties, should be allowed deductions.

In cases where salary was deductible at source, the assessee should not be called upon to pay the tax himself to the extent deducted, unless he received the salary without such deduction.

Cases may occur when an employee may have to pay taxes on salaries which they will never enjoy. To obviate hardship in that case, executive instructions will come to his rescue.

The case of *Banke Behari Lal* v. *C. I. T.*, A. I. R., 1937 L. 878 : 10 I. T. C. 461, is no longer a good law because under the previous Act, the scheme of taxation was on the actual profits received and not upon potential profits. Under the amendment potential profits will attract liability.

Explanation 1 :

The right of an assessee to occupy a rent-free quarter is a perquisite, which attracts liability, although under the United Kingdom law, the criteria is whether the occupier is able to let it or obtain a monetary return in lieu (*vide* detailed discussions hereafter).

Explanation 2 :

The change of the word "received" to "receivable" is significant. The word "due" is intended to refer to the date on which remuneration becomes payable and has no reference to the period for which it was earned.

Effect of : It has been inserted obviously to nullify for the future, in respect of the payments with which it deals the effect of the Privy Council decision in *Shaw Wallace & Co.* v. *C. I. T.*, 6 I. T. C. 178 : 136 I. C. 743 : 36 C. W. N. 683 : 55 C. L. J. 386.

Further this explanation has been embodied on account of the High Court and Privy Council decisions in the cases, detailed below.

In C. I. T. v. *Rangoon Electric Tramway and Supply Co. Ltd.*, A. I. R. 1933 R. 22 : 6 I. T. C. 374 : 1933 I. T. R. 315, it was held that the company did not possess any legal or beneficial interest in the shares ; and the transfer of the shares did not amount to receipt by the employee of a perquisite or profit in addition to his salary paid by or on behalf of the company.

Similarly in *R. Johnstone* v. *C. I. T.*, A. I. R. 1934 R. 377 : 7 I. T. C. 330 : 1934 I. T. R. 390, it was held that when any person voluntarily paid to the assessee a sum of money equal to gratuity, the sum was not taxable. In the Privy Council case of *C. I. T.* v. *Fletcher*, A. I. R. 1937 P. C. 261 : 5 I. T. R. 428 : 64 I. A. 323 : 39 B. L. R. 1050 : 169 I. C. the receipt was held to be a capital receipt as would be the payment of a lump sum from a provident fund on the employee's retirement.

The effect in cases like those, is liability will attach, unless the payment is made solely as compensation for loss employment and not by way of remuneration for past services.

In *re A. R. Hattingadi*, 8 I. T. R. 83, the Bombay High Court, on the principle of the case of *C. I. T.* v. *B. J. Fletcher*, 5 I. T. R. 428, 64 I. A. 323, 39 B. L. R. 1050, 169 I. C. 658, 1937 A. I. R. P. C. 261, held that the payment received by the assessee was not in the nature of a deferred salary but payment in the nature of a capital bonus and hence not taxable.

But the addition of this Explanation rendered ineffective the Privy Council decision in the case of *B. J. Fletcher* and necessarily the decision in *re Hathangadi* is wrong and both the decisions may be treated as not binding now.

Compensation for loss of service :

Explanation 2 read with the definition of "income" in clause 2(*d*) nullifies for the future the rule in respect of the payments with which it deals in the effect of the Privy Council decision in the *Shaw Wallace* case (6 I. T. C. 178).

Explanation 2 as worded by the present Act, categorically lays down that a payment due to or received by an employee from an employer or *former employer* or from a provident or other fund at or in connection with the termination of his employment, is a profit in lieu of salary.

The phrase "former employer" is very significant, it is designed to put a stop to any loophole by which an employer can defer a payment for future years.

But if the payment is made solely as compensation for loss of employment and not by way of remuneration for past services, such payment is specifically exempt.

Explanation 2 resolves into this, that any lump sum that represents remuneration for past services including a lump sum received from an unrecognised provident fund is to be regarded as a proper subject of taxation, while compensation for loss of employment should not be so regarded.

Income :

Income connotes a periodical monetary return coming in with some sort of regularity from definite sources. The source is not necessarily one which is expected to be continuously productive of a definite return, excluding in the nature of a mere windfall.

When the assessee after the termination of agency, is granted by his employer a certain periodical sum of money during the life time of the assessee, and in the event of his death before expiry of 5 years from the date of the termination of the agency, to his son for the unexpired period of 5 years, for the services rendered during the agency, provided he does not enter into a competitive business, the periodical sum of money falls within the purview of section 7 (*1*) and is taxable as such (*in re Gopal Saran Narayan Singh* v. *C I.T., B. & O*, A.I.R. 1935 P. C. 193 : 156 I.C. 856 : 39 C. W. N. 1093 (PC) : *relied on C. I. T., Bengal* v. *Shaw Wallace & Co.*, A. I. R. 1932 P. C. 138 : 36 C. W. N.

653 P. C. : 55 C. L. J. 386 *Dist*)—*C. I. T.* v. *K. B. K. K. Katrak*, A. I. R. 1937 S. 234 : 171 I. C. 375 : 1937 I. T. R. 527.

Miscellaneous Income :

It sometimes happens that an employee receives payment for services rendered quite outside his normal duties. These must be included as profits from the employment. This was held to be the case where directors guaranteed a loan on behalf of a company, and received additional fees as consideration for so doing—*Ryall* v. *Honeywill*, 8. T. C. 521. When the remuneration consists wholly or partly of shares, the question of liability will usually turn on the question of whether they can be converted into cash—*Tenant* v. *Smith*, 3 T. C. 158 ; *Scottish Investment Co., Ltd.* v. *Easson*, 8 T. C. 265 and *Parker* v. *Chapman*, 7 A. T. C. 158.

In each case, liability will attach when the payment in question is in consideration of services rendered and has a cash value. When for instance, a lump sum payment is made in respect of services, the payment is not considered as a capital receipt but as part of the remuneration for the year in which it is made.

The position when a lump sum is paid by way of compensation for loss of office, is of a different character, and such payments will not attract liability—*Chibbet* v. *Robinson*, 3 A. T. C. 529. In *Cowan* v. *Seymour*, 7 T. C. 372, where payment to a liquidator by the shareholders of a company as a voluntary gift in appreciation of his conduct was held not to be a profit of any office, but a testimonial for past services and not assessable *Duncan's Executor* v. *Farmer*, 5 T. C. 417, *Beyon* v. *Thorpe*, 7 A. T. C. 190.

Construction :

On a true consideration of section 7 (*1*) unless and until salary was received, it was not taxable. But when the interest of the company's own contributions to the provident fund is paid by the company and received by the employee, the sum so paid is salary within the meaning of the Act—*C. I. T.* v. *Bombay Burma Corporation Ltd.*, 143 I. C. 532 : A. I. R. 1933 R. 75.

Similarly contributions made by the company by the credit of its officers in the officers' Retiring fund, are not part of the officer's salaries, nor are the gratuity or profits received by the officers in lieu of or in addition to salary. It is in fact a voluntary contribution made by the company to the fund under the conditions framed by the Fund rules and the true character of the contribution must be gathered therefrom.—*C. I. T. Madras* v.

B. J. Fletcher, 5 I. T. R. 428 : 64 I. A. 323 : 169 I. C. 658 : A. I. R. 1937 P. C. 261.

When by a deed of partnership between the father and the son, the son is to receive an allowance for managing his father's estate and for imposing upon himself the condition of permanent residence in the estate with a view to relieve his father of the necessity of so residing. This surplus payment is over and above the ordinary share of the income which his son is otherwise entitled to receive and is to all intents and purposes not agricultural income in his hands—whatever his position may be, the son is an employee of his father *qua* that portion of the work which he does exclusively for his father and for which he is paid an extra amount and this is liable under section 7 (*1*)—*Major L. H. G. Conville* v. *C. I. T., Punjab*, 8 I. T. C. 399 : A. I. R. 1935 Lah. 978 : 1935 I. T. R. 404.

Section 7 (*1*) makes gratuity liable to assessment under head "salaries" consequently payment of any gratuity by a Bank to its employee on retirement under the Provident Fund and Gratuity rules of the Bank, is liable to tax under section 7 (*1*) of the Act—*D. K. Balaji Rao* v. *C. I. T., Madras*, 8 I. T. C. 80.

Gratuity paid to non-pensionable Railway employees & others :

Explanation 2 to section 7 lays down that payment received by an employee from an employer on termination of services attracts liability under the head "Salaries", if it is received by way of remuneration for past services. According to State Railway Gratuity Rules, gratuity not paid as a compensation for loss of employment or in lieu of salary, but is paid as a 'gift' for good, efficient, faithful and continuous service. Payment of such gratuity cannot come within the purview of section 2(*6C*). On a perusal of the section, it is apparent that it is not "Income" within the meaning of the section.

Similarly where gratuity is paid to District Board or Municipal employees, if it can be shewn that it is not income within the meaning of section 2(*6C*), there will be no liability. But it is a pure question of fact. *Explanation* 2 to section 7 makes an employee liable if the payment is not by way of remuneration for past services, payment made solely as compensation for loss of employment attracts tax. If it can be shewn that the payment is a 'gift' I do not think it should attract tax.

A detailed discussion is necessary whether the Provident Fund established for the benefit of its employees by any local authority,

viz., the Municipal Corporation and the District Board, is a Provident Fund to which the Provident Funds Act, 1925, applies. Such a Fund may or may not be a 'recognised' Provident Fund; but it is to be deemed as a 'Provident Fund' to which the Provident Funds Act, 1925, applies as will be found from section 8 of the 'Provident Funds Act of 1925' (Act No. XIX of 1925.) Section 8 runs thus :—

Power to apply the Act to other Provident Funds.

"*8. The Local Government may, by notification in the local official Gazette, direct that the provisions of this Act shall apply to any Provident Fund established for the benefit of its employees by any local authority within the meaning of the Local Authorities Loans Act, 1914, and, on the making of such declaration, this Act shall apply accordingly, as if such Provident Fund were a Government Provident Fund and such local authority were the Government.*

Now it is a common knowledge that all local bodies have got their Provident Funds duly approved by the local Government and as such there is nothing to question its character and applicability. All payments from such Provident Funds are exempt from taxation by virtue of the Proviso of *Explanation* 2 to section 7 of the Income-tax Act.

It sometimes happens that some of the Local Bodies make payments to their employees from the 'Provident Fund' describing as 'Gratuity or Additional Provident Fund' and the Taxing authorities take the payment as income. In my humble opinion it should not be taxed at all; the wrong description, however misleading it may be, does not and cannot make the payment a 'Gratuity' within its literal meaning.

Scope of Section 7(2) :

Salaries, paid out of Indian Exchequer without British India, were under section 60, exempt from liability, but the Amendment Act of 1939 has withdrawn the present exemptions and salaries paid or payable outside British India will now be liable to tax.

Principles :

The general nature of income, assessable under section 7 includes in the category—income from an office or employment of profit, salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits in addition to salary. Liability attracts whether the payments are made under contractual obligation or voluntarily.

Tips, such as are sometimes given to professional sportsmen will be assessable but not apparently public testimonials (*Wing* v. *O'Connel*, 1927 I. R. 84) even when they form a recognised addition to the remuneration of the recipient : (*Reed* v. *Seymour*, 6 A. T C. 437). 11 T. C. 625 Testimonials generally will not be assessed (*Turton* v. *Cooper*, 5 T.C. 138), but Easter offerings which form a recognised part of an incumbent's income, will (*Cooper* v. *Blackstone*, 5 T. C. 347). In general when services are rendered and payment is received, whether by agreement or purely *ex gratia*, liability will attach.

When board is supplied as part of the remuneration of the employment, nothing will be added to the wages on account of this, but when an allowance in lieu of broad is made this must be added to the amount of the cash salary.

Persons resident abroad can be assessed if the employment is exercised from British India.

Under the United Kingdom law, where, for instance, a rent free house is one of the emoluments of an office, the question whether the annual value of the house forms part of the holder's salary will depend on whether he is able to let it or otherwise obtain a monetary return in lieu. But under the Indian Act the right to occupy free of rent as a place of residence any premises is a perquisite liable to taxation—*E. Abbot* v. *C. I. T.*, 9 I. T. C. 9 : 2 I. T. L. R. 205. This has been enacted to run counter to cases like *Tenant* v. *Smith* (1892), A. C. 150 3 T. C. 158 and *Bent* v. *Roberie* (1887), 3 Ex D. 66.

When a salaried partner receives salary from the firm, although the latter may be assessed at nil, and notwithstanding the fact that the Income-tax Officer did not allow any deduction of the amount from the profit of the firm, the employee is liable nonetheless— *Soma Sundaram Chettiar* v. *C. I. T.*, I. T. C. 88 : 1934 M. L. J. 638.

Lump Sum :

Any lump sum that represents remuneration for past services including a lump sum from an unrecognised provident fund, should be regarded as a proper subject of taxation—but contributions to the provident fund by the assessee and interest on such contributions, should be excluded.

Compensation, pure and simple, for loss of employment and not by way of remuneration for past services, does not attract liability, neither any payment from an approved Super-annuation Fund within the meaning of Chapter IX 13 made on the death of beneficiary.

Fees of Government Pleader :

Fees (including retaining fees) paid to Government Pleaders and Public Prosecutors are not "salaries" within the meaning of section 7 of the Act, but are "professional earnings" within the meaning of section 2 of the Act.

The proviso to sub-section (*1*) applies only to compulsory deductions made under the authority of Government and not to compulsory deductions made by other employers. The amount exempted under this proviso has, however, to be taken into account under section 16(*1*) in computing the total income of an assessee for the purposes of determining whether he is liable to tax and the rate at which he is to be assessed. An assessee, for example, who has a salary of Rs. 180 per mensem or Rs. 2,160 *per annum* and from whose salary a compulsory deduction is made by the authority of Government of Rs. 300 *per annum* of the nature referred to in this proviso is liable to pay income-tax on Rs. 1,860 at the rate applicable to an income of Rs. 2,160.

Under section 58 of the Act this proviso does not apply to super-tax, that is, no allowance of this kind is made for super-tax purposes.

Rewards for passing Language Examination :

Rewards for passing language examinations are not taxable unless by the conditions of his employment the assessee is compelled to pass the examination. Where they are taxable, they are taxable as salaries and tax should be deducted at source.

Examiner's Fees :

In regard to examiners' fees if the conduct of the examination is part of the assessee's duties, the position is precisely the same as regards the passing of an examination. Even if it cannot be said that the assessee is under any obligation to do the work for which the fees are paid, the fees will be liable to tax if the work done can be regarded as incidental to the exercise of the assessee's profession, occupation or vocation, as when a school master conducts an examination or an Advocate sets or values paper in law examination he should then be taxed as on "Professional earnings". When there is no such close connection between the work done and the assessee's profession, for example, if a member of the Indian Civil Service sets a paper in history, it would still be for the assessee to prove that the income was non-recurring, and in the absence of such proof the income would be taxable as income from "other sources". In such a case it

would hardly be possible to tax such fees on the first occasion on which the assessee received them, but if he again received them in the following year the first year's fees could be taxed under section 34.

Honoraria or fees paid to Government servants by local bodies or private persons, companies, etc., for professional work, the whole of which are in the first instance credited to Government, after which the whole or part is drawn under proper sanction by the Government servant concerned on a bill, should be taxed as salary by deduction at source. They are obviously fees, commissions, or perquisites received in addition to salary and paid by or on behalf of Government. [Section 7(*1*)].

For classes or portions of "salaries" which are entirely exempt from tax, *see* paragraphs 17(1), (2), (4), (5), (11), (14), (15), (16), (17), (18), (19), (20), (21), (22), (25), (26), (29), (30) and (31).

Advance Salary :

Income under this head is always included in the income of the year in which it is received irrespective of the period in respect of which it was earned, with the solitary exception that where an officer of Government takes an advance of pay, the tax is not chargeable on the advance, but the tax is charged on the full salary of the month on which the advance is recovered by deduction without any regard to the deduction.

Attached Salary if Taxable :

A portion of a salary withheld under the orders of a Court is liable to tax.

Salaries paid in India but Outside British India :

Section 7. Sub-section (2) makes chargeable, under this head, salaries paid from Indian revenues to Government employees in any part of India and also salaries paid by a local authority established in exercise of the powers of the Governor-General in Council. All servants of Government, or of such local authorities are, therefore, liable to pay tax on the salaries if they are employed in any part of India irrespective of their nationality.

Rules Relating to British Subject and Alien Subjects :

The words "or any servant of His Majesty" in this sub-section were inserted in the Act of 1918, so as to bring all servants of the Crown, whether British subjects or not, within the purview of this sub-section, on the ground that it seemed unnecessary to give to persons who were not British subjects

specially favourable treatment which was not accorded to British subjects.

The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States are not chargeable to income-tax unless they are drawn or received in British India ; but the leave allowances and pensions of such officers are chargeable to income-tax unless covered by any exemption. The Government of India recover contributions at fixed rates from the Indian States to meet the cost of leave allowances and pensions of officers in foreign service and make themselves responsible for paying the leave allowances and pensions of their employees earned in foreign service. The portion of salaries of Government officers serving in Indian States, which is paid in the first instance by the Government of India but is subsequently recoverd from the State concerned is not liable to income-tax.

Salaries, etc., paid outside India :

Under exemptions Nos. 21-25 quoted in paragraph 17, leave allowances or salaries paid in the United Kingdom to, or drawn from any Colonial treasury by, officers of Government on leave or duty in the United Kingdom or in a Colony and the pensions of officers of Government residing out of India, which are paid in the United Kingdom or are drawn from any Colonial treasury, are exempt from tax. Similarly under exemptions 19-A and 21-A leave salaries or leave allowances paid in the United Kingdom or in a Colony to officers of local authorities or to employees of companies or of private employers on leave in the United Kingdom or in a Colony and pensions paid in the United Kingdom or in a Colony to officers of local authorities, or to employees of companies or private employers provided such officers or employees are residing out of India, are exempt from tax. Vacation salaries paid in the United Kingdom or in a colony to Judges of High Courts or of Chief Courts, to Judicial Commissioner or to other officers of Government when on vacation therein are also exempt from tax (*vide* exemption No. 24 in paragraph 17).

Pay and allowances drawn by officers from the Indian revenue which are earned by them by service outside India are not liable to tax unless they are drawn or received in India. But owing to the amendment, notification Nos. 21 to 25 have been withdrawn.

Salaries :

Exemption by virtue of section 60 of the Income-tax Act—The Governor-General in Council is entitled to declare any class

of persons or portion of salaries totally exempt from assessment. (*Vide* remarks under sec. 60).

Deferred Annuity :

Where any sum is deduced from the salary under the authority of the Government for the purpose of securing a deferred annuity no tax can be charged for the sum so deducted provided the sum so deducted shall not exceed $\frac{1}{6}$th of the salary.

Perquisite :

The term denotes any benefit enjoyed by assessee which is neither money nor capable of being converted into money. Such benefit is a 'perquisite' in the real sense of the term. The explanation under section 7 clearly provides that 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 purpose of this sub-section. But as a matter of practice, by an executive fiat, it has been arranged that when an employee enjoys the privilege of a rent-free quarter, the money value shall not be taken at more than 10% of the salary of the employee.

Payments in kind, from residence, board and similar items are not assessable unless there is an obiter or possibility of turning them into cash. [*Tenant* v. *Smith*, 3 T. C. 158 (1892) A. C. 150]. But under the Income-tax Act, rent-free quarter is a 'perquisite' within the meaning of the section 7(*1*). The explanation portion makes it specially taxable. Each case will be decided on the actual facts and circumstances of the case. When the use of residence rent-free is available but there is a right to let the premises and live elsewhere, the annual value of the house will be assessable as part of the remuneration of the office in question, but where there is no such right, the value will be excluded.

The above English principle is inapplicable in India so far as rent-free quarters are concerned.

Similarly, allowances made in lieu of board, uniform etc. are assessable, with a right in proper cases to have necessary expenses deducted ; but when board etc. is provided but a deduction from salary is made in payments therefor, the question as to whether the gross or the net amount of the salary will be assessed, will depend largely upon whether the amount is voluntary or compulsory on the part of the employee concerned.

Refund :

Salaries as a whole are to be deducted at sources. This procedure may often result in higher deduction and the assessee

is often affected by the rate. But under section 48(3) where the assessee presents an application for refund in the prescribed from he is entitled to get a refund of the differences. As a matter of fact salary of employees is taxed and no deductions are allowed for earning the profits. It seems proper that an employee drawing salaries can hardly claim deduction of expenses because of the fact that all personal or private expenses of the assessee are not admissible deduction and such expenses are not incurred solely for the purpose of earning profit. In the case of *Mahiuddin Ahamad*, 27 Cal. 674, it was held that where income is received by the superior of a Khankha (a kind of monastery) such income is not salary under section 7, but it is an agricultural income within the meaning of section 4.

Compensation for Abrupt Loss of Office :

In the case of *Turner Morrison & Co.*, 33 C. W. N. 112, it was decided by the Calcutta High Court that where the managing agent received compensation for loss of office such compensation is a receipt from business and as such is taxable. The decision of the Calcutta High Court is dubious. But it seems proper that receipt of compensation as is reported in this case is a business receipt. Section 10(*viii*)(*a*) runs thus :—"Any sums paid to an employee as bonus or commission for service rendered where such sum would not have been payable to him as profit or dividend if it had not been paid as bonus or commission." Thus it is clear that compensation, if any, received by an assessee may be not liable to assessment if such compensation comes within the meaning of receipt of capital asset in the nature of a good will. But in this particular case possibly it cannot be urged that it is not a business receipt. But in the case of *Messrs Shaw Wallace & Company*, 35 C. W. N. 34, it was held that the sums were the capitalised value of future income and as such not taxable, there being no fact or finding to warrant the conclusion that they were mere payments in advance of earnings of the assessee over a period so short as to suggest that the receipt was income. (The case of *Turner Morrison & Co.* was *distinguished.*)

Salary Free of Income-tax :

Where an employee receives salary, free of income-tax, such an advantage is an addition to salary and as such is a perquisite within the meaning of section 7 [*Vide Hartland* v. *Diggins*, 10 T. C. 247, relying on the decisions of *North British Railway Company* v. *Scott* (1923), A. C. 37 *and Ashton Gas Company* v. *Attorney General* (1906), A. C. 10].

The term perquisite includes within its purview free con-

veyance, free medical aid, and free board etc., but these advantages are not convertible into cash, these are not an addition to salary.

Travelling Allowances :

An employee is not entitled to claim deductions for travelling expenses incurred for coming to his place of service from his residence (*Rickets* v. *Colokoham* (1926), A. C. 1). Similar views are held in the case of *Cook* v. *Knolt*, 4 T. L. R. 104,—that Directors of the company could not claim deductions for travelling expenses incurred for attending office from residences. Passage money paid to Government Officers is not liable to tax.

The perquisites include fees, commissions, allowances and any other remuneration etc., but when these receipts do not fall within the ambit of section 4, cl. 3, sub-section VI, these are taxable.

When an employee gets a fixed salary plus commission, such commission is an addition to his salary—*Macdonald* v. *Shant*, (1923), A. C. 337 : 8 T. C. 420. In *Parker* v. *Chapman*, 138 L. T. 729, it is held that where an employee receives salary and certain percentage of profits by way of commission, whether in cash or by way of newly paid-up shares, it is an addition to salary.

But where an unpaid secretary of a company in liquidation is appointed and the Directors resolve to give him a remuneration from the sum of money to be distributed amongst the shareholders, the receipt is not taxable—*Cowan's Case* (1920) 7 T. C. 372 C. A.

In *Howlett's case*, 10 T. C. 454, it has been held that a lump sum payment over and above remuneration to the Directors of a private company is taxable.

A person is given a first class travelling allowance for his services and position but he makes some profits out of it by travelling in Inter class, still it is not a perquisite but is exempted under section 4, cl. 3, sub-cl. *vi*.

Allowances permissible :

In the proviso, it has been laid down that 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. Apparently, therefore, expenditures are allowable when incurred (1) by an assessee by the conditions of his employment and (2) where the expenses are incurred wholly, necessarily

and exclusively in the performances of his duties. Expenses of a private character are therefore not to be allowed. The words 'in the performance of his duties' are significant and exclude any allowance of expenditures incurred to enable an employee to reach his place of employment. Travelling allowances therefore between the place of residence and the place of employment are not in any circumstances to be allowed.

Insurance Agents, whether assessable under section 7 or under section 12 of the Act :

It is rather difficult to hazard an opinion whether the assessment is to be made under section 7 or under section 12, but in practice they are generally assessed under section 7 of the Act ; although there is no bar to make the assessment under section 12 of the Act. Necessarily all expenditures which are incurred by them solely for earning their commission, are to be allowed. Section 7 now provides for a deduction 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.

Refund :

Section 18 enjoins that any person responsible for paying any income chargeable under head (salaries) shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head.

This procedure of deduction at source may sometimes result in higher or lesser deductions, as the case may be, and there is a provision under section 18 for adjustment of any excess or deficiency arising out of any previous deduction or failure to deduct.

Persons responsible for deductions at source are the principal officers or rather the disbursing officers.

Where higher deductions are made, an assessee is entitled to apply under section 48 in the prescribed form for the differences in rate. But where an assessee has got higher income *i.e.*, income from any source other than salaries, the Income-tax Officer is to ask him to file his return of total income under section 22, sub-section (*2*) ; then to proceed according to the provisions of law. Of course, the amount deducted as income-tax should be adjusted and shown in the notice of demand.

Receiver :

Where a receiver is appointed of an estate which has got agricultural and non-agricultural income, portion of salary being incurred from non-agricultural property, the assessee is entitled to a proportionate deduction of salary incurred. *In the matter of Sachindra Mohan Ghose* v. *Commissioner of Income-tax, B. & O.*, 136 I. C. 63 : A. I. R. 1932 Pat. 102.

Salaries or not :

In the case of *Mohiuddin Ahmed*, 27 Cal. 674, it was held that where income is received by the superior of a Khankha (a kind of monastery), such income was not salary within the meaning of section 7, but was an agricultural receipt within the meaning of section 4.

The Trustee of Colonial Bishopric Fund made an allowance of certain sums to the assessee in view of his position as Lord Bishop of Lucknow. The sum he receives in addition to his pay was payable to him and was paid in London. This was a gratuitous payment, on condition that the payment was to be made to the person who occupied the position of Lord Bishop of London. It was held that it came within the meaning of section 7, sub-section (*1*) and it arose in British India : for if the assessee chose not to give up his appointment and to go to England he could not get the sum—*In the matter of Rt. Rev. C. J. G. Saunders, Bishop of Lucknow*, A. I. R. 1932 All. 151.

Transfer to the trustees of the shares of an employee at the termination of his employment was not a payment, perquisite or profits thereunder received by the employee, in addition to his salary or wages which were paid by or on behalf of the company within the meaning of section 7 of the Act—*Commissioner of Income-tax, Burma* v. *Rangoon Electric Tramway Supply Co., Ltd.*, 142 I. C. 239 : A. I. R. 1933 R. 45.

The scheme of the Indian Income-tax is not upon potential but on actual profits. The interest paid by the company on the contributions which the company makes to the provident fund is a perquisite in addition to salary or wages. It is a receipt accruing to the members of the Provident Fund by virtue of their being in the service and necessarily it falls within section 7, sub-section (*1*).

Destination of Profits :

Whenever any salary, wages, pension or annuity, etc. are paid, by or on behalf of Government, a local authority, a company, or any other public body or association or by or on behalf

of any private employer, it must be held that the sum is chargeable irrespective of its destination whether within local limits or outside British India. In *Bijoy Singh Dudhuria*, 51 Cal. 918 : A. I. R. 1930, Cal. 641, it was held "*prima facie* destination of profits is irrelevant. A portion of salary attached under orders of a Court is also taxable."

Diversion of profits under this section does not confer any advantage to the assessee, who will be taxed on the gross receipt. No deductions are permissible under head "salaries" but the assessee is entitled to abatement for premiums paid for Life Insurance and Provident Fund contributions up to one-sixth of his total income. Deductions are not allowed under head "salaries" as the assessee is to exercise his intellect, and expense, if any, is to be regarded as personal.

Interest on securities.

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

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee 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 further that no income-tax shall be payable on the interest receivable on any security of the Central Government issued or declared to be income-tax free ;

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

Scope of the Section :

Section 8 of the Income-tax Act as amended, is intended to point the law by which any future issues of Government of India shall be governed. This section is not retrospective and it does not affect the exemption from liability to tax of a loan which was issued by the Government of India years ago having regard to the Government of Burma Act and clause 10 of the Burma Adoptation of Laws Order.

Clause 10 Burma Adoptation of Laws Order says in the plainest terms, that a right which has already accrued prior to the Government of Burma Act coming into force, is not affected by any amendment made by the Adoptation of Laws Order. The right to get interest on securities free of Income-tax is a right which is attached to the securities themselves and is not merely the personal right of the particular person who happens to be the holder of securities at any one time. So the question as to when the purchaser became possessed of the securities does not arise. The interest on securities issued long before the Government of Burma Act came into force cannot be made liable to income-tax in Burma throughout their currency—*C. I. T., Burma,* v. *Central Bank of India, Rangoon,* 188 I. C. 614 : A. I. R. 1940, R. 123

It has been held in 32 C. W. N. 242 that the amended Act of 1922 is not retrospective.

Interest, allowance for :

A set-off against income from Interest on Securities, of interest payable on money borrowed for the purpose of investment in securities is allowable. No allowance is, however, due in respect of any interest chargeable under the Act which is payable without British India (not being interest on loan issued for public subscription before the first day of April 1938) unless in respect of such interest tax has already been paid by the recipient or has

been deducted under section 18, or unless there is a person who may be appointed as an agent under section 43.

When a bank or other concern engaged in business similar to that of a Bank receives deposits on account of loans *in the course of its business* and invests the money so borrowed as occasion arises, the entire interest on such borrowings will be allowed as a deduction against its entire income liable to tax without attempting at allocation of the borrowed money to investments in tax-free and other securities. When, however, there is a definite proof (not a mere inference) that a certain sum was specifically borrowed by a Bank or similar concern for the purpose of investment in tax-free securities and has been so invested, the interest on money so borrowed will be set off against the interest on the tax-free securities only. In the case of Co-operative societies whose business income has been exempted from tax under section 60 of the Income-tax Act, a proportionate amount of interest will be allowed against the income from interest on taxed and tax-free securities. This interest will bear the same proportion to total interest paid as the capital invested in securities bears to the total working capital.

The 5 per cent. loan 1945-55 of the Central Government is the only current security which has been issued free of income tax, and the only security therefore to which the second proviso to this section applies. (*Vide* I. T. M.)

Cost of Realisation if deductible :

In *In the matter of Rajniti Prosad Singha*, 123 I. C. 611 : A. I. R. 1930, Pat. 33, it has been held that the cost of realisation of interest from securities cannot be deducted. Tax is chargeable on all interest received from securities and as such no allowance for commission is allowable : *In the matter of A. H. Forbes*, 119 I.C. 402 : A. I. R. 1929, Pat. 429 : 4 I. T. C. 1. This draws a distinction with collection charges for money invested elsewhere, in as much as such collection charges are permissible deductions. The recent amendment allows banking interest by way of deductions.

Co-operative Society :

In the case of *Madras Central Urban Bank Ltd.*, 118 I. C. 107 : A. I. R. 1929 Mad. 387 : 56 M. L. J. 431, it was held that where a co-operative society invests fluid assets in Government securities through Government orders, the income arising therefrom is assessable as such investment and is no part of their business.

Annuity for Maintenance :

Where an annuity is paid by an assessee in pursuance of a decree of the Court, the amount so paid cannot be a deductible expenditure : *In the matter of Bijoy Singh Dudhuria*, 60 Cal. 1029 : A. I. R. 1933 P. C. 145 destination of profits has got nothing to do with assessment.

Payment of Interest :

Where interest is paid by an assessee and the amount is borrowed by a private person such payment of interest is not deductible. *In the matter of Mahadeo Asram Prosad Shahi Bahadur*, 100 I. C. 897 . A. I. R. 1927 Pat. 133. Where creditors are not partners, loan secured through others, is not a boon incurred by the partners.

Business Premises :

It is more or less concerned with the properties of the nature of residential house ; but business premises, namely shops, godowns, and office are not included in the term "house property" : *In the matter of Row & Co.* v. *Secy. of State*, 67 I. C. 781. There cannot be any valuation of a business premises which is exempt from assessment.

Securities :

The Indian Income-tax Act nowhere defines the term, but "security" obviously connotes a debt or claim secured by way of mortgage, pledge or charge, *e.g.*, war bonds, etc.

Debentures :

Debenture, though not defined under the Act covers cases, *e.g.*, (1) simple acknowledgment under seal of a debt, (2) an instrument acknowledging the debt and charging the property of the company with repayment, (3) an instrument acknowledging the debt and charging the property of the company from giving any prior charge, as *per* L. J. Bowen in *English and Scottish Trusts* v. *Brunton*, (1892), 2 Q. B. 700.

Allowances under the section :

Section 8, before the second Amendment Act, virtually conferred no deduction under this head to an assessee, although under section 9 and 10, various heads of reliefs are allowed. When interest for securities are realised, costs incurred if any, could not be allowed—*In the matter of Rajniti Prosad Singh* v. Comm. of *C. I. T., B. & O.*, A. I. R. 1930 Pat. 33 : 123 I. C. 611 [illegible] *Asram Prosad* v *C. I. T., B. & O.*, 100 I. C. 897 : A. I. R. [illegible]

Patna 133, we find that deduction under the head "securities' is not allowable ; even in the case of *A. H. Forbes* v. *Commr. of I. T., B. & O.*, 4 I. T. C. 1 : A. I. R. 1929 Pat. 429, we find that the tax is to be levied on the entire amount of interest receivable by him and commission, if any paid to a banker for realisation cannot be allowed.

But the Amending proviso removes a long-felt grievance ; under section 8 tax is payable in respect of interest on securities which are not declared to be Income-tax free. The Amending Act provides that no income-tax shall be payable in respect of any sum deducted from such interest by way of commission by a banker realising such interest on behalf of the assessee. The proviso is intended to allow commission paid by an assessee to a banker for the realisation of interest on securities to be treated as an admissible deduction against the interest so realised.

Depreciation :

But loss arising from depreciation in the value of Government Securities kept as emergency Reserve by a Bank is not an allowable deduction—*In re Tata Industrial Bank Ltd.*, A. I. R. 1922 B. 75 : *vide* also the *Punjab National Bank* v. *Crown*, A. I. R. 1926 L. 373, where the asssessee Bank purchased high class securities not for trading but for emergency reserve and claimed depreciation, it was held to be a capital loss.

Holder of securities if, can be assessed under sec. 10 :

But where securities are bought and sold as a matter of business within the meaning of section 10, then all the rights and liabilities under section 10 will automatically follow and the assessee will be entitled to all reliefs mentioned in that section.

A person who deals exclusively in shares and securities, is to be assessed under section 10—the business of a Stock Jobber.

Assessibility of profits made by conversion of securities :—The question that arises is, what constitutes "accrual" or "realisation" of income. In *Westminister Bank* v. *Osler*, (1932) I. K. B. 668 : 17 T. C. 381 instance is forthcoming when the learned Judges of England found it difficult to decide whether there was a "realisation" of profits. Where there is a mere appreciation in the value of securities held by a business house, it is settled that there is no "accrual" of income upon which tax could be levied.

But suppose a Bank converts one kind of securities, *e.g.*, war bonds, into securities of a greater value, as war loan or conversion loan ; is there a "realisation" of profits ? After great hesitation

the Courts of Appeal in England have held that in such cases there is a realisation where the change of investment is made. Although no deductions are allowed for depreciation of securities or for any commissions paid for obtaining the securities (*Maharaja of Darbhanga* v. *C. I. T.*, I. L. R. 6 Pat. 29) or for costs of collecting interest thereon (*Forbes* v. *C. I. T.* (1929), I. L. R. 9 Pat. 139 : 4 I. T. C. 1.)

But where securities are bought and sold as a matter of business, the deductions allowed under the head "business" in section 10 may apply.

Holder of Securities—Assessment under section 8 or 10 :

In the case of *Haveli Saha Sardarilal* v. *C. I. T.*, 1933 L. 829 : 7 I. T. C. 32 the question arose whether an assessee (not being a dealer in securities by way of "business") having purchased a security at a price expressed as a capital surplus interest computed *de die in diem* from the last due interest date, was entitled to deduct the said computed interest from the interest actually received by him. It was held that he could not do so, because interest on Government Securities does not accrue from day to day and cannot be received until the due date.

In the *Punjab Co-operative Bank Ltd.* v. *C. I. T.*, I. L. R. 1938 Lah. 526, it was held, *inter alia*, that where a Bank dealt in share and securities, section 10 is the proper section and allowances permissible thereunder should be given.

Borrowed Capital—Interest if duductible :

The allowances under section 8 have already been enumerated. The Amendment Act of 1939 has granted further allowance by allowing interest paid on any money borrowed for the purpose of investment in securities. Interest on any legal loan for the purpose of investment in securities is allowable. The test is whether there has been a legal loan and secondly if the money thus raised has been invested in securities. On fulfilment of the above conditions, deduction becomes allowable.

The term "paid" as used, should on the analogy of clause (*iv*) of sub-section (*1*,) section 9 means "payable" as well.

Deduction at Source and refund :

Section 18 mentions that payments of interest on securities shall be deducted at source at the maximum rate when payment is made, although there is no provision to deduct super-tax at source.

Thus, interests on Government Securities shall be deducted at the maximum rate prevalent when the interest is drawn ; but of

course under section 48 he is entitled to claim refund provided he has got no taxable income or that the rate of tax applicable to his case is less than the rate at which income-tax has been charged in making such deduction in the year. He shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates.

Income-tax free Securities :

When a local Government issues a security as income-tax free, income-tax on interest thereon shall be payable by such Government. The result is that the interest thus received is not chargeable to income-tax, but it is taken into account in computing the total income for the purpose of determining whether he is liable to tax or to determine the rate at which he shall pay his income-tax on his other income.

Interest on Sterling Securities :

In *C. I. T., Madras* v. *The Power Securities Corporation Ltd.*, (unreported), it was held that commission paid in England to the corporation in sterling was income accruing or arising in British India.

In *C. I. T., Bombay*, v. *The Ahmedabad Advance Mill Ltd.*, (1940) C. W. N. 379 : 8 I. T. R. 95 : A. I. R. 1940 P. C. 36, the assessees are a limited company, and in the year of assessment they had certain income amounting to Rs. 18,000, which they received in London. They invested that income in the purchase of stores and machinery in England. The question is whether they are liable to pay income-tax on so much of the stores and machinery as represent the income recieved by them in London.

Income received in a foreign country may be brought into India in some form other than that in which it is actually received. Foreign income may be received in sterling or francs or dollars and may be brought into India in the form of rupees, or income received abroad may be remitted to India by a banker's draft. To use Lord Brempton's phrase in the Gresham case, [*Gresham Life Assurance Society Ltd.* v. *Bishop*, (1902), A. C. 287), the income may be received in specie or in any form known to the commercial world for the transmission of money from one country or place to another. But it seems that in order to attract income-tax in India, what is brought must be income, profits or gains, and if the assessee has converted income received abroad into capital, and then brings that capital into India, he is not bringing into India, income, profits or gains.

Co-operative Society & Government Securities :

By virtue of section 60 of the Indian Income-tax Act, the Governor-General in Council by notification dated the 25th August, 1925, did not exempt interest derived by a Co-operative Bank from its investments in Government securities, and such interest is not to be regarded as part of the profit of the business of the Bank. The exemption from Income-tax given by the notification of Government of India dated the 28th August, 1925, is to the profits made by the Bank from its business of a Co-operative Bank only.

In *The Madras Central Co-operative Bank Ltd.*, A. I. R. 1929 M. 387, it was held that the investment of fluid assets could not be held to be part of a bank's business and hence was liable to tax.

The Madras Provincial Co-operative Bank v. *Commr. of Income-tax, Madras*, A. I. R. 1933 M. 489, (Special Bench) relying on the above decision, held that notification of 1925 does not help the bank ; (*Norwich Union Fire Insurance* v. *Megee* (1896), 3 T. C. 457 ; *Liverpool and London Globe Insurance Co.* v. *Bennet*, 6 T. C. 327 *distinguished.*) A question of far-reaching importance was decided in *Madras Provincial Co-operative Bank Ltd.*, (*supra*) Under the Government of India Notification of 1925, "Profits of any Co-operative Society" are exempted from Income-tax. It was contended that interest derived by a Co-operative Society from Government Securities was "profits" within this Notification and therefore not taxable. While rejecting the contention, their Lordships held that interest from securities should be assessed under section 8, while the profits are to be assessed under section 10. "Profits" as under section 10 are exempted from tax. The fact that the society by virtue of its bye-laws made "purchase and sale of Government Securities" as one of its objects does not improve matters. Bardswell, J., said that the exemption is meant as an encouragement to the employing of as much capital as possible for the financing of co-operative societies and so extending the scope of co-operation. Investment of money in Government Securities does not further the cause of co-operation but it is only a means of keeping from lying idle funds that cannot immediately be used for such a purpose.

Similar views are expressed in the case of *Commr. of Income-tax, Burma*, v. *Bengalee Urban Co-operative Societies, Ltd.*, I. L. R. 11 Ran. 521 : A. I. R. 1934 R. 27. Under the Notification of Government of India dated the 25th August, 1925, the profits accuring to a co-operative society are exempted from income-tax.

"It appears to me that the intention of the Governor-

General in Council was to exempt from the income-tax under the notification the profits accruing to co-operative society upon the ground that a man cannot make loss or profits out of himself''—*per* Buckly, L. J., in *Carlisle and Silloth Golf Club* v. *Smith*, (1913), 2 K. B. 177 : 6 T. C. 198 *see* also *Gresham Life Assurance* v. *Styles*, 67 L. T. 497 ; *New York Life Assurance* v. *Styles*, (1889), 2 T. C. 460 ; *United Service Club Ltd. of Simla* v. *Emperor*, 2 Lah. 109 and *Board of Revenue* v. *Mylapore Hindu Permanent Fund*, A. I. R. 1928 M. 684—in this way to encourage and foster Co-operative Societies which are brought into being as the result of a move to improve the conditions under which the cultivators of the land in India and Burma lived and worked. Co-operative undertakings have always been held liable to pay income-tax upon the income derived from investments and house property ; see *Commr. of Income-tax* v. *National Mutual Life Association of Australasia*, 134 I. C. 555 : A. I. R. 1931 B. 440.

Co-operative Societies :

The profits of these societies, by an executive fiat, were exempted from both income-tax and super-tax and this exemption, until cancelled continues, to have statutory effect.

The word 'profits' in section 8 does not embrace interest on securities, dividends, house property and any sum which is assessable under section 12 as 'other sources'.

Societies whose total income is not liable to tax at the minimum rate or whose income is below the assessable limit may apply to the Income-tax Officer within whose jurisdiction, they are situate, for an exemption certificate enabling them to have tax deducted at source at the appropriate rate or not deducted at all, as the case may be.

Co-operative Societies which are not registered under the Indian Companies Act suffer heavily in the matter of super-tax, they being on the graduated scale applicable to individuals. In the *Punjab Co-operative Bank Limited* v. *Commissioner of Income-tax, Punjab*, I. L. R. 1938, L. 526 their Lordships of the Privy Council held that the purchase and the sale of shares and the securities by the Punjab Co-operative Bank Limited were so much linked with the deposits and withdrawals by clients that they were part of the assessee's business of banking, and profits arising thereform were assessable to income-tax. In the ordinary case of a Bank the business consists in its essence of dealing with money and credit. The Banker has always to keep enough cash or easily realisible securities to meet any probable demand by depositors, and if some of the securities are realised in order to meet withdrawals by depositors, this is clearly a normal step in carrying on the banking business, in other words, that it is an act done in what is truly the carrying on of the banking business.

CHAPTER III

TAXABLE INCOME

Property.

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

(*i*) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value ;

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

(*iii*) the amount of any annual premium paid to insure the property against risk of damage or destruction ;

[(*iv*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge ; where the property is subject to an annual charge not being a capital charge, the amount of such charge ; where the property is subject to a ground rent, the

amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of and interest payable on such capital :

Provided that no allowance shall be made in respect of any interest or annual charge payable without British India and chargeable under this Act, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in British India who may be assessed under section 43 ;

(*v*) any sums paid on account of land revenue in respect of the property ;

(*vi*) in respect of collection charges, a sum not exceeding the prescribed maximum ;

(*vii*) in respect of vacancies, that part of "the annual value," after deducting the foregoing allowances, which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of "the annual value," after deducting the foregoing allowances appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied ;

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

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

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

Taxable Income :

Tax is payable under this section in respect of income from property consisting of any building, or lands appurtenant to a building. It is to be noted that it is only the owner who is liable to pay tax under this head. Where a person derives an income from house property which he holds on lease, such income is chargeable under section 12. Lands not attached to a building are not chargeable under this section. The income derived from vacant lands let out in urban areas for the purpose, *e.g.*, of storing materials is chargeable to tax under section 12.

Buildings or lands occupied by the ower thereof for the purposes of his own business, profession or vocation the profits of which are *chargeable to tax* are *not* liable to tax under this head. The full profits of the business, profession or vocation without any deduction for the annual value of such buildings or land are chargeable under section 10.

Tax under the head "income from property", is chargeable in respect not of any actual rental or cash received but of the "*bona fide* annual value". The *bona fide* annual value of a building is the full annual rent at which the building could be let from year to year if the owner bears all owner's burdens including municipal rates or taxes chargeable on the owner and if the tenant bears all tenant's burdens including municipal rates and taxes chargeable on the tenant. It differs from the actual annual rent payable on a long term lease or the actual rent payable on a yearly lease under a privileged rental or with tenant's liability to pay owner's rates or taxes.

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

The allowance for interest was previously made when the property was acquired with borrowed capital and this has now been extended—*vide* clause (*iv*) to sub-section (*1*) of this section, —to cover interest on money borrowed to construct, re-construct, repair or renew the property. No allowance is, however, due in respect of any interest or annual charge chargeable under the Act which is payable without British India (not being interest on a loan issued for public subscription before the first day of April 1938) unless in respect of such interest or charge tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent under section 43.

The allowance on account of repairs under clauses (*i*) and (*ii*) of sub-section (*1*) of section 9 will be granted without proof of the actual expenditure and irrespective of the amount of such expenditure. It will also be allowed in full even when an allowance is given for "vacancies" under section 9(*1*)(*vii*). Other allowances falling under clauses (*iii*) to (*vi*) must be supported by proof of actual expenditure.

Legal expenses incurred in recovering rents from tenants are allowable deductions subject to the following conditions :—

(*a*) Only net expenses, that is, after deducting any costs recovered from the opposite party, are deductible.

(*b*) The total allowance for collection charges including legal expenses cannot exceed 6 per cent of the annual value (see Rule 7).

As regards the provision for deduction on account of unrealised rent, see exemptions under section 60(*1*) in Part II of the Income-Tax Manual (item 38).

In arriving at the amount to be allowed in respect of vacancies the proportion of the vacant period to the full year has in future to be applied not to the *gross* annual value, but to the *net*

annual value after deducting all other allowances. (*Vide* I. T. Manual).

Property, meaning of :

(*1*) The exemption given to property occupied for business purposes is restricted to property occupied for the purposes of an assessable business, profession or vocation.

Sub-section 9(*1*) puts a limit to the definition of the term "Property" and is applicable to assessees who are owners of properties and consequently a lessee is not chargeable under this section but is liable under section 12.

Land not attached to a building are not chargeble under this section. The income derived from vacant lands let out in urban areas for the purpose, *e.g.*, of storing materials is chargeable to tax under section 12.

Bona fide Annual Value :

The assessee is assessed under section 9, not on any actual rent receipt but on the *bona fide* annual value of the property. It is a notional assessment and the Income-tax Officer cannot assess him on the rental received, he has absolutely no discretion in the matter.

The term "*bona fide* annual value" means the full market value at which the building would be let from year to year irrespective of any charge by way of municipal rates or taxes thereon.

The term annual value must be taken to be what the tenants are consistently paying to the land-lord, the figure representing the sum for which property might reasonably be expected to let from year to year.....*In re Chunnamal Salagram*, A.I.R. 1931 Lahore 320 · 121 I. C. 508.

Where a house is let out on a nominal sum out of love, he shall be assessed on the annual value simply because the assessable value is notional.....In *Guptoo Estates*, A. I. R. 1930 Cal. 1.

The "annual value" is a hypothetical sum and it is quite possible that the actual consideration paid or stipulated for by the parties in any individual case may be out of a relation to this sum or much inferior as evidence thereof, to the evidence afforded by transactions by other parties in respect of other property more or less comparable in value with the property in question—*C. I. T., Bengal* v. *Krishna Kumar Seal and another*, 36 C. W. N. 1144 : A. I. R. 1932 Cal. 886.

Municipal tax and Annual Value :

The term "annual value" does not include municipal tax which cannot be treated as rental for the purpose of determining the "annual value"—*In re Chunnamal Salagram*, A. I. R. 1931 Lahore 320 (*dissented from*).

The Calcutta High Court held, dissenting from the Punjab decision, that the total consideration which a landlord may reasonably be expected to receive in a particular year from a tenant in respect of a house, is not really a clear profit to the landlord, is an obvious fact, just equitably recognised by the Legislature by providing allowances under several different heads. It therefore does not stand to reason why the Municipal tax payable by the landlords when paid by the tenant, should not be treated as a clear profit to the landlord, and as such the sums so paid should be added to arrive at the annual value But where the tenant pays the occupier's tax, the annual value should be minus the occupier's tax. (*Ashton Gas Co.* v. *Attorney General*, 93 L. T. 676 referred)—*Krishna Lal Seal* v. *C. I. T., Bengal*, A. I. R. 1932 Cal. 886 : 36 C. W. N. 1144 : 60 Cal. 357.

Similar views were expressed by a Full Bench of the Lahore High Court, upholding the decision of the Calcutta High Court, that in estimating the sum for which the property might reasonably be expected to let from year to year, the amount paid by the tenant to the landlord on account of Municipal tax should be included, *i.e.*, should be treated as part of the rent by the tenant.

If the amount payable to the Municipality on behalf of the landlord by the tenant cannot be included for the purpose of arriving at the annual value there would be nothing to prevent the landlord making an arrangement for the tenant to pay other liabilities of his and so further to reduce the annual value. There is no distinction between the tax payable to the Municipality and the land revenue payable in respect of the property. The land revenue is by sec. 9 sub-sec.(*1*) clause (*v*) an authorised deduction. It is clear that if the Legislature had meant to authorise any other deduction of the same kind, it would expressly have been included in the "allowance"—*Lalla Mal Sangham Lal* v. *C. I. T.*, 17 L. 494 416 : I. C. 598 : 1936 1. T. R. 250 : 9 I. T. C. 439 : A. I. R. 1936 I. 762.

In the case of *Tejpal Jamunadas* v. *C. I. T., U. P.*, 10 I.T.C. 234, the Allahabad High Court also agreed with the above decisions. So the total sum which the landlord receives, call it what you will, is the rent of the property let by him and hence house tax.

The principle underlying the section is that the sum for which the property might reasonably be excepted to let from year to year is a notional amount and is not necessarily the amount for which the property is actually let during a particular year.

For example, a house may be let at a very low or even a nominal rental for the relationship existing between the tenant and the landlord. Such a low or nominal rent cannot possibly represent the annual value of that property as defined in the Income-tax Act. Again unusual circumstances may have enabled a landlord for one particular year to obtain an enormously increased rent for a house. The landlord can be in no better position by dividing the total sum received by him from the tenant and describing part of it as rent and part of it house-tax which he eventually will have to pay to the municipality. It would make no difference what the amount paid to the landlord, or to his use, by the tenant for the right to use the premises was termed. The total sum which he receives, call it what you will, is the rent of the property let by him. That being so, the Income-tax Officer is fully entitled to take into consideration, in assessing the annual value of the properties, the house-tax for which the assessees are liable.

"Of which he is the owner":

When the assessee is not the owner of "Property", he cannot certainly be assessed under section 9 of the Act. The Calcutta High Court in the case of *Guptoo Estates*, 34 C. W. N. 327, has definitely held that an assessee having a limited interest in the "Property" say a lessee, is not an owner and section 9 is inapplicable.

Although the Act does not define the terms "owner" and "ownership", it cannot be seriously contended that the term "owner" connotes the narrow and technical meaning of the full ultimate and legal owner, but the failure to define it, points to its not having been so intended—*Burma Railway Co.* v. *Secy. of States*, 64 I. C. 801.

The Madras High Court has held that when an assessee who takes a long lease of a part of land from Government and erects building thereon with permission and is entitled to remove the superstructure within a stipulated period on the expiry of the lease, is liable to assessment under section 9(*1*).

The view that section 9(*1*) contemplates an assessment upon the full owner of buildings is erroneous. There is nothing in section 9 to warrant any contention that in order to come within

the provision of the section, the person who owns the building must also be the owner of the land upon which it stands and possibly the land surrounding it—*Madras Cricket Club* v. *C. I. T., Madras*, 1 I. T. L. R. 153 : 71 T. C. 290 : 1934 M. W. N. 773 : 1934 Mad. 670 : 1934 I. T. R. 209.

Where the property of an insolvent becomes vested in the official assignee under section 17 of the Provincial Insolvency Act and such official assignee takes possession thereof, the official assignee is liable to tax under section 9(*1*) (*Commissioner of Inland Revenue* v. *Fleming*, 14 T. C. 78 *referred to*)—*In the matter of Official Assignee, Estate Jnanendra Nath Paramanik*, 41 C. W. N. 683. In *Re the matter of D. H. and C. H. Pitale of Bombay*, 1938 B 353 it has been held that two persons who had purchased property and managed it for the purpose of producing income were properly assessable under section 3, and they are owners of the property under section 9.

Association of individuals (persons) within the meaning of section 3, is liable to assessment as owner of property under section 9(*1*)—*B. N. Elias and others* v. *C. I. T., Bengal*, 9 I.T.C. 63 Cal. 534 : 40 C. W. N. 476. The Bombay High Court *in the case of C. I. T., Bombay* v. *Laxmidas Debidas and Vasanji Ruttonsay* (1937) I. T. R. 584 : 39 Bom. L. R. 910 10 I. T. C. 414 : came to the same consideration that an association of individuals (persons) can be the owner of properties under section 9(*1*) of the Act.

Before the assessee can be taxed as an "owner" under section 9 of the Act, it must be decided that he is in the fact owner of the property in question and this decision rests with the Income-tax Officer, subject to the right of appeal under sections 30 and 31. The mere existence of a dispute as to title, even when a suit has been filed, cannot of itself hold up an assessment, otherwise it would be open to an assessee to delay assessment indefinitely by arranging for the institutions of collusive proceedings. *In the matter of Keshardeo Chamaria*, A. I. R. 1937 Cal. 583 : 1939 P. C. 163.

The term owner, it seems, is applicable to persons having limited interest under special circumstances, *e. g.* Guardian, Trustee, Executors and other legal representatives and property in their hands are liable to assessment.

In the case of *Rochiram Khatar* v. *C. I. T., Punjab*, 6 I. T. C. 127, it has been held that in case of a perpetual lease, where the leased properties are not to revert to the lessor, a lessee is rightly assessed under section 9.

The position of a Hindu widow may give rise to some complications, but where a widow has merely a life interest, it is reasonable that the assessment shall have to be made under section 9 and it is also reasonable that long term lessee should also be assessed under section 9 and the decision of the Rangoon High Court seems to be equitable.

It is perfectly clear and that there is a legal sanction behind it, that though the present tense is used all through in sections 9 and 10, the sections are to be construed and applied to a state of facts in the previous year. Hence "of which he is the owner" should be construed as "of which he was the owner in the previous year—*Beharilal Mullik* v. *C. I. T., Bengal*, 2 I. T. C. 328 : 54 Cal. 636.

There may be cases where persons other than 'Owners' may be assessed under section 9. *Prima facie* it is the owner of the income who has to be assessed but when property is vested in a trustee in trust for a beneficiary, *prima facie* it is the beneficiary who is to be assessed : *C. I. T. Bombay* v. *Abubaker Abdul Rahaman*, A. I. R. 1939 B. 195 : 7 I. T. R. 139 : 182 I. C. 713. There may be cases in which the assessment is properly made upon the Trustee, there being nothing in the Income-tax Act which prevents assessment on a trustee. *In the case of Commissioner of Income-tax* v. *Ibrahimji Hakimji and others*, 8 I. T. R. 501, it was held that the trustees formed an association of Individuals (now association of persons) within section 3 of the Act, but this could not make them 'owners' within the meaning of section 9 of the Act.

It is the definite law now that once a person is held to be owner, he cannot escape liability. *In Keshordia Chamaria* v. *C. I. T. Bengal*, A. I. R. 1939 P. C. 163 : 43 C.W.N. 1009 : 1939 I. T. R. 394, their Lordships of the Privy Council held that the assessee could be rightly assessed under section 9 of the Act. It may be pointed out in this connection that section 41(*2*) after the amendment of 1939, has given wide power to the taxing authorities and there is no bar to assess the beneficiary or the trustee. Section 41 may be read with advantage.

Extent of allowance :

Sub-clauses (*i*) and (*ii*) lay down that an assessee is entitled to allowances up to one-sixth of the bonafide annual value, no matter whether repairs have been undertaken or not, but this does not authorise an assessee to claim more than $\frac{1}{6}$ of the annual value, even when he has incurred more than $\frac{1}{6}$ for repairs. This statutory allowance has been specifically granted as no allowance in the shape of depreciation, municipal tax, etc. is allowable.

Under sub-clause (*iii*) any annual premium paid to insure the property against risk of damage or destruction in an allowable remission.

Interest on Mortgage :

It is now a settled law that an amount of interest due on a mortgage debt but not actually paid, is an allowable item of expenditure. Similarly interest payable on borrowed capital raised for the purpose of acquiring property has now become a legitimate deductible expenditure. Chief Justice Rankin in the case of *Behari Lall Mallik*, 31 C. W. N. 557 observes : "* * * "Apart from the consideration that a taxing statute should be construed, if possible, by confining oneself to the ordinary meaning of the words used and that there is special objection to any construction which puts a burden upon the subject when the intention of the legislature to impose it is not clear, I think that sections 9 and 10 of the Act of 1922 must be construed that when the legislature means 'paid' it is paid. In section 10 there is a special definition of the word for the purposes of that section. In section 9 certain allowances are authorised by way of deductions from the annual value of the property—itself a hypothetical figure. The first two allowances have reference to repairs and do not depend upon proof of any actual expenditures. The third and the fourth are expressly made to depend upon what have actually been paid. The sixth is definite only by limit and the seventh is left to the discretion, as regards amount, of the Income-tax Officer. In this context in my humble opinion, the absence of the word 'paid' in the fourth clause is not without significance. I am not satisfied that the legislature has intended to charge on the basis of the sum which a hypothetical tenant would give, save upon the assumption made in favour of the assessee that the real income of an incumbrance is the difference between the yearly value and the interest". Thus where interest is not paid but is payable, deductions of the entire amount are permissible irrespective of the purpose for which the mortgage has been created. In the matter of *Amulyadhan Addy*, 63 Cal. 1157 : 9 I. T. C. 306 : 1936 I. T. R. 164 : A. I. R. 1937 Cal 369, a question arose whether mortgage interest payable by an individual member of the undivided family could be allowed as deduction. Mr. Justice Costello observed :—"when the assessee as a Hindu undivided family is being assessed in respect of his income under the provisions of section 9 of the Income-tax Act, the word 'mortgage' in section 9 (*1*) (*iv*) refers to a mortgage by the Hindu undivided family as such and does not also include a mortgage by any individual member or members of his or their shares only of such property." So the position of the Hindu undivided Family for the purposes of Income-tax matters should be treated as a single unit.

Charge :

Under section 9(*1*) (*iv*) interest paid or payable on mortgage is an allowable deduction. The sub-clause further states thereby altering the position so as to allow only interest on a charge to which the property was subject at the time of acquisition by the assessee.

The term "charge" has not been defined in the Act. In the Transfer of Property Act we get, "When immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property". Charge is created by operation of sections 39, 55(*IV*), 55(*VI*), 72 and 95 of the Transfer of Property Act. A security bond which does not name the person to whom the money is to be paid does not create a charge—*Mohdi Ali* v. *Chunilal*, A. I. R. 1924 All. 834.

"Charge" may be created in various ways, namely, by act of parties, by will, by operation of law or by a decree of the Court and not by the *ipsedixit* of the holder. A charge cannot be created by implications—*Makul Ali* v. *Ali Ahamad*, 40 Cal. 574. But when a charge is created by document, it must be registered—*Ramanath Kanailal*, 7 C. W. N. 104.

It has been held by the Allahabad High Court in the case of *Basantrai Takhats Singh* v. *C. I. T., U. P.*, 4 I. T. C. 321 and 5 I. T. C. 460 : A. I. R. 1932 All. 451 : 142 I. C. 864, that deposit of title deeds with the creditors, relating to property for the purpose of borrowing money for the purchase or extension of property, does not constitute a charge.

In assessing an impartible estate governed by the rule of primogeniture a question arises whether the allowance to be paid to the junior members are to be regarded as a "charge" so as to bring such allowances within the exemption clause.

The Lahore High Court, in the case of *Kishen Kishore* v. *C. I. T.* 141 I. C. 417, has held that the rule as to allowances payable to junior members of ordinary Hindu undivided families are inapplicable to an impartible estate and necessarily it has been held that the allowance payable are in the nature of a charge and hence allowable and should be left out of accounting in reckoning the total income. This distinguishes the case of *Raja Jyoti Prosad Singh Deo Bahadur*, 130 I. C. 43, where the "allowance" was held not to be a "charge". The Privy Council decision of *Raja Bejoy Singh Dudhuria* v. *C. I. T., Bengal*, 6 I. T. C. 450 : 143 I. C. 145 : 60 Cal. 1029 : A. I. R. 1933 P. C. 145, dealt hereafter, reversed the Calcutta High Court decision.

holding that under section 3 an "income" is what reaches the individual as income and that the diversion of some portion to the stepmother is not his income and as such should be left out of consideration. It is not a case of the application by the appellants of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it becomes "income" into his hands. In the case of *C. I. T., Bombay* v. *Makanji Lalji*, A. I. R. 1937 B. 479, it has been held that maintenance allowance paid to a member of the Hindu undivided family does not constitute a charge and is not deductible. A similar question arose in the case of *C. I. T., Bombay* v. *D. R. Naik*, A. I. R. 1939 Bom. 362 : 1939 I. T. R. 362, whether maintenance allowance falls under section 9. It was held that though charges of this sort could not be deducted under section 9, the principle underlying the Privy Council decision of *Bejoy Shingh Dudhuria* 6 I. T. C. 449, should apply and hence the assessee should have been assessed not to the full amount of the income derivable from the immovable property, but to that income less the amounts payable for maintenance allowance.

Land Revenue, Collection charge :

Any amount paid on account of land revenue in respect of the property is an allowable deduction. Deduction of collection charges can be allowed only if actually incurred and that too up to the sum not exceeding the prescribed maximum—*In re Maharaja Darbhanga*, 133 I. C. 33 : 10 Pat. 261 : A. I. R. 1931 Pat. 223.

Vacancy allowance :

The Amendment Act of 1939 made a drastic change with respect to vacancy allowance under section 9 (*1*) (*vii*). Therein it is noticeable that the vacancy allowance to be given is not the proportion of the gross annual value which the vacant period bears to the year but the proportion of the 'net value' after deducting all other permissible allowances.

But this too has undergone a thorough change. By the recent amendment of section 9, the words "the net annual value after deducting the foregoing allowances" in both places where they occur in clause (*vii*) are to be substituted by the words "the *annual value*".

There was enormous hardship to the owners of property, as allowances for vacancies were restricted to the 'net annual value'. The amendment provides that the allowance for vacancies shall be given on the gross annual value and not on the net annual value.

Property figure can be a minus sum :

Under the previous Act, section 9 laid down that the aggregate of allowance made under this sub-section shall in no case exceed the annual value. The necessary corollary, therefore was that in no case, the annual value could be a minus sum. This proviso to sub-section (*I*) which restricted the allowance in respect of property to the amount of the annual value is debated. As a result, a loss on property is now permissible.

Power of Income-tax Officer :

In ascertaining the "annual value" of property, it is incumbent on the Income-tax Officer, to take into consideration other facts of the case, *e.g.*, actual daily rent for each of the stalls—*In re Kaladhan Suratee Bazar*, A. I. R. 1931 R. I.

In arriving at a decision as to the annual value of the building, the Income-tax Officer is entitled to take into accounts the actual sum spent in the erection of building—*Haveli Saha* v. *C. I. T., Lahore*, A. I. R 1933 L. 829—146 I. C. 550.

That in determining the *bona fide* annual value a deed of lease for a year relating to the property is not a conclusive evidence of net value and the question is one of fact—*Babulal Raj-Garhia* v. *C. I. T.*, 1936 I. T. R. 148.

It is not open to the Income-tax Officer to take into account the momentary value of the assessees' right to occupy five seats of any class without any payment therefore for determining the annual letting value of a theatre hall for the purpose of section 9 of the Act—*In re Rao Gopal Das Rao Vaijnath Das of Benares* (decided by the Allahabad High Court on 7. 8. 36).

No allowance is permissible in respect of residential house in fixing their annual value—*In re Maharaja of Darbhanga*, A. I. R. 1931 Pat. 223—133 I. C. 33—12 P. L. T. 502.

Owner's own Residence :

Under the previous Act, the proviso under section 9(*2*) specifically referred to residential house of the assessee whereas the *bona fide* annual value above, forms the basis of assessment in the matter of tenanted house property, in the case of owner's own residence its assessable value was the annual value provided the amount does not exceed 10 p. c. of the total income of the assessee. This proviso relieved the hard case of those who had big ancestral dwelling houses without any substantial money income. The only workable method of computation would be to divide by 11 the income from all other sources. This would give the net annual value of the dwelling house.

In *In the matter of Calcutta Exchange Association, Ltd.*,—8 I.T.C. 85—62 Cal. 547—39 C. W. N. 327—1935 I. T. R. 105, the Calcutta High Court laid down that the word "residence" in its simple and ordinary meaning signifies the place where a human being eats, drinks and sleeps and where there is some performance and continuance of such eating, drinking and sleeping.

It is true that in certain circumstances, a more extended meaning has been given to the word, for example, it has been held that a limited liability company can 'reside' for the purpose of income-tax legislation. There is no justification for giving to the word 'residence' in proviso to section 9(*2*) that extended meaning.

The insertion of the word 'own' between the words 'his' and 'residence' indicates that the phrase applied to a human person or persons and not to a fictional person, such as a limited liability company.

It forms, therefore, that a building owned by a Stock Exchange Association, which is partly used for office purpose and property let out to members for the business of the association, is not a residence within the perview of section 9(*2*) of the Proviso.

But the above proviso which restricted the annual value of owner occupied property to 10 p.c. of its owner's income is also deleted. This amendment remedies the anomaly of the annual value of the property varying with the assessee's other income.

Assessment of Association of persons when shares are definite :

Joint ownership :

Section 9(*3*) provides that where property is owned by two or more persons in definite shares, the share of each person will be included in his total income, and no assessment made on the joint owners after the manner of an "association of persons". The reasons for this amendment will be found in the Statement of Objects and Reasons which runs thus :—

"Property is often owned jointly by persons with definite shares and the High Courts have held that such persons are assessable on the income from the property as an 'association of individuals'. This amendment provides that such persons shall be assessed as an association but that their shares will be included in their individual assessments."

This will bring additional revenue, just as section 23(*5*) is likely to produce better revenue. Take for instance the case of 4 persons holding jointly a property which yields an annual income of Rs. 8000, if they are jointly assessed, the tax payable will be at 9 pies up to Rs. 5000 and 12 pies above that. But if the joint owners have each individual income exceeding Rs. 20,000, ¼th share from property will be added with his individual income and it will be taxed at a much higher rate. At the same time where the income of joint-owner is less than Rs. 2000 it will not be taxed at all if assessment is made as an 'association of persons', but under the present Act, ¼th share of each owner will be taxed with his individual income.

Under the previous Act, there were lots of decisions which are incidentally referred to here :—*C. I. T.* v. *Laxmidas Debidas*, 39 B. L. R 910 : 10 I. T. C. 414 ; *In re B. N. Elias*, 63 Cal. 538 : 40 C. W. N. 476 : 9 I. T. C, 1 ; *Mahamad Aslam* v. *C. I. T.*, 10 I. T. C. 26, A. I. R. 1936 All. 817 ; *C. I. T.* v. *Dwarakanath Harischandra Pitale*, A. I. R. 1938 Bom. 353, 1937 I. T. R. 716 ; and *C. I. T.* v. *Chhotolal Mohonlal*, 8 I. T. R. 114.

Thus where shares of joint owners are definite and ascertainable, assessment as 'association of persons' is forbidden, but where shares are indefinite and cannot be ascertained, assessment shall have to be made as 'Association of persons".

The next question that arises out of it is if the shares of a Mitakshara Family can be held to be definite and ascertainable. For it is a well known principle of Hindu Law that no body can say that he has a certain definite share (*vide Appovier v. Subba Aiyar* (1866) 11 M. I. A. 75. Hence it can be said without hesitation that Section 9(*3*) does not contemplate a case like this, it only contemplates cases of tenancy-in-common.

Co-operative Society :

Where a society registered under the Co-operative Societies Act, during the year of assessment made a certain profit out of letting its immovable properties, the profit is not exempt from taxation.

The Governor-General, acting under section 60 of the Act, has exempted from income-tax of a Co-operative Society of the character of the assessee, but that exemption excepts, among other things, income, profits or gains derived from investments in property of the nature referred to in section 9 of the Act.

But when the income is derived from property as defined in section 9, then the exemption does not arise—*C. I. T. Bombay* v. *The Gond Saraswat Brahmin Co-operative Housing Society Ltd.*, 10 I. T. C. 422.

The allowance on account of collection charges must be supported by proof of the actual expenditure, but where proofs were not forthcoming, the Income-tax Officer has no authority to allow more than 6 p.c. of the annual value. Rule 7 definitely lays down that the allowance must not exceed 6 p. c.

Collection charge under section 9 covers legal expenditure incurred in recovering rents from tenants and such expenses are to be regarded as permissible deductions, subject to the following conditions :—

(i) Only net legal expenses are to be allowed.

(ii) The actual expenses incurred in excess of the cost deducted will be allowed in the year in which the decrees are passed.

(iii) The total allowances for collection charges including legal expenses must not exceed 6 p.c.

Litigation Charges :

It has been held that collection charges include legal expenses incurred for recovering rents from tenants, just as legal charges are allowed under section 10 for recovering trade debts.

But it must be remembered that amounts spent for employing lawyer and accountants cannot be allowed either under section 9 or under section 10. In the case of *Muniswami Chetty*, 77 I. C 89, it has been held that costs incurred for employing lawyer to represent income-tax cases do not form a legitimate deduction. Such an expenditure is not allowable even under section 13 as it is not incurred for earning profits.

Money paid to under-writers on the issue of certain preference shares by a company is not a deductible expenditure under section 10 (*2* ; *X*), *In the matter of Tata Iron and Steel Company Ltd.*, 64 I. C. 12 : 45 Bom. 1306.

Depreciation :

Under section 10, it is noticeable that the allowance under head "depreciation" for wear and tear is an allowable deduction. But when an assessment is made under section 9, depreciation allowance cannot be granted, for the Legislature nowhere says that a tenanted house can claim depreciation. Section 10 allows relief where the property is used for business purposes only and nowhere else.

So as a matter of fact 'depreciation allowance' is not permissible under section 9 of the Act. *In the case of Commissioner*

of Income-tax v. *Bosotto Brothers Limited*, 8 I. T. R. 41, the Commissioner of Income-tax wanted to have the assessment under section 9 so that the claim for depreciation might be disallowed. It was conceded that when the assessee was running the hotel it was entitled to be assessed under section 10 and therefore entitled to the deductions, but if he ceased to utilise the building itself for the purpose of a hotel business, the building must be regarded as 'property' and not part of assessee's business. The Madras High Court held that the case was governed by the decisions in the case of *Mangalgiri Rice Factory* v. *C. I. T.*, 2 I. T. C. 251 : 51 M. L. J. 360 : A. I. R. 1926 Mad. 1032 and *Sadhu Charan Roy Choudhury and others.* v. *C. I. T., Bengal*, 8 I. T. C. 177 : 62 Cal. 804 : A. I. R. 1935 Cal. 344 : 39 C. W. N. 739 : 156 I. C. 394. The Income-tax Act, being a fiscal statute, should receive a strict construction, that is, a construction in favour of the subject, and not in favour of the Crown. If a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be taxed under that one which leaves him with a lighter burden. Justice Krishnaswami Ayyangar observed "The Act, it seems to me, contemplates the business as being something different from the buildings, the plant, machinery or furniture which may be used for the purpose of the business. It is as different from any of these things, as for instance the capital embarked on it, or the establishment with which it is carried on. The term business as used in the section denotes, I think, an abstract and intangible thing, quite apart from any of these physical adjuncts, and quite apart also from such other elements as the goodwill, the business connections, the business reputation and so on. In my judgment it is an entity different from any of these things, and has to be so understood in the Act. A running business can be leased, as it can be sold, as such, together with the buildings where it is carried on. If the lessee carried on the business leased to him, using the same premises together with the fittings and furniture, though for the purposes of his own business, there may be some ground—even of this I am by no means sure, for saying that the assessee is still carrying on the business, through the agency of the lessee, so as to attract the provisions of section 10 (*2*) (*vi*)."

Sale of Property :

The question whether a particular amount received is of the nature of annual profits or gains or is of a capital nature does not depend on the language in which parties have chosen to describe it. It is necessary in each case to examine the circumstances and see what the sum really is, bearing in mind the presumption that "it cannot be taken that the Legislature meant to impose a

duty on that which is not profit derived from property but the price of it". *Perrin* v. *Dickinson*, 1 K. C. 107 (1930).

In *Minister of National Revenue* v. *Katherine Spooner*, 147 I. C. 747 P. C., it was held that royalties were in effect payment by instalments of part of the price of the property, and as there was no question of profits or gain, the royalties were not liable to be assessed to income-tax [relying on the decisions of *Commissioners of Inland Revenue* v. *Marine, Steam & Turbine Company* (1920), 1 K. B. 193 ; *Commissioner of Inland Revenue* v. *Korean Syndicate Limited*, 1 K. B. 598 ; and *Jones* v. *Commissioner of Inland Revenue*, 1 K. B. 711].

Deduction for Unrealised Rent :

"Unrealised rent on any property is exempt from income-tax and is also excluded in computing the total income of an assessee, provided that—

(*a*) the tenancy is *bona fide* ;

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

(*c*) the defaulting tenant is not in occupation of other property of the assessee ; and

(*d*) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent."

Business.

10. (*1*) The tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him.

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

(*i*) any rent paid for the premises in which such business, profession or vocation is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional annual value of the part so used :

(*ii*) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;

(*iii*) in respect of capital borrowed for the purposes of the business, profession or vocation, the amount of the interest paid:

Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in British India who may be assessed under section 43 or, in the case of a firm, for any interest paid to a partner of the firm;

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

(*iv*) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation, the amount of any premium paid;

(*v*) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;

(*vi*) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent where the assets are ships other than ships ordinarily plying on in land water, to such percentage on the 'original cost' thereof to the assessee as may in any case or class of cases be prescribed: (and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed) :

Provided that—

(*a*) the prescribed particulars have been duly furnished ;

(*b*) where full effect cannot be given to any such allowance in any year (not being a year which ended prior to the 1st day of April 1939) owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, 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, and so on for succeeding years ; and

(*c*) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee, of the buildings, machinery, plant, or furniture, as the case may be ;

(*vii*) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the

machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value :

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

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place.

(*viii*) in respect of animals which have been used for the purposes of the business, profession or vocation otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount if any, realised in respect of the carcasses or animals ;

(*ix*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business, profession or vocation ;

(*x*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission ;

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

(*a*) the pay of the employee and the conditions of his service ;

(*b*) the profits of the business, profession or vocation for the year in question ; and

(*c*) the general practice in similar business, professions or vocations ;

(*xi*) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year ;

(*xii*) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation ;

(*3*) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (*iv*), clause (*v*), or clause (*vi*) of subsection (*2*) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the

amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

(*4*) Nothing in clause (*ix*) or clause (*xii*) of sub-section (*2*) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains ; and nothing in the clause (*xii*) of sub-section (*2*) shall be deemed to authorise—

(*a*) any allowance in respect of a payment which is chargeable under the head 'Salaries' if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18 ; or

(*b*) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm ; or

(*c*) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head 'Salaries'.

(*5*) In sub-section (*2*), 'paid' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section ; 'plant' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation ; and 'written down value' means—

(*a*) in the case of assets acquired in the previous year, the actual cost to the assessee ;

(*b*) in the case of assets acquired before the previous year but after the commencement
VII of 1939. of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less all depreciation allowable to him under this section ;

(*c*) in the case of assets acquired before the commencement of the Indian Income-tax
VI of 1939. (Amendment) Act, 1939, the actual cost to the assessee less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of April, 1922, and at the rates in force on the 1st day of April, 1922, for each such year prior to that date :

Provided that where the provisions of the proviso to sub-section (*2*) of section 26 are applicable, the actual cost to the assessee referred to in clauses (*a*), (*b*) and (*c*) shall be the actual cost to the person succeeded in the business, profession or vocation :

Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of April, 1939, but to which full effect was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance.

(*6*) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(*7*) Notwithstanding anything to the contrary contained in sections 8, 9, 10, 12 or 18, the profits and

gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act.

Changes in the Section :

Three important changes have been made by the Income-tax (Amendment) Act, 1939, in clause (iii) of sub-section (*2*) of this section, *viz* :—

(*a*) The provision for disallowance of interest dependent upon the earning of profit has been withdrawn ;

(*b*) In the case of a firm *all* interest (whether on capital or on loan) paid to a partner is to be disallowed ; and

(*c*) No allowance is to be made 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) unless in respect of such interest tax has been paid or tax has been deducted from it under section 18 or in respect of which there is an agent under section 43.

No allowance can be made for interest on share capital of companies, but a company is entitled to an allowance of the interest paid on its debentures subject to condition (*c*) above.

No society has been prescribed under the "*Explanation*" to clause (*iii*) of section 10 (*2*). Societies, which have dealings only with their *own* members, are dealt with for income-tax purposes on the footing that their dealings do not yield profit which is liable to income-tax, but the income derived by such societies from "Interest on Securities", "Property", or "Other Sources" is lable to assessment. Societies which have some of the characteristics of mutual societies, but which have dealings with non-members and are doing banking business are assessed like other banking concerns on their entire profits. The interest payable by such societies called guaranteed interest or otherwise is a permissible deduction but is liable to tax in the hands of the recipients.

Allowances in respect of insurance premia are restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture, stocks or shares, used for the purposes of the particular business, profession or vocation under assessment and no allowance can be made on account of premia for other insurances. Any sums not actually expended on premiums, but merely set aside as a reserve for insurance, cannot be allowed as a deduction.

The Act does not provide specifically for the deduction of premia on account of insurance against a loss of profit consequential upon damage by fire, but such premia should be allowed under section 10 (*2*) (*xii*) without requiring the assessee to make a declaration in writing undertaking to declare and pay tax on any amounts received from an Insurance Company under any such policy or policies. Moneys received from an Insurance Company in respect of loss of profit caused by destruction of plant and premises by fire was held by the Privy Council in the *Fir & Cedar Timber Co.*, case (101 L. J., P. C. 113 : 1932 A. C. 441, to be income and liable to tax under the British Columbia Taxation Act, 1924, and the same principle holds good under the Indian Income-tax Act, 1922.

The phrase "current repairs" in clause (*v*) of sub-section (*2*) of this section includes minor replacements of parts provided that such replacements are not of such an extensive nature as to change the identity of the asset in question. Expenditure on any asset that would have increased its capital value if it had been done when the asset was new, must be regarded as capital expenditure.

Depreciation and Obsolescence :

Very important changes have been effected by the Income-tax (Amendment) Act, 1939, but these changes are not to take effect prior to the 1st day of April, 1940. In computing the profits for assessment for the year 1939-40 on the income of the "previous year" the old basis of computing allowances on the original cost of the assets is still in force.

Instructions regarding the deductions for depreciation and obsolescence for assessments for the year 1939-40 and for earlier years.

The following notes apply only to assessments ending with that for the year 1939-40. They do not apply, without modification, to assessments for the year 1940-41 onwards excepting notes (*a*) and (*b*) which are common for all assessments.

(*a*) Buildings belonging to the owner of a business and used by him in order to house his employees are buildings used for the purpose of business if the owner charges no rent to the employees occupying the buildings. If, however, rent is charged, section 9 applies.

(*b*) When a person succeeds to a business, the depreciation allowance due to him in respect of buildings, machinery, etc., taken over by him from his predecessor should be worked out on the basis of original cost to the successor (not on the cost to the predecessor).

The same applies where the person is not a successor but merely a purchaser.

(*c*) Depreciation is allowable on the cost of setting up machinery and plant, that is, the expression "original cost" in section 10 (*2*) (*vi*) includes the cost of freight, pay of Engineers and staff who erect the machinery, put it in working order and carry out experiments to test it.

(*d*) Depreciation at the prescribed rates is allowable each year when there are sufficient profits, and only the excess of the depreciation allowance over profits can be carried forward from year to year until absorbed. This practice must be followed whether the depreciation allowance is adjusted in the accounts of the assessee or not and irrespective of the amount shown in the accounts.

(*e*) No depreciation allowances are granted to railways on account of depreciation of their rolling stock as renewal charges are allowed as a business deduction.

(*f*) By virtue of a notification under section 60 (*1*)—*vide* Part II of this Manual—an assessee deriving income from a railway or tramway (other than an electric tramway) business has been allowed the option of electing certain specified deductions in lieu of allowances specified in clauses (*v*), (*vi*) and (*vii*) of subsection (*2*) of section 10.

(*g*) The percentage allowance fixed in the rule for the "air conditioning machinery" covers the machinery portion of humidifying plants but plant other than machinery (*e g.*, tube-wells, settling tanks, distributing pipes) is excluded. Such plants will remain entitled to depreciation at the general rate prescribed in the rule for "machinery, plant and furniture".

(*h*) As stated above, no allowance can be made on account of the depreciation of the assets of a business other than the particular items mentioned in this sub-clause and in rule 8. No depreciation allowance, for example, is permissible to provide for the amortisation of capital sums paid on account of the purchase of the lease of a mine or for the depreciation of wasting assets such as coal. Depreciation allowances should, however, be allowed for tramways and sidings in coal mines, which are included in the term "plant".

(*i*) Where a business of such a nature that the profits derived from it were not previously liable to tax owing to a special exemption conferred either by statute or by notification, or rule having the force of law (examples are Shipping Companies and Indigo Companies), is taxed for the first time, the assessee is not entitled to claim in the first year of taxation, under proviso (*b*) to section 10 (*2*) (*vi*), accumulated depreciation allowances for all the years during which the profits of the business were not liable to tax.

(*j*) *Obsolescence allowances.*—The allowances under this clause can only be given where the machinery or plant *becomes obsolete.* Where machinery or plant is sold for reasons other than that it has become obsolete, no allowance can be given.

(*k*) The amount allowed for obsolescence is calculated upon the original cost *to the owner.* The amount to be given is (*a*) the amount of such original cost to the owner as *reduced by* (*b*) the depreciation allowances under clause (*vi*), and (*c*) the amount for which the machine is actually sold or its scrap value.

Instructions regarding the deductions for depreciation and obsolescence for assessments for the year 1940-41 onwards.

The entire basis of allowance for depreciation is to be changed with effect from the assessment year 1940-41.

The manner in which written down value is to be computed is laid down in sub-section (*5*). In respect of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the amount of depreciation which was due in respect of any assessment prior to that for the assessment year 1939-40 but which was not actually allowed because of the non-existence of sufficient profits is to be included in the written down value. Thus, if an asset costing Rs. 20,000 was acquired in the year ended 31st March, 1931, and if the rate of depreciation on this asset was 5 per cent., the written down value for the assessment for 1940-41 would, in the absence of any unabsorbed depreciation, be calculated as follows :—

	Rs.
Original cost	20,000
Less depreciation for 8 years (1932-33 to 1939-40) at 5 per cent. per year	8,000
Written down value for 1940-41 ...	12,000

If the rate under the written down value basis is 6 per cent., the allowance for 1940-41 will be Rs. 720 and the written down value for 1941-42 Rs. 11,280 (Rs. 12,000—720).

If, however, no allowance was given for the years 1937-38, 1938-39 and 1939-40 owing to the insufficiency of profits in those years, the allowances for 1937-38 and 1938-39 would be added to Rs. 12,000 making the written down value Rs. 14,000, whilst the allowance for 1939-40 would be carried forward under proviso (*b*) to sub-section (*2*) (*vi*).

Unabsorbed depreciation on account of assessment years 1939-40 onwards is to be carried forward but not the unabsorbed depreciation on account of assessment years prior to 1939-40.

Whenever any machinery or plant is sold or discarded, for whatever reason, a deduction in respect of obsolescence can be claimed and the amount to be allowed is the excess of the written down value over the sale price or the scrap value, as the case may be, provided that the asset must be written off in the books of the assessee. Where the sale price exceeds the written down value this excess is to be included in the profits and gains charged to tax.

The depreciation for which a deduction is provided in clause (*vi*) of sub-section (*2*) of section 10 should be distinguished from depreciation on shares and securities. So long as shares or securities continue to be held by an assessee as part of his capital, any depreciation or appreciation in their market value is outside the scope of the Income-tax Act, and similarly when the shares and securities so held are sold ; the transaction is of a capital nature and no account should be taken for income-tax purposes of any profit or loss resulting from it. On the other hand, when an assessee habitually uses part of his resources in the purchase of securities or shares with a view to obtaining profit on their sale and the subsequent re-investment of the proceeds, the assessee is carrying on a trade and the profits and losses made are within the scope of the Income-tax Act.

Clause (*x*) of this sub-section takes the place of the previous clause (*viiia*) and lays down the conditions for allowance of a deduction on account of bonus or commission paid to an employee for services rendered. Such charges will be normally allowed as deductions unless there are grounds for suspecting that the amount of bonus or commission has been fixed with a view to avoidance of tax by the employer.

Bad debts and irrecoverable loans :—The investments of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading.

Miscellaneous Deductions :—The following notes on the admissibility of certain expenses are intended to be illustrative and for general guidance. They are not, and, of course could not be exhaustive :—

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

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

(*c*) Premia paid by an employer to cover the risk of liability to compensate any of his employees for injuries under the Workman's Compensation or Accident Insurance Act (VIII of 1923) are allowable under section 10 (*2*) (*xvi*).

(*d*) *Bona fide* expenditure of a revenue character for the welfare of employees is allowable, but in no case is any capital expenditure allowable.

(*e*) Indian traders and businessmen charge their customers or clients a small fee on each transaction—for example, so many pies per bag of some commodity sold—the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes. Such customary receipts and the corresponding expenditure should be left out of account altogether for income-tax purposes.

(*f*) Audit and other accountancy expenses incurred annually including expenses of settling the income-tax

liabilty of an assessee will be ordinarily allowed. But expenses connected with subsequent proceedings before the higher authorities in Appeal, Review or High Court will not be allowed.

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

Sub-sections (*3*), (*4*) and (*5*) have been added by the Income-tax (Amendment) Act, 1939. The most noteworthy of the new provisions are that no allowance can now be given in respect of :—

(*a*) A payment which is chargeable under the head "salaries" if it is payable without British India unless tax has been paid thereon or deducted therefrom under section 18 ;

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

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

Effect of Amendment :

Section 10 deals with "profits and gains of business, professions or vocation" and not "Business" alone, as was in the previous Act. The result is that the old section 11, which, exclusively, dealt with "profession and vocation" merges in section 10 and consequently section 11 is deleted.

Profits :

"Profits" means a comparison between the state of business at two specific dates usually separated by an interval of a year and if the company is to be regarded as dealing in house property by letting it out for premium and rent in the course for the purposes of its business the money value to which at the end of the year, it betters its position by such means, will be assessable as profits. If its position is improved by other means from causes not directly connected with the business of the company, the enhanced value, though realised, is not part of the business. Everything depends upon what the business is—*In re Guptoo Estate Ltd.*, 34 C. W. N. 327.

Business Defined :

Where the exercise of any profession or occupation is carried on with the object of making profits or gains, the transaction is business, pure and simple and is liable to assessment. But Mutual Trading Societies carrying on business are not liable to assessment, *e.g.*, Bar Association, Social Clubs and the like.

Definition of the Term 'Business' :

Business as defined under section 2, cl. (*4*) includes any trade, commerce or manufacture or any adventure or concern in the nature of a trade, commerce or manufacture ; where in performance of a duty, an occupation or profession is carried on with the sole object of making profits, the transaction amounts to business.

Thus "business" connotes something in the shape of labour and attention for the sole purpose of earning profits—*In the matter of Rogers, Pratt, Shellac & Co.* v. *Secretary of State*, 52 Cal. 1. Carrying on business can only exist when there is a succession of acts or of continuity of transactions or acts and the performance of a single act apart from single circumstances it is enough even though it may result in profits or gains—*Smith* v. *Anderson*, (1880) 15 Ch.D. 247, 258 ; *Erichsen* v. *Last*, 4 T.C. 422 *Werle & Co.* v. *Colquhoun*, 2. T. C. 402 ; *In the matter of C.I.T.* v. *Corrimbhai Ebrahim & Sons Ltd.*, A. I. R. 1933 Bombay 422.

Meaning of any Business & Profits or Gains :

If any business in section 10 (*1*) means all the business put together, then the profits or gains will mean the aggregate profits or gains of all the businesses together (relying on the decisions reported in A. I. R. 1924, Madras 474 & A. I. R. 1929 Lahore 566—*In the matter of Suppanchettiar & Co.*, 123 I. C. 801 : 42. T. C. 211.

In *The Commissioner of Inland Revenue* v. *The Marine, Steam, Turbine Co. Ltd.*, 12 T. C. 174 : 1920, 1 K. B. 93, Justice Rowlatt observes : "the word business however is also used in another and a very different sense, as meaning an active occupation or profession continuously carried on, and it is in that sense that the word is used in the Act."

In *Smith* v. *Anderson*, 1880 (15 Ch. D. 247, 258) it is said that business is an occupation for profit. The occupation may be continuous or stray—*Martin* v. *Lowry*, 11 T. C. 297.

In *South Behar Railway Company* v. *Commissioner of Inland Revenue*, 12 T. C. 657, it has been held that continuity of activity is not essential, there may be long intervals of inactivity.

Profits and Gains :

The profits of a trade or business is the surplus by which the receipts from the business or trade exceed the expenditure necessary for the purpose of earning those receipts. That seems to be the meaning of the word "profits" in relation to any trade or business. Unless and until you have ascertained that there is such a balance, nothing exists to which the name "profits" can properly be applied—*Russel* v. *Aberdeen Town and Country Bank*, 2 T. C. 321. It has been held in numerous English cases that "profit" is the balance of income over all the expenses, damages and losses incurred in carrying of the business—*Mersey Docks* v. *Lucas*, 2 T. C. 25 ; *Gresham Life Ass. Co.* v. *Styles*, 3 T. C. 185 and *John Smith and Son* v. *Moore*, 12 T. C. 266.

Business carried on by him :

In order to charge the profits of business liable to income-tax, it must be shown that the business is being carried on for the purpose of earning profits. Section, 10, sub-sec. (*1*) puts no limit to space or locality, whereas section 4, sub-sec. (*1*), provides a limit.

Subject to the limitations laid down under section 4, profits of any business carried on by an assessee are taxable under section 10. For the purpose of taxation, section 4 controls section 10 to a considerable extent and the limitations put under section 4, have been dealt separately under section 4.

But chargeability and assessibility to tax depend entirely upon the circumstances of each particular case and section 10 cannot be invoked where business is not carried on.

There may be cases where a company goes in liquidation and the liquidator subsequently realises money. The company cannot be said to carry on business—*In the matter of Commissioner of Inland Revenue* v. *Korian Syndicate, Ltd.*, 12 T. C. 181.

In the case of *Executors of E. A. Cohen*, 129 L. T. 797, it has been held that where an executor is authorised to realise and administer the estate, and where his action amounts to securing a proper advantage to the testator's estate, such an action does not mean "carrying on business." "It seems to me that the evidence shows that the executors only dealt with the business, only handled the business for the purpose of securing proper advantage to the estate of the testator. Of course, it is largely a question of degree as to whether a business is being carried on by the executors for their own purposes or not." In the *South Behar Railway Company*, 12 T. C. 657, it was held that where a railway company sells away the lot undertaking to acquire

and work in consideration of some annual payments the company is said to be carrying on business.

Where there is an absence of repetition of act, business is not carried. A person is entitled to royalties on invention but receipt of such royalties are not business profits unless he invents yearly and sells his invention—*Inland Revenue Commissioner* v. *Sangster*, 12 T. C. 208. Justice Rowlatt observes : "although I do not see how you can treat his royalties income where it has become a royalty income, as an income from trade or business carried on, it might be said that you could treat this gentleman as carrying a business of inventing, the profits of which were to be arrived at a different way. It is said that if a man habitually invents, or if a man habitually paints pictures or if he habitually writes books, with a view to gain from the patents which he has taken for them, out of the books which he has written, and the pictures which he has painted, that is carrying on business and I feel a little difficulty about the fact. Very possibly, if a man habitually paints a number of pictures, year after year and sells them, you could say he was carrying on business. He might be a professional man but that is another matter. If he was writing books habitually, year after year, and carrying on business, I suppose he would be assessable under section D for it." But where no evidence is forthcoming as to date of invention of patent etc., and in the absence of any evidence of disposal of articles produced, it cannot be construed that the assessee is carrying on business.

Where a business is closed down but the company is eligible for royalties, it cannot be seriously maintained that as the company exists for receiving royalties, it is carrying on business. The company has closed down its original business and has ceased to function as such, but is only receiving royalties for the business which it has parted with, it cannot be construed that the company is carrying on business within the meaning of the Act—*The Marine Steam Turbine Co. Ltd.* v. *Commissioner of Inland Revenue*, 12. T. C. 174.

When a consulting Engineer charges fees when consulted, he cannot be said to be carrying on business and the fees received are professional receipts. But suppose where orders for machineries are placed to him and he gets (1) a merchant's profits, (2) consultation fees for advice, it cannot be said that he is carrying on his profession but carrying on business within his professional skill—*Commissioner of Inland Revenue* v. *Maxse*, 4 A. T. C. 467 : 12 T. C. 41.

Growing Tea, whether Business :

It has been held by the Calcutta High Court that "the earlier part of the operation where the tea bush is planted and the

young leaf is selected and plucked may even be deemed to be agricultural. But the latter part of the process is really manufacture of tea and cannot without violence to language be described as agriculture"—per Justice Mukherjee of the Calcutta High Court in the case of *Killing Valley Tea Company* v. *Secretary of State*, 48 Cal. 161 : 1 I. T. C. 54 : 32 C. L. J. 421.

Apparently cultivation of tea bushes is not carrying on business ; but the latter part, *e.g.*, the manufacturing process is carrying on business.

Section 4 exempts "agricultural income" free of tax and consequently it is held to be not carrying on business, and no liability is attached. Section 2, cl. (*1*) in effect provides that an "agricultural income" is to be exempt from the operation of the Indian Income-tax Act where the land is assessed to land revenue in British India.

In *Punuswami Pillai* v. *Commissioner of Income-tax, Madras*, 3 I. T. C. 378, it has been held that where an assessee has got a tea estate in Ceylon, he is liable not only for the income of manufacturing process but is also chargeable for the income derived from the growing process, although it is agricultural income ; section 4, sub-section (*3*) (*viii*) is inoperative to foreign agricultural income. It has been held that where an assessee has got a tea estate in Ceylon, he is liable not only for the income of the manufacturing process but is also chargeable for the income derived from the growing process, although it is agricultural income ; section 4, sub-section (*3*) cl. (*viii*) is inoperative to foreign agricultural income.

Rule 23 lays down the procedure to be adopted where income is partly agricultural and partly from business and provides for the separation of industrial from agricultural profits, whereas rule 24 says that "income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business, and 40 p. c. of such income shall be deemed to be income, profits and gains liable to tax". Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned.

Under section 10, sub-section (*2*) cl. (*xii*) of the Act the only expenditure which can be set off against profits is expenditure incurred solely for the purpose of business, professions or vocation, but so far as tea estates are concerned, it is fair and equitable to allow as a charge against profits the whole of the cost of the

upkeep (*e.g.* weeding and draining) of extensions of the estate which are not in bearing.

In the case of *Mothay Gangarayu* v. *C. I. T., Madras*, 8 I. T. C. 76 : 1935 1. T. R. 58, it was held that an isolated transaction unconnected with business is not, carrying on business and it does not attract tax. But profits from wagering contracts or illegal business are business—*In re Chunilal Kalyan Das*, 1 I. T. C. 419. In *Sadhu Charan Ray* v. *C. I. T.*, 8 I. T. C. 177 : 62 Cal. 804, it was held that the letting out jute press was business. Mere ownership of all the shares or a large proportion of the shares, will not of itself make the profit of that company, the profits of the owner—*Kodak Ltd.* v. *Clark*, 4. T. C. 549 and *Gramophone and Typewriter Co. Ltd.* v. *Stanley*, 5 T. C. 358.

Business of buying goat and sheep in British India and selling them outside :

In the case of *Sudalaimani Nadar* v. *C. I. T., Madras*, 8 I.T. R. 619, it was held that the profit made by the assessee could only be calculated on what the goat and sheep actually cost him and the amounts at which they were sold at Columbo. The figures in the invoices, whether inflated or deflated, did not matter.

In cases like this, where animals intended for human consumption are bought in one place and sold in another place, the profit arises only at the place of sale.

Destination of Profits if Relevant for the Purposes of Profits :

Section 10, sub-sec. (*1*) states that where a business is carried on profits therefrom are liable to tax, so where a "business" is carried on at a profit, it becomes taxable.

The Income-tax Act nowhere provides that liability to tax can be avoided by ultimate disposal of profits. Of course, if any of His Majesty's subjects are clever enough to avoid taxation by legal means, they are at liberty to do so, and there is nothing wrong in so conducting one's affairs within the law as not to attract taxation—*In the matter of Bai Sakinaboo*, A. I. R. 1932, B. 146. The mere fact that the transaction is a device to escape income-tax, ought not to prejudice the assessee. Any subject of the State is entitled to escape paying taxes if he can devise a lawful method of doing so—*In re Gangasagar*, A. I. R. 1929 All. 919, *Mukunda Swarup*, 107 I.C. 435 : 2 I. T. C. 495 and also the decided case of *Rajnath Prosad Sinha* v. *Commissioner of Income-tax, B. and O.*, A. I. R. 1930 Pat. 33.

But the above is a totally different matter. The destination of income, profits or gains is immaterial for the purposes of computation of profits provided it is income, profits, or gains to the assessee—*In Paddington Burial Board* v. *Commissioner of Inland Revenue*, 2 T. C. 46.

In *Mersey Docks* v. *Lucas*, 2 T. C. 25, it has been held that taxing authorities are not at all concerned how profits are ultimately disposed of. It is immaterial for whatever purposes the profits are used, the destination of profits once earned cannot affect the question of their assessibility to tax.

The Calcutta High Court in the case of *Howrah Amta Light Railway*, 32 C. W. N. 757, came to the finding that destination of profits is immaterial.

In *Hudson's Bay Company* v. *Stevens*, 5 T. C. 424, it was held: "if money is otherwise liable to income-tax, it cannot escape taxation by reason of its being applied to a capital purpose". In *Smythe* v. *Stretton*, 5 T. C. 36, it was held that a salary is none the less a salary because it was applied in a particular manner. In *St. Andrews Hospital, Northampton* v. *Shea smith*, 2 T. C. 219, a case of a hospital where profits earned from wealthy patients are applied for the benefits of poor patients and for betterment of hospital the profits are chargeable to tax. Ultimate disposal for charitable purposes does not make any difference.

Excepting what is clearly exempt under section 4 of the Act, the destination of profits is immaterial and even the diversion of profits of cases coming under section 4, for secular purposes, makes the profit liable to tax. It is a common practice amongst Marwaris to set apart a share, *e.g.* 2 annas, 3 annas or so forth for religious purposes invariably, but the setting apart of a specific share for specific charitable purposes, does not relieve the firm of being taxed on the entire profits. Destination of profits is immaterial.

Where income, profits or gains are withheld at source, the test to be applied is whether there is an effective alienation of income at source, before such income reaches the assessee. In *Bejoy Sinha Dhuduria* v. *Commissioner of Income-tax, Bengal*, 143 I. C. 145 (Privy Council), their Lordships held: "where the Act by section 3 subjects to charge an income of an individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the Court by charging appellant's whole resources with specific payments to his step-mother has to that extent diverted his income from him and has directed it to his step-mother to that extent, what he receives from her, is not income. It is not a case

of the application by the appellants of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it becomes income in his hands."

Distribution of Reserve Fund :

All assets and profits of a company belong to its shareholders. A company is liable to tax for profits or gains, if any, whether or not any or the entire dividends have been declared. The shareholders can declare the profits partially or wholly as dividend, to keep partially or wholly the profits as undistributed or as capital of the company by way of reserve fund.

If the shareholders desire to declare dividends out of the undistributed profits, the dividends would form part of the total income of shareholders, but such dividends will not be taxed again as these being part of the profits of the company were taxed previously. Where distribution of profits accumulated by a company in the form of bonus shares was given to shareholders without any option to have the profit in any other form the bonus shares do not at all represent "income, profits or gains" to the shareholders. Chief Justice Robinson observes : "In my opinion the transaction must me regarded as a whole, and the obvious intention of the company must be taken into account. There never was and was never intended to be, any payment at all to the shareholders. No amount whatever was taken from the company or received by the shareholders"—*In the matter of Steel Bros. & Co. Ltd.*, A. I. R. 1926 R. 97.

In *Binny & Company Ltd., Madras*, 50 M. 920 it has been held that where surplus accumulated profits are capitalised without distribution to the shareholders and new shares were issued to the shareholders in the shape of their shares in accumulated profits, such new shares are not taxable.

Allowances on account of Rent of Business premises :

Rent of the premises used forms a legitimate deduction, on the basis of the value of the portion used for business, profession or vocation. Before the Amendment Act of 1939, the proportion was worked out on an area basis. It has now been changed and it should be worked out on a value basis. The words 'proportional part' have been replaced by the words 'proportional annual value of the part', and the main object is to ensure that where a part only of certain premises is used for the purpose of the business, profession or vocation, the rent to be allowed is to be proportional not to the area of the portion so used but to the value of the area so used. An assessee may enjoy a valuable chamber

in the ground floor for the purpose of his profession and less valuable upstairs having larger area are being occupied by him, the valuation of the valuable chamber in the ground floor will be greater.

The word 'premises' has not been defined. Popularly 'premises' usually means a building, but a colliery is also a 'premises'..... *In re Isabela Coal Co.*, 29 C. W. N. 927.

In the *Howrah Amta Ry. Co.*, v. *C. I. T.*, 2 I. T. C. 509, it was held that the share of profits paid to the District Board in return for free grant of land could not be construed as payment of rent. Similarly where a portion of net profits is payable to another company, it cannot be described as rent : *Indian Radio Cable Co.* v. *C. I. T.*, 8 I. T. C. 233 : 1937 I. T. R. 270 (P. C.).

Profession or Vocation :

Section 11 stands deleted, there being a merger of section 11 into section 10 of the Act.

Profession involves the idea of an occupation, requiring purely intellectual skill as distinguished from an occupation—*C. I. R.* v. *Maxse*, 12 T. C. 41. The words 'profession or vocation' connote the same meaning. Strictly speaking, profession is more or less connected with education.

An incorporated company cannot exercise a profession notwithstanding that its members are all professional men, for a company is a legal entity and as such can have no personal qualifications required for the exercise of a profession—*William Esplen, Ltd.* v. *C. I. R.* (*1919*), 2 K. B. 108.

Conditions for Deductions :

An assessee is not entitled to deduct an expenditure (Adat, interest, etc.,) not actually incurrred by him before the close of the account year and a deduction can be claimed only if the expenditure is actually incurred or the liability incurred is satisfied before the close of the year : *In the matter of Joynarayan Matiram*, A. I. R. 1926 Nag. 243.

Profession Tax :

In the case of *King and Patridge*, 92 I. C. 943, it was held that the profession tax is a payment made out of the income of the taxpayer and is quite different from license fee though the payment is not made in the matter of license fee. It always depends upon the nature of the profession tax levied.

Expenses, Capital or Not :

Where expenses are incurred solely for purposes of profession, such expenses are admissible deduction. But expenditure which is of capital nature, *e.g.*, additions, alterations and improvements are capital expenditures and as such should not be allowed and it is doubtful whether any amount spent for such capital expenditures should be allowed or not.

Professional Fees—Within and outside British India :

Strictly speaking, professional fees received by an assessee, ordinarily resident in British India, are taxable, but in the case of *Eastern Extension Australasian and China Telegraph Co., Ltd.*, (unreported) the Madras High Court held that income-tax and excess profits duty paid in England by a non-resident are not permissible deductions.

But in the case of *Rogers Pratt Shellac Co., Ltd.*, 28 C.W.N. 1004 : 40 C. L. J. 110, it was contended that to include income which did not arrive or accrue in British India to a non-resident of British India would be to make not actual but "notional" income chargeable. The taxability of notional income is an idea not foreign to the Act, for by section 8 *bona fide* annual value of property has been made assessable as being income which has accrued to the property, though it may not have actually arisen from it.

In the case of *Ramnandan Chetty*, 43 Mad. 75, it was held that profits derived from business carried on outside British India by persons resident in British India are not liable to assessment if the profits are not remitted to British India. The Calcutta High Court in the case of *Bengal Nagpur Railway Co., Ltd.*, 27 C. W. N. 34 : 70 I. C. 46 : 1 I. T. C. 178, held that it is not liable to pay tax on the interest guaranteed by the Secretary of State and this ruling is to be followed in the case of railway companies where the interest is guaranteed by the Secretary of State and is paid in England.

Inadmissible Deductions :

Where an employee is required to supply his own tools, he can get deduction of the amount actually spent for the upkeep of the tools during the accounting year. Musicians can put forth claims for amounts spent for the purchase and maintenance of musical instruments.

Travelling allowances incurred in the performance of duties will be normally allowed, but hotel charges are living expenses

and hence inadmissible. Costs for maintaining telephones are inadmissible—*Nolder* v. *Walters*, 15 T. C. 380.

Professional subscriptions are but deductible—*Simpson* v. *Tate*, 4 A. T C. 187 : 9 T. C. 314 and so are removal expenses—*Frydson* v. *Glynn Johnes*, 1 A. T. C. 346. Cook's wages for a school master are not allowable—*Bowers* v. *Harding*, 3 T. C. 22. Profession tax of a solicitor is not deductible—*Commr. of I. Tax* v. *Patridge*, 49 M. 296.

A professional man is not entitled to deductions for travelling expense and hotel charges. A professional man must have some kind of office, the rent of which is undoubtedly allowable. If he lives in a substantial house and uses few rooms exclusively for his profession, he is entitled to a proportionate deduction. Pay of clerks and peons are of course allowable. The cost of running a conveyance to and from office to court or to patients is allowable, provided the conveyance is used solely for his profession ; if it is not, no part of it is allowable. Subscription to Association to which legal practitioners as a rule belong are certainly expenditure incurred solely for earning profits. Professional tax paid to the Municipality or District Board, is a contribution from the income of the assessee and hence inadmissible.

Interest on Borrowed Capital :

Sub-section 2 (*iii*) allowed interest on capital borrowed for the purposes of the business subject to the condition that the payment of interest is not in any way dependent on the earning of profits. But the clause as amended, delets this latter condition but withdraws the allowances to a firm in the case of interest payable without British India (not being a public loan issued before 1st April, 1938) except interest from which tax has been deducted. Section 10 (*2*) (*iii*) lays down that interest on borrowed capital is an allowable expenditure and deletion of the line "not dependent on the earning of profits" has considerably given a long rope to the assessee. For a lucid exposition, it is classified under the following heads (*i*) Capital borrowed from outsider, (*ii*) Capital borrowed from partners, (*iii*) Capital borrowed without British India.

Borrowed Capital from persons other than Partners :

The guiding principle is that where there is a borrowed capital, interest paid or payable according to the system of accountancy forms a legitimate deduction. But it must be understood that capital borrowed for the purpose of business implies capital borrowed so used. *Soma Sundaram Chattiar* v. *C. I. T.*, 22 T.C. 61. In the case of *Bhola Saha Narasing Das* v. *C. I. T.*,

41 T. C. 401 : A. I. R. 1930 L. 738, it was held that the term "Capital borrowed" means borrowed for capital expenses of the business.

It must be understood that only interest on such capital is to be allowed as is borrowed exclusively for the purposes of a business from which profits may ensue. If it is such a business, allowances for interest is not deductible. Where business, is carried on by one person but capital is borrowed by another person, the latter is not entitled to any deduction. Further a claim under this head is permissible if interest is paid during the year of account. Interest may be paid in cash or there may be notional adjustment and allowance is permissible according to the system of accountancy followed.

But as the expression "not dependent on the earning of profits" has been deleted, there is now no bar to allow deduction for interest. Hence where interest is paid or payable in some manner depending on the earning of profits, deduction should be allowed.

Interest on Partner's Advances and Contributions :

Under the previous Act, there was no bar to allowance of interest to a partner, on capital borrowed for the purposes of business, provided the deed of partnership is sufficiently clear as to what portion is the intitial capital which is risked in the business and what part is additional capital borrowed on condition of payment of interest. The sole test whether such an allowance is to be allowed or not depends entirely on definite proof that a particular partner had made a legal loan to the firm, that is, one legally enforceable. Attention is invited to the following cases where under the previous Act, interest paid to partner was allowed—*C.I.T.* v. *Subramanian Chettiar*, A.I.R. 1928 Mad. 889 : 3 I. T. C. 187 ; *C. I. T., Bom.*, v. *Tejbhandas Matumal*, A. I. R. 1936. S. 68 : 163 I. C. 275 : 1936 I. T. R. 227 ; *In re* : *Bhola Saha Narasingha Das*, 4 I. T. C. 401 : A. I. R. 1930 L. 738 ; *C. I. T.* v. *K. K. C. T. Chettiar, Firm*, A. I. R. 1930 R. 249 : 126 I. C. 213 and *Lala Mal Hardeo Das*, 11 I. T. C. 266 ; *C. I. T.* v. *Pethu Permal Chettiar*, A. I. R. 1929 Mad. 34.

Under the previous Act, interest was allowable provided it did not depend on the earning of profits. Thus in *C. I. T.* v. *Haji Jamal Nurmahammad*, 1 I. T. C. 396 : A. I. R. 1925 B. 251, where a person borrowed the business capital agreeing to pay interest at a certain percentage of profits without being responsible for losses at all, interest thereon was not deductible. In *Peria Swami Nadar* v. *C. I. T.*, A. I. R. 1930 Mad. 1003, it was held that as there was no express agreement to pay

interest, it could not be allowed. In *Harakchand Tularam*, 3 I. T. C. 363, where a partner paid interest to the firm, it was held liable. In *K. Sidha Gowder & Sons* v. *C. I. T.*, 6 I. T. C. 78, it was held that where a firm stood dissolved, interest or capital paid to the outgoing partner could not be allowed (*vide* also *Karuppaswami Moopanar* v. *C. I. T.*, 7 I. T. C. 283 : 1936 I. T. R. 284). In *Sher Singh Nathuram* v. *C. I. T.*, 8 I. T. C. 38 : 1934 I. T. R. 479, interest paid to a Hindu undivided family was disallowed as it was found that the firm had a credit with the Bank at a cheaper rate. In *Nopechand Mangiram*, 2 I. T. C. 146, it was held that interest paid to fictitious persons, mostly relations, was not deductible. In *Mianchannu Factories Union* v. *C. I. T.*, 9 I. T. C. 246 : 1936 L. 548 : 1936 I. T. R. 203, interest paid was not allowed.

Change under the Act of 1939 :

But under the Amendment Act of 1939, it has been laid down that no allowance shall be made under section 10 (*2*) (*iii*), in the case of a firm, for any interest paid to a partner of the firm. As there is a specific provision, the old decisions become obsolete. The Act has further inserted section 10 (*4*) (*b*) disallowing any allowance in respect of any interest, salary, commission or remuneration made by a firm to any partner of the firm. Under the previous Act there was some diversity of treatment of salaries and interest payable to partners. In some cases salary or interest had been treated as an allowable deduction in computing the profits of a firm and as a source of income separately assessable on the partner. But at present, the law is, that in the computation of the profits of a firm, whether registered or not, no deduction should be made in respect of any sum, whether described as salary, interest, commission or otherwise which is payable to a partner, and that any partner's assessable income from partnership business should be his actual share of the profits or loss of the previous year.

Interest on Borrowed Capital outside British India :

The proviso to section 10 (*2*) (*iii*) specifically lays down that interest chargeable under this Act paid outside British India will not be allowed unless tax has been deducted thereon under section 18 (*3-A*). It will be seen that the proviso to sub-section (*1*) cl. (*iv*) of section 9 disallows any interest or annual charge payable without British India and chargeable under this Act, unless tax is deducted on the same under section 18. But a remarkable exception is made with respect to interest payable abroad on a public loan issued before 1st April, 1938. Even where tax has not been deducted under that section, it may be allowed if there is

an agent in British India who may be assessed under section 43. But the deduction of Income-tax shall be at the maximum rate.

As Burma is outside British India, interest to persons without British India cannot be allowed, neither interest paid to Bikaneer, Ramgara, etc. can be allowed. Where the assessee raised capital in British India to invest it outside British India and the interest he had to pay on the borrowed capital was an expenditure incurred in connection with his outside investment and had nothing to do with anything else. It was held that he was not entitled to deduct such interest from his income assessed in British India, as the said income from the investment outside British India is not liable to taxation under Indian Income Tax Act and is not a permissible business deduction *A. C. Macnabb* v. *C. I. T.*, 167 I. C. 584 : A. I. R. 1936 L. 1001. (*Somasundaram Chettiar* v. *C. I. T*, 2 I. T. C. 61 ; *Provident Investment Co.* v. *C. I. T.*, 6 I. T. C. 21 : A. I. R. 1932 B, 94 relied on).

Guaranteed Interest & Interest on Borrowed Capital :

In the *Ahmadpur Katwa Rly. Co. Ltd.* v. *C. I. T*, 8 I. T. C. 280 : 63 Cal. 109, it was held that guaranteed interest agreed to be paid to shareholders of a railway company is not deductible under section 10 (*2*) (*ii*) even when the Secretary of State undertakes to pay subsidy to the company to guarantee the payment of such interest. But in the case of *Bengal Nagpur Railway Company* v. *Secy. of State*, 1 I. T. C. 178, it was held that the company was liable to pay tax in respect only of the company's share of surplus profits which it got in return for its services in the management of the Railway, but was not liable for the guaranteed interest. In the *Madras and Southern Mahratta Rly. Co. Ltd.* v. *C I. R.*, 12 T. C. 1111, it was held that the guaranteed interest paid by the Secretary of State formed part of the company's profits for the purposes of corporation profits tax and that the company's recoupment of such interest to the Secretary of State out of its share of surplus profits was a distribution of profits which cannot be allowed.

In *Pondichery Ry. Co.*, 5 I. T. C. 363 (P. C.) share of profits paid to the French Government was disallowed.

Capital locked up in agricultural lands :

There is no express provision in the Act which can deprive an assessee of the advantages conferred by exemptions under section 10 (*2*) (*iii*) because the capital benefitting therefrom by means of permissible deductions happens to produce a non-taxable income. The case of *Chellappa Chettiar* v. *C. I. T.*, (1937) I. T. R. 97 : 10 I. T. C. 181, 1937 Mad. 734 is to the point, the facts of

the case may be summarised thus : Where a person carrying on business as money-lender borrows money for his money-lending business, lends it out to constituents, and is obliged in the course of the business to receive agricultural lands in repayment of his debts from such constituents, he is entitled to a deduction of the interest paid by him on so much of the capital borrowed by him for business purposes as is represented by the agricultural lands got in under this clause in computing the profits or gains of the banking business of the year of account. The assessee is also entitled to deduction in respect of establishment and other charges.

Mutual Societies :

The society which claims exemption must be a Mutual Benefit Society, exemption does not apply to other societies. In *Madras Hindu Permanent Fund, Ltd.*, 6 I. T. C. 326, it was found that guaranteed interest was paid to subscribers, but as it was interest borrowed for the purpose of such business, interest was held to be deductible. In 7 I. T. C. 317 : 1934 Madras 653, it was held that where an association was incorporated under the Indian Companies Act with a share capital where deposits could be taken from subscriber as well as outsider and loans could be advanced both to shareholders and non-shareholders, it was held not to be a Mutual Benefit Society and the exemption does not apply.

No rule has been made under the "explanation" to this clause defining what Mutual Benefit Societies are to have the benefit of the "explanation". It has been found that the "explanation", if applied, is likely to give more trouble to the societies than the present procedure. Executive instructions have however been issued that in the case of such societies (which appear to be peculiar to the Madras Presidency) where the taxable income is Rs. 5,000 or under, and where the "shareholders" or "subscribers" reside within the limits of the circle of one Income-tax Officer, the company or society should not be assessed direct to income-tax, but the principal officer should furnish the Income-tax Officer with a list of the amounts paid out to subscribers showing the original subscriptions or capital invested and the interest thereon, and the Income-tax Officer should ascertain what particular recipients of these payments are liable to tax and should add the amount of interest that they have received to the income on which they would otherwise have been assessed, that is, he should assess the recipients direct.

Business—Allowances in respect of Insurance Prem

[*Section 10 (2) (iv).*]—(*i*) The allowances under th are restricted to insurance policies taken out against the

damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the particular business of which the profits or gains are being calculated and no allowance can be made on account of *premia* in regard to other insurances. Further, any sums not actually expended on *premia* but merely set aside by a company or firm as an insurance fund are simply a particular description of reserve and no allowance or deduction can be given in respect of such reserves.

(*ii*) The Act does not contemplate the deduction of *premia* on account of insurance against a loss of profit. If, however, the owner of a business elects to claim any such allowance, he should signify his intention to the Income-tax Officer—and if he makes a declaration in writing, undertaking generally to pay the tax on any amounts recovered from an Insurance Company under any such policy or policies, the allowance will be granted in respect of the premia for any such policies that he may have taken out not more than a month before the date of such declaration or that he may take out subsequent thereto. Where no allowance is asked or allowed in respect of such policy, any sums received from the Insurance Company on account of the policy will not be liable to tax.

Under the United Kingdom law, sums received from Accident Insurance policies for a definite continuous period, are, in practice, assessable.

Allowances in respect of Current Repairs :

The phrase "current repairs" should be interpreted to mean such repairs required to keep building, machinery, plant and furniture, in serviceable condition, as are rendered necessary by ordinary wear and tear (as opposed to accidental or wilful damage or other unusual causes) and are of their nature recurrent. The words "current repairs" are practically synonymous with such repairs as are essentially necessary to keep machinery, plant, etc. in serviceable condition. It also includes renewals and minor replacements and also mere adjustment of existing parts. This is quite different and distinct from capital expenditure. Expenditure or anything like that which, being done when the asset was new, would have increased its capital value, should be regarded as capital expenditure.

In the case of *Ratan Singh*, 50 M. L. J. 157, the point was discussed in detail. It is said that if a carburetter of a motor car ceases to function, the renewal of the carburetter in order to enable the car to keep the road must be "running repair". On the other hand if a car as the result of an accident had nothing

left but a wheel and everything else had to be renewed, clearly the sensible view would be that a renewal of the car could only be described as an increase of capital. Current repairs are what is commonly known as running repairs which are bound to recur. It is always open to the Income-tax Officer to enquire whether a particular expenditure is current or capital and for this he can look into the nature of the business and the materials used ; on the other hand, it is for the assessee to furnish with all necessary information. Where no such information is forthcoming, the assessee cannot complain at the finding of fact arrived at by the Income-tax Officer. In the case of *Stubbs* v. *Cooper*, 10 T. C. 29, it was held that whether repairs are really repairs or replacement of capital assets, is a question of degree and as such is a question of fact.

Repairs and Renewals :

Running repairs and renewals of premises, plant, machinery, tools, etc., will be allowed, but where the renewal amounts to a complete replacement of assets, such replacement will only be admitted as a charge on the understanding that no wear and tear allowance will be claimed. Moreover only so much of the expense incurred as represents a pure *replacement, as distinguished from an improvement*, will be allowed. Where capital assets are purchased in a state of bad repair, initial expenditure on putting them in workable order will not be allowed—*In re Law Shipping Co., Ltd.*, 12 T. C. 621 and *In re Granite City Steamship Co.*, 13 T. C. 1 and *Naval Colliery Co., Ltd.* v. *Commissioner of Inland Revenue*, 6 A. T. C. 351 : 12 T. C. 1017. Amounts spent on making good delapidation at the expiry of a lease will also as a general rule be disallowed. Where new expenditure is incurred instead of repairs being put in hand, *e.g.*, where a new shaft or bore is sunk, in place of one which has silted up or become dangerous, costs will be disallowed. *United Colliers Ltd.* v. *Commissioner of Inland Revenue*, 8. A. T. C. 518 : 12 T. C. 1248.

In contrast to this it may be mentioned that in the case of certain enterprises such as plantations, maintenance and similar expenditure during the period of development such costs may be charged against profits, if any, and will not be treated as capital expenditure—*Valombrosa Rubber Co., Ltd.* v. *Farmer*, T. C. 529. Brewers may claim expenditure incurred on repairs to tiled houses—*Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, 31 T. L. R. 104 : 6 T. C. 399.

It must be understood that renewals and replacements, which do not destroy the identity of buildings, machinery, plant and furniture, are allowable as current expenditure.

Scope :

The amended clause alters the basis upon which depreciation allowance is to be calculated from the "original cost" to the "original cost less the sums previously allowed for depreciation," and except in the case of unabsorbed depreciation, which the assessee is entitled at the commencement of the Amendment Act to carry forward to a succeeding year, it treats depreciation on the same footing as any other expense of the business. Consequently depreciation for any year subsequent to the commencement of the Amending Act can only be carried forward for as long as any other loss can be carried forward. But the unabsorbed depreciation at the commencement of the Amending Act may be carried forward until fully allowed and is to be allowed before the depreciation due in respect of subsequent year.

Proviso (*b*) to section 10 (*2*) (*vi*) has, therefore, been amended so as to restrict the allowance for depreciation to the amount written off in the assessee's account.

Depreciation, meaning of :

The present Act has substituted "written down value" in place of "original cost thereof to the assessee" and consequently the United Kingdom Law has been followed. Under that Law where the asset concerned comes under the head of plant and machinery, an allowance in respect of wear and tear may be claimed as an alternative to charging replacements. It is often a matter of some difficulty to decide which of the two would be more favourable to adopt. In favour of the charge for replacements it may be said that the wear and tear allowances given frequently does not represent the actual annual expense on account of depreciation of the machine, which may be worked out and disposed of before anything approaching its value has been allowed by wear and tear. On the other hand replacements charged in accounts from time to time so far as they represent pure replacements as distinguished from improvements, allowed in adjusting the profits or income-tax, do not secure the undertaking any relief in respect of the original machine. It is important to see to what classes of assets the name of plant and machinery may be given. In addition to what may be termed machinery pure and simple, such items as turbines, engines, shafting and similar fittings, boilers, vats, ovens, and mechanical vehicles of all kinds including ships, come within the designation, but not loose tools, implements and similar utensils. Furniture and shop fittings do not come under plant and machinery, but in practice, depreciation allowance is allowed.

Depreciation allowance to books has been refused : *Daphne* v. *Shaw*, 6 A. T. C. 21 : 11 T. C. 256. But in the present Act depreciation allowance has been extended to books as well.

It may be well to state that since the allowance is strictly in respect of wear and tear, no claim will be entertained, where the machinery in question is lying idle, notwithstanding that deterioration may be going on even more rapidly than when it is fully worked.

A claim for wear and tear allowance shall have to be made along with the return, although in practice it can be done at any time before the assessment. Even when there is no profit, it is better to make the claim to preserve the right to carry forward. The amount is left to the discretion of the Commissioners with the proviso that the total of the allowances given in respect of it shall not exceed the actual cost thereof to the person making the claim. Excepting in the case of ships, which are given an annual allowance by way of percentage on the prime cost (plus any additions), the allowance is given by way of percentage on the written down value of the asset at the beginning of the year of assessment : (*Peninsular and Oriental S. S. Co.* v. *Leslie*, 4 T. C. 177) and is deducted from the statutory profit for the year. Where the amount of the allowance due exceeds the amount of the statutory profits chargeable, the balance which cannot be given in consequence of the insufficiency of such profits may be carried forward and added to the allowance for the following year or where there is no allowance for the following year, regarded as the allowance for that year, and so for succeeding years.

The property in respect of which depreciation is allowed must have been used for the purposes of business. The word "used" in section 10 (*2*) (*vi*) may be given a wider interpretation so as to embrace passive as well as active user. Machinery which is kept idle may well depreciate, particularly during the monsoon season. The ultimate test is whether without the particular user of the machinery, the profits sought to be taxed could have been made. The word "used" denotes actual user and not merely being capable of being used. But when machinery is kept ready for use at any moment in a particular factory under an express contract from which taxable profits are earned, the machinery can be said to be used for the purpose of the business which earns the profits, although it is not actually worked : *C. I. T.* v. *Biswanath Vaskar Sathe*, 10 I. T. C. 386 : A. I. R. 1937 B. 493 : 174 I. C. 327. This view is not in any way inconsistent with the views of the Lahore High Court in the case of *Sri Gopalji & Co.* v. *C. I. T.*, 5 I. T. C. 257 ; *Radha Kishan & Sons* v. *C. I. T.*, 3 I. T. C. 73 and in *Bhikazi Venkatesh* v. *C. I. T.*, 8 I. T. C. 410.

Under the previous Act, it was never said in *expressis verbis* that an allowance for depreciation can be disallowed or proportionately allowed where the machinery does not work the full period. But in view of section 10 (*3*), provision for fair proportional part of the allowance has been made where building, machinery, etc. is not wholly used for the purposes of the business, profession or vocation, in respect of which any allowance is due under clauses (*iv*), (*v*) & (*vii*).

Right of the I. T. O. to revise Depreciation Allowance :

It is often said that the calculation of depreciation in any year is part of the proceedings for assessment and that the amount of depreciation when once it has been calculated, cannot be altered after a period of one year under the provisions of section 34 of the Act. It is further said that the income-tax authorities keep a running account of depreciation and this account cannot be varied.

This is giving too wide a meaning upon the term "assessment". The calculation of depreciation is no part of an assessment unless the person concerned is actually assessed to the payment of a tax. An assessee is defined in section 2 (*2*) as a person by whom income-tax is payable. If no income-tax is found to be payable, there is no assessee and no assessment. The taxing authorities may keep a running account of depreciation for the sake of convenience, but there is nothing in the Act which requires them to do so. Where a person has in no year been assessed to tax, the amount of depreciation which he is entitled to set off in the year when he is finally assessed is one which is open for decision in that year. There is no question of estoppel or *res judicata* in it. The taxing authorities are justified in revising the depreciation account as from the assessment year since which time there have not been sufficient profits to absorb the allowance on account of depreciation—*In re* : *New Victoria Mills*, 10 I. T. C. 108.

Original cost includes cost of freight, pay of engineering staff and actual allowances treated each year for depreciation.

Power of Income-tax Officer in ascertaining original cost :

In the case of *C. I. T., Madras* v. *Messrs Harveys Ltd.*, 8 I.T.R. 307, a question arose if the Income-tax authorities can go behind the document and it was held that they have such power. The mere production of documentary evidence showing that a contract has been made for purchasing assets at a certain price does not conclusively establish the correctness of a claim made by an assessee. It is open to the Department, in cases where the

circumstances show that an assessee has arranged to put an entirely fictitious price on his assets, to refuse to accept the documentary evidence produced in support of such fictitious price and to go behind the terms of the contract in order to ascertain what the real facts are.

The above view is in agreement with the view expressed in the case of *C. I. T., U. P. & C. P.* v. *Seth Mathuradas Mohta*, 7 I. T. R. 160, where it was laid down that the Taxing authorities were not precluded by law from going behind the deed of partition in order to ascertain the 'original cost' of the machinery and buildings.

Original cost includes cost of freight, pay of engineering staff and actual allowances treated each year for depreciation.

Basis of Computation, step system and slab system :

	20 p. c. on written down value.	Written down value method
Year 1, original cost		10,000/-
Allowance 15 p. c. on cost—1500	,,	2000
Year 2, written down value 15 p. c. on cost—8500	,,	8000/-
1500		1600
Year 3, written down value 15 p. c. on cost—7000/-	,,	6400
1500/-		1280
Year 4 ,, 5500	,,	5120
1500		1024
4000/-		4096

Depreciation Allowance, when to be given :

The following conditions are essential for claiming depreciation allowances—

(1) that the machinery, etc., depreciated must belong to the assessee.

(2) That the machinery, etc., must be used for the purpose of the business.

(3) That the prescribed form of the Central Board of Revenue, *e.g.*, Rule 9, must be duly filled up, signed and verified, before the assessment is completed.

The assessee is entitled to deduction in respect of depreciation of machinery in his mill even if the mill had been worked by the lessee and not by the owner. However, when claiming a deduction, assessee must give the particulars required in the Act. If he fails to do this, he is not in a position to claim deduction... *P. R. A. L. M. Muthakarupan Chettiar* v. *C. I. T.*, A. I. R. 1939 Mad. 357.

Excess Depreciation :

The trend of modern decisions is that where profits or gains of a business are insufficient to cover full depreciation, excess depreciation allowance can be set off against profits or gains of other business—*In re : Suppan Chettiar*, 123 I. C. 801 : 4 I. T. C. 211, relying on the decision in the case of *Karam Elliahi*, 116 I. C. 547 : 3 I. T. C. 456, where it has been held that depreciation on building and machinery, etc. can be set off against gains accruing from other sources.

In *Commissioner of Income-tax* v. *The Ballarpur Collieries*, 4 I. T. C. 255, it has been held that where a business has resulted in a loss, the assessee can claim that the amount of loss shall be increased by giving depreciation allowance in view of the provisions of section 10 (*2*) (*vi*) of the Act.

Successors to Business :

In *Massey Co.*, 115 I. C. 814 : 3 I. T. C. 302, it has been held that the successor-in-interest is entitled to carry forward depreciation to which full effect could not be given in years previous to succession, but calculation must be made on the original cost to the company to which it has succeeded and not on value at which assets were taken over by the succeeding company. *This Madras decision has since been overruled.*

Depreciation Allowance "On the Original Cost to the Assessee" :

There has been some conflict of opinion on the interpretation of the expression "original cost to the assessee," occurring in section 10(*2*) (*vi*) of the Act. In the case of *Massey & Co.*, 115 I. C. 814 : 3 I. T. C. 302, above referred to, it was held that where machinery of one company has been purchased by another company, "original cost to the assessee" does not necessarily refer to the cost to the actual assessee, but means the cost to the

vendor company. In *in the matter of Sarashpur Mills, Ltd.*, 137 I. C. 898, the Bombay High Court strongly and in *expressis verbis* dissented from *Massey & Co's* case (*Suforco*) and was of opinion that the phraseology of the Indian Act differs widely from the English Act upon the question of deduction on account of depreciation of machinery, etc. Under the English law it is clear that depreciation must be based on the wear and tear of the machinery, irrespective of the price paid by the assessee for it—*Scottish Shire Lines, Ltd.* v. *Lethem*, 6 T. C. 91. But under the Indian Act it is clear that where an assessee succeeds another in business, depreciation allowance in respect of machinery should be calculated on the basis of the cost to the person who is being actually assessed and not the previous owner of the business.

In the instruction portion of the Manual we find that when a person succeeds to a business, depreciation allowance due to him in respect of buildings, machinery etc., taken over by him from his predecessor should be worked out on the basis of original cost to the successor (not on the cost to the predecessor). The same will apply where the person is not a successor but merely a purchaser.

The Patna High Court in the case of *Matiram Rasonlal Coal Co., Ltd.*, 140 I.C. 904 : 6 I.T.C. 235, relying on the Bombay decision held that the expression "original cost to the assessee" means the person who is actually assessed.

The interpretation given by the Bombay High Court, in my humble opinion, appears to be more reasonable. The issue depends largely on the meaning of the term "assessee" in the case of succession. Does it mean "a person by whom income-tax is payable" as defined in section 2, or, having regard to the subject or context, the original purchaser of buildings, plant, machinery, etc. Where the business is transferred to the new assessee, the question is not approached from the point of view in the decision under review.

While, no doubt, there are obvious differences of language between the Indian Act and the English Act, and the basis of depreciation allowance is a fixed percentage in the Indian Act, it is based on wear and tear under the English Act. The benefit of the unexhausted depreciation allowance is held not to be personal under the English Law and if this is the view of the Indian Act also, it is certainly just and equitable to hold that the cost in relation to which the fixed allowance is granted for depreciation should be the cost to the successor in business, who is the assessee.

A literal interpretation of the term "assessee" does not curtail and confine the benefit of proviso (*2*) to previous unex-

hausted depreciation allowance of the particular assessee and cannot negative the benefit of the allowance itself in a case where there is a testamentary or intestate succession to a business as such.

The Bombay High Court view apparently depends upon the meaning of the word "assessee". A predecessor-in-interest cannot be held to be an assessee. An assessee purchases a motor car at a lakh of rupees, he gets the benefits in full for 5 years, on the 6th year he sells it away at Rs. 20,000/-, the purchaser again gets the benefit although it was exhausted. Receipt by way of gift is in the nature of a windfall and a purchase at a higher price cannot be ignored.

The Rangoon High Court in the case of *Commissioner of Income-tax* v. *Soloman and Sons*, 72 T. C. 58 : 11 R. 514, practically agreed with the Bombay decision by granting the depreciation allowance to the successor who succeeds to the asset, by bequest at its market value at the time of acquisition by way of gift.

Page, C. J., observes : ".....I am satisfied that it could never have been intended by the Legislature, that no allowance should be made for depreciation of buildings, machinery, plant or furniture belonging to the assessee, merely because the assessee had acquired title to the property by bequest and not by purchase. It may be that it is *casus omissus* and there would be force in such contention. In my opinion, however, the intention of the Legislature in using the words 'the orginal cost thereof to the assessee' was that the owner to be assessed, should not receive an allowance for depreciation, based on a capital value of the property higher than or different from the value of the property to the assessee at the time when he originally acquired it. No doubt, if the assessee purchased the property the best evidence would be the price that he paid for it, but where, as in the present case, the assessees acquired the property, otherwise than by purchase, in my opinion, 'the original cost thereof to the assessee' means and is the real value of the property at the time when the assessee acquired it less the expenditure necessary for the purpose of completing the title".

There is no fundamental misconception as to the meaning of the terms "cost" and "value" and it may be contended that the "original cost" is the value of the asset at the time the bequest took effect.

Depreciation of "Securities" : In *In the Tata Industrial Bank Ltd.*, 1 I. T. C. 152, the bank claimed depreciation on war bonds and securities on comparison of the market rates, the claim was disallowed.

If the method of calculation is to be confined to profits of a business, the assessee is bound to maintain year after year, all appreciation and depreciation—he cannot claim depreciation when the market values fall, without showing the increased value when it actually increases.

In *In the matter of the Punjab National Bank Ltd.*, 2 I. T. C. 184, it has been held that when a bank purchases higher class securities not for the purpose of trading in them, but for retaining them as emergency reserve, deduction is not admissible under section 10 or under any other provision of the Act.

Reference is also invited to *Scottish Investment Trust Company* v. *Forbes*, 6 T. C. 731, where claim for depreciation was disallowed.

The Privy Council in *C. I. T.* v. *Buckingham and Carnatic Co., Ltd.*, 9 I. T. C. 114, approved the decisions of the Bombay, Patna and Rangoon High Courts and overruled the decisions of the Madras High Court. The Allahabad High Court in *In re Kamalapat Motilal*, 1939 I. T. R. 347, agreed with the Bombay decisions.

Depreciation for lease or let out :

Section 12 has now definitely provided for depreciation allowance where assessee lets on hire machinery, plant or furniture belonging to him. Before incorporation of this in section 12, several cases cropped up with the results that depreciation allowances were allowed. The cases of *Mangalgiri Rice Factory* v. *C. I. T.*, 2 I. T. C. 251 : A. I R. 1926 Mad. 1032 ; *Sadhucharan Ray Chowdhury and ors.* v. *C. I. T., Bengal*, 8 I. T. C. 177 : 62 Cal. 804 : 39 C. W. N. 739. In *Commissioner of Income-tax, Madras* v. *Bosotto Brothers Limited*, 8 I. T. R. 41, it was held that the letting of the premises was part of the business of the company and so it was entitled to an allowance for depreciation.

Capital Asset :

Depreciation charges on account of the exhaustion of wasting assets, such as mineral deposits, quarries, etc., will not be allowed, —*Coltness Iron Co.* v. *Black*, 1 T. C. 287.

Provision to meet depreciation of capital asset is not permissible—*Naval Colliery Co., Ltd.* v. *C. I. R.*, 12 T. C. 1017.

Similar views have been expressed in the matter of *Edinburgh Southern Cemetery Co.* v. *Kinmont*, 2 T. C. 516. In the case of *Commr. of Income-tax, Burma* v. *K. A. R. K. Firm*, A. I. R. 1934 R. 1, it was held that the sum was not a trading loss, but was

only the estimated depreciation of the value of assets of the firm, based upon a revaluation of such assets made for the purpose and on the occasion of the reconstruction of the firm.

Motor Cars :

For the purpose of allowing depreciation, the life of motor cars is taken at five years under the Income-tax rules. The Income-tax Officer is bound to maintain depreciation account as required under the rules, no matter whether it is claimed or not. *Govt. Mail Motor Service*, 6 I. T. C. 120.

Second Proviso :

To mitigate the hardship, this proviso has been added to ensure that depreciation allowance due for a year prior to the change of law, the unabsorbed part shall not be deducted from original cost in arriving at the written down value.

The effect of this is to spread the writing off of the unabsorbed depreciation over a larger period. Depreciation unabsorbed at the time of the change of law to be carried forward without time limit until it was absorbed, but was to be deducted from, that is to say, allowed against profits before any further allowance for depreciation was to be made for any further allowance for depreciation was to be made for any particular year and subsequent to the change of law.

Obsolescence Allowance :

The Amendment Act does not speak of obsolescence, but speaks of 'sold or discarded'. But whatever appellation is given, the clause lays down specifically that allowances are permissible, where plant or machinery is disposed of (whether by sale or by scrapping) provided that the asset has been completely written off in the books of the assessee. This allowance is intended to cover insufficient depreciation allowance, and that is a provision for bringing in as profit any excess in price obtained for the plant disposed of over the difference between the depreciation already allowed and the original cost of the plant or machinery.

It is important to notice that where any part of the machinery is sold, the amount to be deducted from the value of the machinery for the purpose of computing future depreciation allowance, which will be the written down value of the item sold, and not the actual sum received for it.

Obsolete—Meaning Of :

The expression "obsolete" in section 10 (*2*) (*vii*) includes cases of unfitness, arising from whatever cause, whether it is total

destruction or supersession by new invention—*In re : Rathan Sing*, 2 I. T. C. 294.

"Obsolete" means "out of use, of a discarded type of fashion for the particular purpose for which it was intended and cannot apply to a case, when the machinery remains suitable but there is no occasion for its use".

"*Worn out, degenerated or out of date as machinery for the purposes for which it was originally installed.*" "Obsolete machinery under the Act means machinery, which, though it is able to perform its function, has become in common parlance out of date and performs its functions so indifferently or at such a cost, that a prudent man instead of continuing to use such machinery, would discard it and instal more labour-saving machines. In our opinion the word 'obsolete' is quite inapplicable to a new car which is wholly useless for its purposes, because it was broken to pieces in an accident."

Obsolescence Allowance :

It is purely a question of fact, inasmuch as whether it is obsolete for the invention of a new machine or whether it is sold, is purely a question of fact—*Ramnadhan Chettiar*, 46 M. L. J. 42.

In the *Swadeshi Cotton Mills, Ltd.*, A. I. R. 1929 All. 70, it has been held that where a machine is discarded as obsolete and also because it is beyond repairs, and as such the machine is sold after it broke down, section 10 (*2*) (*vii*) is applicable as it is obsolete within the meaning of the Act.

In *Gokul Das Mills, Ltd.*, 80 I. C. 282, deductions for obsolete machinery were allowed.

But loss, accidental or otherwise, resulting in destruction does not entitle the assessee to claim allowance under this head —*In re : Rathan Singha*, 2 I. T. C. 294.

It is therefore clear that a claim under this head can only be given effect to, when the machineries are obsolete in its real sense, but certainly it does not justify any allowance for any change of business from one to another.

The Calcutta High Court, in the case of *Sheodoyal Jagannath*, 35 C. W. N. 214, held, "where machinery has been sold or discarded not for the reason that employment of newer types of machinery had become necessary, but for the reason that being old and worn out, it could not be worked out at a profit in competition with new machine, obsolescence allowance, such as is provided by section 10 (*9*) (*vi*) cannot be claimed."

The above view is based on the line of decision in the case of *South Metropolitan Gas Co.* v. *Dadd*, 13 T. C. 205. It is said

that replacement for diminition in efficiency or because the installation of a new type of machinery will be more profitable although the displaced article has useful life, does not make the machinery obsolete.

In *in Burnley S. S. Co.*, 3 T. C. 275, it has been held that when a ship suffers a loss of earning power, being out of date, obsolescence allowance is not permissible.

General Practice :

A machine may become unfit or unsuitable for the work for which it was installed by its becoming destroyed (by fire), by its becoming worn out, by a change in the nature of the business carried on, or by its being rendered out of date by the invention of a more efficient machine. It is only when the latter event occurs that the machine becomes entitled to the allowance. The old machine must be fit to do its work, as before, and only put out of use by the fact of its eclipse by a more up to date machine, which makes it unprofitable to continue working the old one—*Evans and Philips, in re.*, 4 A. T. C. 20.

There is no time limit for making claims, but it is advisable that the claim should be made before the assessment is completed.

Municipal Taxes :

Tax on company is allowable inasmuch as the payment of the compulsory levy to the municipality by way of the tax on companies, is not merely for the purpose of the extension of trade, it has a condition precedent to the exercise of the trade at all within the municipal limit.

It therefore stands that payment of company's tax, compulsorily leived on company by the municipality, is wholly and exclusively for the purposes of trade—*In re Nedungadi Bank*, 1 I. T. C. 355. Reference is also invited to *Smith* v. *Lion Brewery Co.* (1911), A. C. 150 : 5 T. C. 568 ; *Ushers' Wiltshire Brewery* v. *Bruce*, (1915) A. C. 433.

When municipality levies tax on profession, trade etc., the tax so paid is not a permissible allowance, because professional men are taxed not for carrying on their profession but for earning income—this is a payment out of income and not a payment initially for earning profits—*King and Patridge*, 49 Mad. 296, relying on *Ashton Gas.* v. *Attorney General*, (1906) A. C. 12.

Scope :

Sub-section 2 (*vii*) prescribes the allowance for machinery or plant, sold or discarded in consequence of its having become

obsolete. This allowance is now to be given in respect of any machinery or plant sold or discarded, upon the difference between the excess of the written down value and the sale price or scrare value, provided this amount is written off in the books of accounts. Any excess of the sale price or scrap value over the written down value is to be treated as an assessable profit.

Where a machinery is obsolete the assessee should write off the residual value of the machinery in the profit and loss account.

Basis of Computation :

Where a machinery was purchased at Rs. 1,000 and it worked full four years, when it become obsolete and was sold off for Rs. 150. Depreciation allowance was allowed at 5 p. c.

(1)	Original cost to the assessee	...	1000
(2)	*Less* Depreciation at 10 p.c. for 4 years ...	...	400
(3)	*Less* Scrap value ..	...	150
			450

Sold or Discarded :

Allowance under section 10 (*2*) (*vii*) can only be claimed in respect of machinery or plant actually discarded in the year of account—*Radhakisan and Sons, in re*, 3 I. T. C. 73.

Dead or Useless Animals :

It prescribes that an allowance shall be made in respect of animals, which have been used for the purposes of the business, otherwise than as stock-in-trade and have died or become permanently unless for such purposes. But where the business stands closed long before the accounting year and it is found that the cattle is not sold because they have become permanently useless, but are sold because the business stands closed, no allowance can be given in respect of the cattle sold. It must be understood that the words 'for the purposes of the business' are referable to the business in respect of which a return has been called and submitted—*In re Ganeshilal Bhattawala* (unreported) misc. case no. 447 of 1934 decided on 5th. May, 1938.

Allowance on account of Rates or Taxes :

The allowance under this clause covers only the land revenue and local rates or municipal taxes paid in respect of the portion of the *premises* used for the purposes of business. In assessing income from business, a local rate or tax which is payable irrespective of whether profits are made or not, should be treated

as expenditure incurred *solely* for the purposes of earning profits or gains within the meaning of section 10 (*2*) (*ix*) if the rate or tax is not an admissible duduction under section 10 (*2*) (*viii*). No allowance can be given on account of any other rates or taxes whatever. All rates and taxes therefore, whether levied on the profits of a business or which are charged on the proprietor of a business in respect of anything other than the actual portion of the premises used for the purposes of the business, must be disallowed. (See also paragraph 69 and Patna High Court Case No. 102 of 1920, *in the matter of Raja Jyoti Prasad Singh Deo of Kashipur*, 1 Srinivasan's Tax Cases, page 103.)

Local Taxes :

It lays down that no allowance is permissible for any tax, cess or rate assessed on the basis of profit. In the case of *Raja Jyoti Prasad Singh Deo*, 6 P.L.J. 62, Chief Justice Dawson Miller observes : "but I can see no reason why royalty received from mines should be regarded as anything other than income in the ordinary sense. There is no definition of the word 'income' in the Act itself, but its meaning as there used can, I think, be determined with sufficient accuracy from a perusal of the Act. Without giving an exhaustive definition it may be described as the annual or periodical yield in money or reducible to a money value arising from the use of real or personal property or from labour or service rendered, bearing in mind that in some cases, *e.g.*, income derived from house property, the yield must be taken as the *bona fide* annual value and not necessarily as the actual yield... . .....as a last resort the petitioner contends that the amount levied for cesses is an expenditure incurred solely for the purpose of making the income, but it would, in my opinion, be an undue straining of plain language to say that the payment of road cess is an expenditure incurred solely for that purpose." In *K. M. Selected Coal Co.*, 3 Pat. 295, it was held by Justice Dawson Miller : "if in fact the very nature of the business requires that certain expenses should be incurred before profits can be ascertained, then, I think, that such expenses can fairly be said to come within the meaning of (*ix*) of cl. (2) in section 10 of the Act, as expenditure incurred solely for the purpose of earning such profits or gains. In my opinion, therefore, the local rates which the assessee claims should be deducted from his taxable income in this case and should be deducted before the assessment of his income is made. Similarly in *Isabela Coal Co.* v. *C. I. T., Bengal*, 29 C. W. N. 923, the Calcutta High Court held : "Cesses paid by a Colliery Co., are local rates in respect of such part of the premises as is used for the purposes of the business within the meaning of clause (*viii*) of sub-section (*2*) of section 10 and

they are entitled to deductions of the amount of cesses paid. The word 'premises' has never been legally defined. Popularly, premises usually means a building ; colliery is premise." Attention is invited to the decision in the case of *Howrah Amta Light Railway, Ltd.*, 32 C. W. N., 757, that such payments are not deductible expenses. (*Vide* also the Patna High Court case of *Sivaprasanna Singha*, 2 I. T. C. 57).

In the matter of *Nedungadi Bank, Ltd.*, 2 I. T. C. 243, it was held that "the payment of the compulsory levy to the municipality by way of tax on companies is not merely for the purpose of extension of trade but it is a condition precedent to the exercise of the trade at all within the municipal boundary. We are therefore clearly of opinion that the payment of companie's tax compulsorily levied on this company by the municipality is wholly and exclusively for purposes of the trade and the object which that payment accomplishes is the same. The answer is, the expenditure is incurred wholly for the purpose of earning profits of gains."

In *Isabella Coal Co.*, 2 I. T. C. 87, it was held that colliery is a premise used for the purpose of business of extraction and sale of coal and the road and public works cess paid on account of the colliery is a local rate, 89 I. C. 789 : 53 Cal. 76 : 29 C.W.N. 923. Similarly income-tax on trading company by the municipality in the shape of licence fees can be deducted as a proper business allowance : *Nedungadi Bank Ltd.* (*supra*). (44 Mad. 489 *dist.*).

Bonus or Commission :

The object of this clause is to prevent double taxation of the same item. Under section 7, 'any annuity' pension or gratuity, and any fees, commissions, perquisites, or profits" including a right to occupy, free of rent, a place of residence, provided by his employees, due by an employee, in addition to his salary or wages, is deemed to be part of his salary or wages and taxable as such.

Before the amendment of 1930, the employer was not allowed to deduct any sum so paid as part of his working expenses. Hence such payments attracted liability in the hands of the employer and of the employee. But now the position has been altered allowing the employer deduction for the sum so paid. But it is confined to bonus or commission for services rendered.

Bonus or Commission paid for Services Rendered :

The sub-clause has been inserted by the Act of 1930. It lays down that where bonus or commission is paid to an employee for services rendered, the amount thus paid should be considered

as not liable to assessment provided, (1) it is reasonable with reference to his pay and condition of service, (2) with reference to the profits of the business for the year in question, (3) with reference to general practice in similar other businesses.

Bad and Doubtful Debts :

Sub-section *2* (*ix*), a new provision, has been inserted giving legal sanction to deductions of bad and doubtful debts. The provisions of the section are self-explanatory. The allowance has now been made statutory. Where accounts are on the 'cash basis', no allowance is permissible for bad and doubtful debts, but where the system is 'mercantile', they are allowable. Irrecoverable loans have been placed at a different footing, possibly on the ground that a money-lender or a banker may not recover in full all his investments. In the case of an assessee carrying on banking or a money-lending business, irrecoverable loans are treated as bad debts, regardless of the accounting system adopted. As a result of this money-lender or Bank having cash basis of accountancy may now claim deduction for bad and doubtful debts which are irrecoverable.

The criterion for allowance is (*a*) the amount must be written off in the accounts, (*b*) it must be actually bad, and (*c*) it must have become bad in the previous year. It must be understood that a loan which is not legally recoverable is to be treated as 'bad'.

Power of the Income-tax Officer :

On a perusal of the clause it is obvious that the Income-tax Officer has been vested with wide powers to make an estimate of bad and doubtful debts. The estimate of the amount is left absolutely at the discretion of the Income-tax Officer.

Under the United Kingdom Law, debts written off as bad and irrecoverable will be allowed, as well as reserves made in respect of doubtful debts, where these relate to specific debts to the extent to which they are respectively estimated to be bad. Bad debts recovered and provision for doubtful debts subsequently proved to be unnecessary will similarly be brought into review in the process of adjusting the account from the period during which the amounts in question are recovered. But bad debts incurred otherwise than in respect of transactions arising out of the ordinary course of trade are not allowable : *English Crown Spelter Co., Ltd.* v. *Baker*, 5 T. C. 327 ; *Curtis* v. *Oldfield*, 4 A. T. C. 183 : 9 T. C. 319. Unless the advancement of money on loan to customers etc., is an essential part of a business, bad debts incurred on such loans will not be permitted as

deductions in adjusting the profits of that business : *Reids' Brewery Co.* v. *Male*, 3 T. C. 279 ; *Stott* v. *Hoddinott*, 7 T. C. 85 ; *Morley* v. *Lawford & Co.*, 45 T. L. R. 30, and *Moore* v. *Stewards Lloyds, Ltd.*, 6 T. C. 501.

So long as there is any ray of hope left to receive a debt, however it may be, and so long as a debt is in the process of realisation, it cannot be said that it has become irrecoverable : *B. C. G. A., Ltd.* v. *C. I. T.*, A. I. R., 18 L. 306 : 1937 I. T. R. 279. In *Raj Mal Pahar Chand* v. *C. I. T.* (unreported), it was held that bad debts allowable in past assessment cannot be allowed in subsequent assessment but the Commissioner can refer the matter to the Central Board of Revenue. In *Seth Birdi Chand* (unreported), it was held that findings of the taxing authorities regarding bad debts, that is, what is a bad debt and when a debt became bad are matters which cannot be raised in a reference to the High Court.

When the amount of bad debt became irrecoverable not in the accounting period, it cannot be allowed. *In South India Industrials, Ltd.* v. *C. I. T.*, 8 I. T. C. 128, it was held that losses sustained during any other period could not be allowed. See also *Khemchand Thoomal* v. *C. I. T.*, 10 I. T. C. 245. (*In Bhagabandas Nanakchand* v. *C. I. T.*, 10 I. T. C. 448, bad debt was disallowed as it was found bad long before.) In the matter of *Bissendayal Doyalram*, A. I. R. 1938 Cal. 636 : 1938 I. T. R. 165, *A* and *B* who carried on a joint business separated and divided the assets and liabilities between themselves. Each started his separate business unconnected with the former joint business. *B* claimed during his assessment that an outstanding debt assigned to him in partition with *A* was irrecoverable and hence should be exempted. It was held that the loss claimed was in the nature of a capital loss.

A Partner with $\frac{1}{3}$rd. share in partnership cannot single out only one item of irrecoverable debt of the partnership. He must prove loss in partnership as a whole. *Matilal Onkare Chaure* v. *C. I. T.*, 9 I. T. C. 16. Mere forbearance on the part of creditor in trying to recover a debt, out of regard for relationship, does not make the debt bad, specially when the debtor is solvent—*Prayag Narayan* v. *C.I.T.*, 6 I.T.C. 110. In *Dinshaw* v. *C. I. T.*, 6 I. T. C. 150, it was held that anticipatory loss cannot be allowed. Where an assessee after attachment realises some amount and releases the debtor from all further liability, the deficit is not a bad debt,—*Sheoshyamal Hiralal* v. *C. I. T.*, A. I. R. 1938 Pat. 577. It must be understood that the decision of the Income-tax Commissioner on the question whether a debt is bad or irrecoverable operates only for the particular year under his assessment and it would be open to an assessee to put forward

claim in respect of any particular debt in any subsequent year, provided the debt had not been received in the meanwhile. *Raulia Mal Ranakram* v. *C. I. T.*, 7 I. T. C. 352 : A. I. R. 1935 L. 539. But it must be understood, as laid down in *Binjraj Hukumchand* v. *C. I. T.*, 5 I. T. C. 303 and *Puran Mal* v. *C. I. T.*, 2 I. T. C. 236. Where an assessee claims a deduction on account of irrecoverability of a certain loan, the onus lies upon him to prove that the loan had become bad in the year of the account. *In Shomchand Malukchand* v. *C. I. T.*, 1938 I. T. R. 297 : A. I. R. 1938 L. 545, it was held that an assessee cannot claim a debt as bad simply because some of his debtors are in difficulty.

Bad Debts :

An authoritative pronouncement has been made by the Privy Council in the case of *Sir S. M. Chitnavis*, 55 C. L. J. 575 : 6 I. T. C. 453.

Their Lordships are of opinion that the view of the Judicial Commissioner is erroneous and that the assessee has no such decisive voice. For the purpose of computing yearly gains or profits, each year is a separate self-contained period of time, in regard to which profits earned or losses sustained before its commencement, are irrelevant. It therefore follows that a debt, which had in fact become a bad debt before the commencement of any particular year could not properly be deducted in ascertaining the profits of that year because the loss had not been sustained in the year.

In *In Binjraj*, 35 C. W. N. 589 : 58 Cal. 1446, the Calcutta High Court held that the assessee cannot be allowed to pick and choose the year in which he will treat a debt as bad and write it off.

In their Lordships' opinion the assessee has no option at all ; whether a debt is a bad debt and if so, at what point of time it became a bad debt, are questions of fact to be determined, in the event of dispute, by the appropriate tribunal and not by the *ipse dixit* of any one else.

"The main fact that a debt was incurred at a date beyond the period of limitation will not of itself make the debt a bad debt, still less will it fix the date at which it became a bad debt. A statute-barred debt is not necessarily bad, neither is a debt which is not statute barred necessarily good."

The Bombay High Court in *Ballav Das Muralidhar*, 4 I. T. C. 318 has held that bad debts should be written off within a fair and reasonable time and that the Commissioner has no arbitrary discretion.

But the Patna High Court in the case of *Bansidhar Podda*, A. I. R. 1934 Pat. 46, agreed with the Privy Council decision in the case of *Sir S. M. Chitnavis*. In the case of *Lala Puranmal*, 2 I. T. C. 236, it has been held that the onus is on the assessee to prove that a debt became bad and irrecoverable in the particular year in which the deduction is claimed.

But in the matter of *Ballavdas Muralidhar*, 54 Bom. 430, A. I. R. 1930, Bom. 201, it has been held that if the assessee claims to deduct bad debts becoming irrecoverable some years before they are written off, such bad debts should be written off within a fair and a reasonable time and the Commissioner has no arbitrary discretion to say that bad debts should be written off in a particular year. Each case should be decided on its own merits.

Bad debts arising out of old business, if allowable :

Where an assessee claims as bad debts losses of the old business which were allotted to him when the old business was dissolved, it is held that the losses claimed are losses of the old business and are therefore not properly allowable against the profits and gains of the new firm. It is further held that in so far as smaller sums of nominal debts were realised the losses so sustained were losses of capital and were not trading losses. *Chimanlal Rameshwarlal* v. *C. I. T., Bengal*, 8 I. T. R. 408.

When debt becomes bad and should be written off : In the case of *Alagananda Mudaliar* v. *C. I. T., Madras*, 8 I. T. R. 69, Justice Mockett observed : 'An Income-tax Officer in dealing with these matters deals with them as laid down by Lord Russel in *Income-tax Commissioner* v. *Chitnavis*, 59 I. A. 290 : 28 N. L. R. 205 : 137 I. C. 772 : 36 C. W. N. 797, upon a consideration of all relevant and admissible evidence. It is on such evidence that questions of facts are to be decided by him, such as whether a debt is bad and when it became bad". Though eventually the decision when a debt became bad must be with the Income-tax authorities and not with the creditor, the conduct of the creditor must clearly be relevant and be considered in the ultimate decision.

So far as bad debt due by a Joint Stock Company is concerned, the Privy Council decision in the case of *Dinshaw* v. *C. I. T., Bombay*, 66 I. A. 318 : 58 Bom. 579 : A. I. R. 1934, P. C. 180, lays down the principle. Whether a debt is bad, or the extent to which it is bad, is a question of fact. A debt due from a limited company can be treated as irrecoverable and as bad debt even when the debtor company is not actually wound up or has not ceased to be a going concern. Whether a debt is wholly or partly and to what extent bad or irrecoverable, is, in every case,

whether the debtor is a human being or Joint Stock Company or other entity, a question of fact to be decided by the appropriate tribunal upon a consideration of the relevant facts of the case.

Where a partner of a firm is entitled to interest for debts due from retiring partners, he cannot write off the dedts, for not having brought them into Income-tax accounts as revenue of the continuing firm—*Amarchand Madhabji & Co.* v. *C. I. T., Bombay*, 8 I. T. C. 224.

In *Tahila Ram Amir* v. *C. I. T., Punjab*, 8 I. T. C. 345, where an assessee transfers debts to relatives for purported cash consideration and claims the deficit as irrecoverable, bad debts claimed cannot be allowed, not being proved, as it was an accommodation transaction.

Business Expenditures in General :

Section 10, sub-section (*2*) clause (*xii*) is an omnibus section and has been drafted according to the United Kingdom Law. The language is as below : "In computing the amount of profits or gains to be charged, no sum shall be deducted in respect of (*a*) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment or vocation". Under the old Act the expression "incurred solely for the purpose of earning such profits or gains" occurred and now on the line of the United Kingdom provision, it has been changed into 'laid out or expended wholly and exclusively for the purposes of such business, profession or vocation."

No expenditure can be allowod except such as are "wholly and exclusively laid up for the purposes of such business etc." Lord President (Clyde) in *Robert Addie and Sons' Collieries, Ltd.* v. *C. I. R.*, 8 T. C. 671, said "what is money wholly and exclusively laid out for the purposes of trade" is a question which must be determined upon the principles of ordinary commercial trading. It is necessary accordingly to attend to the true nature of the expenditure, and to ask oneself the question, is it a part of the company's working expenses : is it expenditure laid out as part of the process of profit earning : or on the other hand, is it a capital outlay : is it expenditure necessary for the acquisition of property or of rights of a permanent character, the possession of which is a condition of carrying on its trade at all.

In the matter of the *Amrita Bazar Patrika, Ltd.*, A. I. R. 1938 Cal. 241 : 174 I. C. 817, the Patrika claimed by way of deduction, litigation costs incurred in defending its editor and printer in a contempt proceeding but it was disallowed. It will be seen that generally those expenses will be allowed which are

actually incurred in the business of earning profits, as distinguished from outlay necessary or desirable to put the business in the position to earn profits. There should, moreover, be an element of necessity in the incurrence of the expenses allowed (*Ouns Worth v. Vickers*, 6 T. C. 671).

In *Strong* v. *Woodfield* (1906), A. C. 448 : 5 T. C. 215, Lord Davey stated : "In my opinion, it does not follow that if a loss is in any sense connected with the trade, it must always be allowed as a deduction, for it may be only remotely connected with the trade, or it may be connected with something else quite as much as or even more than with the trade. I think only such losses can be deducted as are connected with, in the sense that they are really incidental to the trade itself." In the preceding paragraph he said "A deduction cannot be allowed on account of loss not connected with or arising out of such trade—That is one indication. And no sum can be deducted unless it be money wholly and exclusively laid out or expended for the purpose of such trade. That is another indication." Lord Davey said "It is not enough that the disbursement is made in the course of, or arises out of, or is connected with, the trade, or is made out of the profits of the trade. It must be made for the purpose of earning profits."

In the case of the *C. I. R.* v. *Alexandar Von Glehn & Co. Ltd.*, 12 T. C. 232, it was held that the mitigated penalty and costs were not admissible deduction in arriving at the profits of the company's trade. Lord Sterndale said "Now, what is the position here : This business could perfectly well be carried on without any infraction of the law at all. This penalty was imposed because of an infraction of the law and that does not seem to me to be, any more than the expense which had to be paid in the case of *Strong* v. *Woodfield*, [5 T. C. 215] appeared to Lord Davey to be a disbursement or expense which "was laid out or expended for the purpose of such trade, manufacture, adventure or concern, nor does it seem to me, though this is rather more questionable, to be a sum paid on account of a loss connected with or arising out of such trade, manufacture, adventure or concern."

Salaries :

Salaries charged in respect of the services of the proprietors of a business or of a partner in a firm must be added back but wages paid to wife or children will be allowed. In the case of payment of wages to wife, it is usual to insist on a declaration that there has been an actual payment in cash : *Thompson* v. *Bruce*, 6 A. T. C. 522. In other cases, when payment is made in kind, the amount to be allowed will be the actual cost of goods issued

to the employees concerned. Lump sum payment in lieu of pension or by way of testimonial to retiring employees are allowable expenses—*Smith* v. *Incorporated Society of Law Reporting for England and Wales*, 6 T. C. 477 and *Hancock* v. *General Reversionary and Investment Company, Ltd.*, 7 T. C. 358.

In *Ramkrishna Ramnath Firm* v. *C. I. T.*, 4 I. T. C. 171, remuneration to a partner was allowed ; but sums styled as commission, pagdi (bonus or commission) or by any other name should be simply the profits of the firm appropriated among the owners after they had been earned.

In *B. K. Pal & Co.* v. *C. I. T.*, 7 I. T. C. 204 : A. I. R. 1939 Cal. 196, as the payment to the adult male members were not *bona fide* payments and as they were not *bona fide employees*, allowances were refused. Attention is invited to the case of *Messrs. N. L. Sen*, 40 C. W. N. 833 : 9 I. T. C. 329.

But section 10(*4*) has definitely laid down that 'any allowance in respect of any payment by way of interest, salary, commission or remuneration, made by a firm to any partner of firm' should not be allowed and thus the decisions for or against are of no avail.

Boarding Expenses, Travelling Expenses, etc. :

Where an assessee incurs expenditures in the nature of boarding (*basha kharach*) and travelling (*Bidagri*) allowances to employees in order to retain their services for the benefit of the business and in order to increase their efficiency, these payments being made solely for the purposes of earning profits, should be deducted in calculating the assessee's taxable income. It is not open to the income-tax authorities to question the arrangements made by an assessee. Whether the assessee should retain the services of more or less hands should entirely depend on the discretion of the assessee.

Sums paid on account of items normally allowable will be disallowed, where the object of the expenditure is of an imperishable nature, as where wages are paid to employees engaged on capital enterprises, such as the construction of new plant for the firm's own use.

Profits on Exchange :

In the case of *McKenly* v. *Jenkins*, 5 A. T. C. 317 : 10 T. C. 372, it was held that a profit resulting from the retention of certain funds invested for ultimate payment in a foreign currency by reason of the fluctuation in the rate of exchange between the time of purchase and disposal, was a capital and non-assessable profit. Profits or losses derived from the ordinary conduct of

business, necessitating exchange operations should be retained in the accounts, however, as they are of a revenue as distinct from a capital nature.

Where an assessee, a resident of British India, carries on a money-lending business without British India and recieves profits therefrom in British India, in computing profits, allowances are to be made for the loss sustained on exchange as such loss is not a loss of capital but loss incurred solely for earning profits—*C. I. T.* v. *A. S. A. Concern*, A. I. R. 1937 R. 257.

Penalties :

When penalties are incurred by a trading firm for negligently failing to observe certain conditions imposed on it, such penalties cannot be allowed.—*In re Warness & Co.*, 12 T. C. 227.

Profits from an illegal undertaking are assessable and on deduction will be allowed therefrom on account of fines imposed (*e.g.* in smuggling, street book-making)—*Canadian Minister of Finance* v. *Smith*, 42 T. L. R. 734 ; *C. I. R.* v. *Warness*, 12 T. C. 227, and *In re Von Glehn*, 12 T. C. 232.

In *Southwell Savil Bros., Ltd.*, 4 T. C. 430, it was held that money spent in getting the "call of license" was an inadmissible deduction.

Penalties imposed for infringements of motor vehicles rules and excise rules are not allowable deductions.

In the matter of *A. B. Patrika Ltd.*, A. I. R. 1938 Cal. 241 : 174 I. C. 817, on the claim of the company to deduct expenditures incurred in defending the editor and the printer in a contempt proceedings, it was held that there was no sort of obligalion to reimburse either the editor or the printer for the expenses they had incurred. In any event it seems quite obvious, that the payment of the sum of Rs. 577-7-9 in no way assisted the Limited Company in earning profits or acquiring gains. The Directors considered it a moral obligation to indemnify the editor against the expenses to which he was put in defending the contempt proceeding, their motive is perfectly intelligible one, but it has not the effect of making the expenditure, a permissible deduction.

Similarly, money spent with a view to escape the consequences of the act of cheating is not deductible from the business of the assessee.

Where a firm of partners claimed to deduct from their income-tax assessment, the expenses incurred in successfully defending the individual partners and manager of their liquor department against criminal charges of conspiracy to commit

offences against the Excise Act, it was held that the sum could not be deducted either as a business loss or as an expenditure. When expenditure has been incurred by persons to protect their good name and they have succeeded they cannot be said to have suffered loss. *C. I. T., Burma*, v. *Gasper & Company, Rangoon*, 8 I. T. R. 100. It may be stated herein that in *Usher's Wiltshire Brewery, Limited* v. *Bruce* (1915 A. C. 433) Lord Parker said :—

"Where a deduction is proper and necessary to be made in order to ascertain the balance of profits and gains, it ought to be allowed..., provided there is no prohibition against such an allowance". If the assessees wish to deduct this sum as a loss, they must show that it is a loss connected with or arising out of their business. But the case of *G. Scammel and Nephew, Limited* v. *Rowles* (1939), All England Law Reports Annotated, 337, is not applicable. The principle there enunciated is that expenditure incurred for the termination of a trading relationship in order to avoid losses occurring in the future through that relationship, whether pecuiniary losses or commercial inconveniences, is just as much for the purposes of the trade as the making or the carrying into effect of a trading agreement.

In the case of *B. W. Noble, Limited* v. *Mitchell*, 11 T. C. 372, Sir Wilfrid Greene made a passing reference in deciding *Scammel's* case, in the following words : "I need not quote from the judgments in that case, but this, I think emerges from it with great clearness, that a payment made in the circumstances of that kind to terminate the employment of somebody in the service of the company whose continuance with the company is undesirable, is properly treated as a revenue payment and a deductible expense".

But in the case of *C. I. T., B & O*, v. *Maharajadhiraj Sir Kameswar Singh of Darbhanga*, 8 I. T. R. 52, it was held that the costs incurred by the assessee in successfully defending suits, are an allowable deduction. It may be pointed out here in connection with this case that it was the relationship of money-lender and borrower which provided a foundation on which the allegations against the late Maharaja were based and the main purpose of the suit was to obtain damages for the breach of an alleged money-lending transaction. Defence of such suits must be regarded, as a necessary though unpleasant part of the business of money-lending ; having regard to this principle, the ruling in *In re Kangra Valley Slate Co. Ltd.*, 16 Lah. 479, is easily distinguishable. In that case expenses incurred in defending a suit were disallowed as capital expenditure, but it was a suit, the success of which would have involved not merely trading loss, but would have put an end to the entire business, and the very existence of the company was affected.

Subscriptions :

The question of subscriptions is a very difficult one. With regard to charitable subscriptions, these will only be allowed, when they are paid out of funds of the business on account of benefits derived by the business or its employees. The most common example of this occurs, where payments are made to a local hospital in order to secure certain services, in the event of any illness or injury of any employee of the subscribing undertaking. In *Bourne and Hollingsworth* v. *Ogden*, 45 T. L. R. 222 : 14 T. C. 349, it was held that the allowance was concessional.

With regard to trade subscriptions, the general rule is that expenditures incurred must be wholly and exclusively for the purposes of the trade—*Rhymney Iron Company, Ltd.* v. *Fowler*, 3 T. C. 476.

Executive instructions have been issued to adopt a more liberal interpretation in allowing exemption for welfare expenditure.

Items not shewn in the account :

Occasionally there are expenses which can be charged against the profits of a business, but which do not appear in the profit and loss account. Annual value of property in lieu of rent, for instance, is frequently not charged in the accounts and where this is a proper deduction, it should be given effect to in income-tax computation. Similarly, renewals, which may have been capitalised in the accounts should be brought into computation, so that the effect of the adding back any depreciation charged in the account may be to some extent diminished.

Other charges, including costs incurred for Income-tax assessment :

Contingent charges and establishment charges, *e.g.*, postage, telegraph, telephone, legal charges, stationery and advertisement cost, railway freight and salaries, etc. paid *bona fide* to the employees are deductible expenses. Audit fees are permissible deductions.

Before this amendment, sums spent for representing a case before Taxing authorities were not allowed as permissible deductions, as laid down in the case of *Muniswami Chetty*. But under the present Act, instructions have been issued that 'audit and other accountancy expenses incurred annually including expenses of settling the income-tax liability of an assessee will be ordinarily allowed. But expenses connected with subsequent proceedings

before the higher authorities in Appeal, Review or High Court will not be allowed'.

Share of Profits :

A person carrying on a business through managers on such terms that the business remains his, but he is to recieve a fixed percentage of the gross collections and a further sum per year, and the balance, after paying all expenses, is to be retained by managers as their remuneration, is liable under this clause to be assessed on the whole profits of the business and not merely on the amount received by him.

The difference between the sum payable to the proprietor and the net trading profits, that is, the amount retained by the managers, cannot be described either as bonus or as an expenditure incurred for earning profits—*In re Narasingh Nandy Chowdhury*, 41 C. W. N. 46.

Payment to third Parties :

Where the purchaser of a business undertakes to the vendor as one of the terms of the purchase that he will pay a sum annually to a third party, irrespective of whether the business yields any profits or not, such annual payments not being made in the process of profits earning, nor being the consideration for the right and opportunity to earn profits, are not deductible as payments made solely for the purposes of the business. That the annual sum is made payable out of a particular receipt of the business makes no difference : *Tata Hydro Electric Agencies, Ltd.* v. *C. I. T.*, 41 C. W. N. 774 P. C. : 39 B. L. R. 775 : 168 I C. 173 : 1937 I. T. 202. (*Pondichery Ry. Co.* v. *C. I. T.*, 35 C. W. N. 895 ; *Bharat Insurance Co. Ltd.* v. *C. I. T.*, 38 C. W. N. 375 referred to ; *C. I. T.* v. *C. Mcdonald and Co.*, 7 I. T. C. 466 ; *Robert Addie and Son's Collieries, Ltd.* v. *C. I. R.*, 8 T. C. 671 followed).

Similarly, in *Indian Radio and Cable Communications Co., Ltd.* v. *C. I. T.*, 41 C. W. N., P. C. 869 : 168 I. C. 769 : 30 B. L. R. 1025 : A. I. R. 1937 P. C. 189, their Lordships of the Privy Council laid down that a payment, the making of which is conditional on profits being earned cannot properly be described as an expenditure incurred for the purpose of earning such profits. A company carrying on the business of communications by wireless entered into an agreement with the communications company, which was carrying on business of communications by cable. It was agreed that the company was to deliver all plant and machinery to the wireless company agreeing to carry on the business of communications company, in conjunction with its wireless business. It was agreed by the wireless company to

give half of the net profits of each year in consideration of the use of the plant and machinery and the business given to it. The consideration money was not described as rent. It was held that it was impossible to presume or infer that the half share of profits was being found only as rent, neither it can be deducted under this clause.

No precise test can be formulated as to what is and what is not expenditure, allowable for the purposes of income-tax, as incurred solely for the purpose of making or earning 'income, profits or gains'. In *P C. Mallik* v. C. *I. T.*, A. I. R. 1938 P. C. 118 : 42 C. W. N. 537, it was held that the Income-tax Officer in computing the chargeable income of the executors should not exclude any part of the sums allocated by the testator for his *Sradha* or the cost of obtaining probate of the will as the payments were made out of the income of the estate coming to the hands of the assessees as executors and in pursuance of an obligation imposed by the testator in whose shoes they stand. In *Rayalu Ayer and Nagaswami* v. *C. I. T.*, 9 I. T. C. 381, it was held that where payment was a distribution of profits already earned, it cannot with any show of reason be contended that it was incurred for earning profits.

Whether or not a deduction claimed by the assessee is really expenditures incurred solely for the purpose of earning profits must nearly always be a question of fact. Consequently when in respect of a monthly allowance, provided for by the Articles of Association of a Company and actually paid to the Directors as alleged remuneration for services, the Commissioner finds the payments as not *bona fide* but a mere device for escaping super-tax, and in that view allows a reasonable sum for services rendered, such decision does not raise any question of law.

The passing of such allowances by a competent auditor as reasonable, does not preclude the assessing officers to examine for themselves what the real situation is and whether the sums are properly deductible.—*In re L. N. Sen*, 40 C. W. N. 833.

Capital Expenditure :

Capital expenditure is what is spent once for all, while a revenue expenditure is recurring—*Vallombrosa Rubber Co.* v. *Farmer*, 5 T. C. 529. *In Rutharford* v. *C. I. T.*, 5 I. T. C. 71, where a partner purchased the share of other partners it was held that it was the price paid for to the retiring partner of his retirement for which the remaining partners were liable. Where debts are contracted in support of allied business expenditures incurred otherwise than in respect of transaction arising out of

the ordinary course of trade are capital—*English Crown Spelter Co., Ltd.* v. *Baker*, 5 T. C. 327, (*Cartis* v. *Oldfield*, 4 A. T. C. 183, 9 T. C. 319, *followed*). Unless advancement of money on loan to customers is an essential part of a business, expenditures incurred on such score are not deductible—*Rieds Brewery Co.* v. *Male*, 3 T. C. 279 ; *Stott* v. *Hoddinott*, 7 T. C. 85 ; *Morley* v. *Lawford & Co.*, 45 T. L. R. 30. Similarly, premium paid for leases are capital expenditures. Preliminary expenses in connection with the formation of a limited company and the raising of a capital are capital expenses—*Texas Land and Mortgage Co.* v. *Holtham*, 3 T. C. 255, and *Thomson* v. *Betty*, 3 T. C. 149.

Money spent on furniture and office fittings was held to be capital—*Hemraj Kanji* v. *C. I. T.*, 6 I. T. C. 354. In *Kangra Valley State Co , Ltd.*, 7 I. T. C. 375, expenditures incurred for defending a suit were held to be capital. Where it appears that there is no finding that the payment to the Western Electric Companies sound projector equipment is in the nature of capital, there is no material justifying the finding that it is out of profits—in the matter of *Hakim Ram Prosad*, 9 I. T. C. 181. In *Sir Kameswar Singha*, 6 I. T. R. 686, it was held that the sum of Rs. 4,98,900/- was laid out for the purchase of debentures but which was subsequently lost, was in its origin in the nature of an investment having no concern whatsoever with his ordinary money-lending business. The loss incurred was a capital loss. In *C. I. R.* v. *Grannite*, 6 A. T. C. 678 : 13 T. C. I. it was observed "broadly speaking, outlay is deemed to be capital when it is made for the initiation of a business or for a substantial replacement."

In *John Smith & Sons* v. *Moore*, 12 T. C. 266, Viscount Haldane observed, "My Lords it is not necessary to draw an exact line of demarcation between fixed and circulating capital. Since Adam Smith drew the distinction in the second book of his Wealth of Nations which appears in the chapter on the division of stock, a distinction which has become classical, economists have never been able to define much more precisely what the line of demarcation is. Adam Smith described fixed capital as what the owner turns to profit by keeping it in his possession, and circulating capital as what he makes profit of by parting with it and letting of changed masters. The latter capital circulates in this sense". Money, which temporarily goes out of a money-lender's hand under an agreement of repayment with interest or other advantages or value, can hardly be regarded as capital expenditure. The following observations of Cave, L. C., in *Atherton* v. *British Cables*, 10 T. C. 155, may usefully be cited. "A sum of money expended not to necessity and with a view to direct immediate benefit to the trade, but voluntarily and on the grounds

of commercial expendiency and in order indirectly to facilitate the carrying of the business may yet be expended wholly and exclusively for the purposes of trade."

That the deposit of Rs. 50,000/- was made in the course of the money-lending business out of the circulating capital and not by way of investment of fixed capital was held on the facts of the case. The fact that the deposit carried the low rate of interest at 7 per cent only does not at all affect the position. The loss therefrom is a trading loss. Where a loan transaction terminated entirely with the purchase of the property of the debtor and thereafter the assessee held it as its owner along with other properties and submitted a return accordingly, and subsequently after 3 years he sold out the property at a loss, it could not be held to be a trading loss—*Abdul Hossain Musaji* v. *C. I. T.*, 10 I. T. C. 255.

Where owing to a premature termination of contract by suppliers of chemicals, the vendor company paid an agreed sum of £4,750, to the buyer company, it was held that the sum in question necessarily represented profits and should be treated as a revenue and not a capital receipt—*Bush, Beach and Gent, Ltd.* v. *Road* (Decided by the King's Bench Division on 26th May, 1939).

But in *Beare* v. *Carter*, decided by the King's Bench Division on 9th May, 1940, it was held that where the publishers of a literary work paid the author a sum of £150 for a license to publish an edition of the book, the fee so paid was in the nature of a capital payment and was not a profit or gain. In *Cameron* v. *Prendergast*, decided on the 12th of March 1940, by the House of Lords, it was laid down that payment of lump sum for not resigning directorship was liable to be assessed to income-tax. The assessee's continuance of the office of director was the essence of the bargain between the company and the assessee, that the transaction necessarily involved an agreement to continue to render services, and the money paid as the consideration for that bargain was a profit arising from assessee's directorship.

In *Hughes* v. *Utting & Co., Ltd.* (Decided by the House of Lords on the 12th March 1940), a company was carrying on the business of builders, contractors and developers of building estates. The company leased out some of the built houses on payment of premiums and ground rents. The company did not sell the ground rents but retained their reversionary interest. It was held that the realisable value of ground rents is not a trading receipt.

In the *Punjab Co-operative Bank Ltd.* v. *C. I T., Punjab*, 8 I. T. R. 635, their Lordships of the Privy Council held that in order to render taxable profits realised on sales of investments it

is not necessary to establish that the tax-payer has been carrying on what may be called a separate business either of buying or selling investments or of merely realising them. The true principle to be applied to such cases is that enhanced values obtained from realisation or conversion of securities may be so assessable where what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on, or the carrying out, of a business. In *In re K. H. Mody*, 8 I. T. R. 179, the assessee purchased an inam village for about Rs. 60,000, borrowing the whole of that amount at 7½% interest. He set aside for building sites some 266 acres divided into 1000 plots. He sold out 208 plots and the I. T. O. estimated the profits at Rs. 47,533 for the 208 plots. He had sold another 111 plots in the meanwhile. It was held that the assessee was carrying on a business of purchasing and selling land, but as the transaction was not complete it could not be said that this figure represented profits.

In *C. I. T., B. & O.* v. *Maharaj Kameshwar Singh Bahadur of Darbhanga*, 182 I. C. 841. the facts are that the assessee purchased shares to the value of Rs. 8,75,000/- in a certain limited company which went into liquidation, and a new company was formed. This company having acquired the assets of the old Company agreed to allot certain shares and debentures to members of the old company. In that agreement the assessee was promised 43 shares of Rs. 100/- each and debentures to the extent of Rs. 5, 72,000-. This agreement was not fulfilled inasmuch as all the debentures were not granted to the assessee as promised. Thus the assessee lost a considerable sum of money of his original investment made in the old company. It was held that the difference between what the assessee in fact got and what he originally invested was a loss which was clearly a loss of capital and therefore it could not be taken into consideration for the purpose of arriving at the assessable income.

Payment of Deposit repayable with interest, Loan of Advance lost, if can be claimed as a business expenditure :

Their Lordships of the Privy Council held, reversing the decision of the Nagpur High Court, that the deposit was not a loan made in the course of carrying on the business of organising agents or in the course of the business of a money-lender. It was exacted by the company as a condition of the assessees being an agency which they hoped to manage profitably ; the purpose of being permitted to engage in such a business must be considered to be a purpose of securing an enduring benefit of a capital nature ; and the deposit amount could not, upon a true view of

the terms of the agreement and in the circumstances of the case, be regarded as an expenditure made in the course of carrying on an existing agency, or any other business. The loss of the deposit was therefore a loss of capital and could not be deducted from the profits of the business made by the assessees for purposes of income-tax—*C.I.T., C. P. & U. P.*, v. *Motiram Nandram*, 8 I. T. R. 132 (P. C.) : 44 C. W. N. 373 (P. C.) : A. I. R. 1940, P. C. 33, the decision of the Nagpur High Court in 1938 I. T. R. 10 *reversed.*

Issue of shares at par, while market value of shares at premium, difference between values, if a business expenditure :

In *Lowry* v. *Consolidated African Selection Trust Ltd.*, (Decided by the House of Lords on the 8th May 1940), the facts of the case may be summarised as below. A company issued to its employees shares at par, when their market value was at a premium. It was claimed that that was done to further the interests of the company's trade and to secure a benefit to the company, and that the sum representing the difference in price was therefore a sum expended for the purposes of their trade, and was consequently deductible before arriving at the amount of the company's profits :—Held, (Lord Wright and Lord Romer dissenting) that it had not been established by the respondents that any sum had thus been expended or laid out for the purposes of the trade of the company. There was no principle laid down in *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K. B. 417, which could be applied to the facts of this case. *(Hilder* v. *Dexter*, 71 L. J. Ch. 781 *applied.)*

Disbursements wholly or exclusively for purposes of trade :

The facts of the case of *Hyett* v. *Lennard* (decided on the 3rd of May by King's Bench Division), are stated briefly as below. The respondent carried on the business of ladies' tailor at number of branch shops. Some time before October, 1930, he acquired the transfer of a lease of premises at 50, Oxford Street, London, and opened a branch there. The lease was for a term of thirty-five years, at an annual rent of £ 3,500. The Oxford Street business proved unprofitable and it was closed in July 1935, but business of other branches continued. He then sublet the premises at 50, Oxford Street, at a rent of £ 2,500. It was held that the respondent entered into an obligation under the head lease to pay £ 3,500 annually, wholly and exclusively for the purposes of his trade, and the loss of £ 1000 a year by the subletting was pro-

perly deductible in computing the profits or gains of the respondent's trade.

In *K. T. M. T. M. Abdul Kayum Sahi Hossain Sahib* v. *C. I. T., Madras*, 7 I. T. R. 652, it was held that acquisition of an exclusive right for a certain period to collect chanks on payment of certain amount in instalments, does not entitle the assessee to claim deductions for the amount paid as it is a capital expenditure.

Provident Fund Contributions :

It is the settled policy of the Government to encourage the particular form of thrift by exempting contributions to these funds and the interest earned by them. The Taxation Enquiry Committee, 1936, observe that with due regard to the prevention of abuse, interest credited, so far as it does not exceed one-third of the salary for the same year, should be deducted from the employee's total income, inclusive of employer's contributions and added interest, in computing the income to be taxed, and that disallowed sums should no longer be segregated in order to compute for further disallowance the interest thereon.

There may be funds whose objects are quite beyond reproach but which nevertheless are not of the kind to which income-tax exemption was intended to be given. Official Funds (*i.e.*, those to which the Provident Funds Act, 1925, applies) should be required to fulfil the same conditions as any others in order to obtain income-tax exemption. Approval of such a fund under the Provident Funds Act, 1925, should not carry with it automatic exemption from income-tax, nor should unsuitability for income-tax exemption preclude its approval under the Provident Funds Act, 1925 (*vide* chapter IX-A).

Superannuation Fund Contributions :

The contributions by an employer to a properly constituted trust for the provision of employees' pensions are already allowed to him as an item of expense and under the present amendment, contributions of employees and the interest earned by the fund have been exempted (*vide* chapter IX-B).

In the case of contributions to Provident Funds, actual cash payment is allowable—*Burma Corporation Ltd.* v. *C. I. T.*, 4 I. C. 49.

When any fund to provide pensions to employees is set up in connection with a trade carried on under an irrecoverable trust and contributions thereto are made by employers and employees, such payments will be exempt from tax, subject to the recognition by the Commissioner. Contributions of employers are also

deductible but not exceptional payments outside the normal contributions—*Atherton and British Insulated and Helsby Cables, Ltd.*, 10 T. C. 155, and *Rowntree* v. *Curtis*, 8 T. C. 678.

Contributions to Provident Funds and other Funds :

Section 10 (*4*) (*c*) lays down that a payment to a Provident Fund or other fund, *e.g.*, superannuation fund for the welfare expenditure of employees, can be allowed when there is an effective arrangement to secure that the tax shall be deducted at source from any payments made from the fund which are taxable under the head "salaries"

On a reference to explanation (*2*) in section 7, it is apparent that a payment due to or received by an assessee from an employer or former employer or from a Provident Fund or other fund at or in connection with the termination of his employment, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions is a profit in lieu of salary. This explanation has been embodied to counteract the following decisions, *e.g.*, *C. I. T.* v. *Rangoon Electric Tramway Supply Co., Ltd.*, A. I. R. 1933 R. 22 : 6 I. T. C. 374 ; *R. Johnstone* v. *C. I. T.*, A. I. R. 1934 R. 377 : 7 I. T. C. 330 : 1934 I. T. R. 390 and *C. I. T., Madras* v. *Fletcher*, A. I. R. 1937 P. C. 261, 82 T. C. 321.

Assets not Wholly Used :

Sub-section (*3*) of section 10, gives in the case of assets not wholly used for the purposes of the business, a proportionate part of the allowance for insurance premia, repairs, depreciation and obsolescence. Where assets are fully used, full allowance should be given, but where partly used, proportionate allowance should be allowed.

In *C. I. T.* v. *Bhiswanath Bhaskar Sathe*, A. I. R. 1937, B. 493 : 10 I. T. C. 386, it was held that the word "used" is capable of being given a wider meaning and it embraces passive as well as active user. Thus the question of partial allowance eclipses when the assets are passively used.

Cess, Rate or Tax on Profits or Gains :

Sub-section (*4*) repeats the proviso in the previous Act, of section 10 (*2*) (*ix*), forbidding the allowance of cesses, rates or taxes on business profits and also forbids (a) the allowance of sums chargeable under the head 'salaries if payable without British India and tax is not deducted therefrom, (b) payments by a firm to any partner and (c) payments by an employer to a Provident Fund or other such fund, if he has not made effective arrangements to have tax deducted from payments made from the fund.

The disallowance of salary payments abroad is repeated in section 12 (*2*), proviso (*c*). The disallowance in respect of Provident Funds is necessary because in practice it is found that payments of accumulated balance from such funds are made abroad and Income-tax authorities have no means of recovering tax on them.

The sub-section now definitely lays down that no allowance for cess, rate or tax paid on the profits of any business, profession or vocation, is an allowable deduction, but not Income-tax and Super-tax paid.

Provident Fund :

For income-tax purposes, provident funds can be of three classes :

(*a*) Governed by the Provident Funds Acts of 1925.

(*b*) Recognised Provident Fund as embodied in chapter IX-A.

(*c*) Private Provident Fund.

In the Act of 1925, the following are included :

(1) Government and Railway Provident Fund.

(2) Local authority Provident Fund.

(3) General, viz., University, Colleges, Reserve and Imperial Banks.

In the Recognised provident fund, contribution by employees are exempt from income-tax, but not from super-tax.

But in the private provident fund, contributions by employee are allowed as a business expense where funds are constituted as irrevocable trust.

Income-tax and Super-tax :

Sub-section (*4*) definitely lays down that no allowance for cess, rate or tax paid on the profits of any business, profession or vocation, is an allowable deduction, but income-tax or super-tax paid without British India, in a State or country with which no arrangement for double income-tax relief has been made, should be allowed.

Salaries paid without British India :

Salaries paid without British India can only be allowed, if tax has been paid thereon or tax has been deducted therefrom under section 18 at the maximum rate. In section 18, it is obvious that salaries paid outside are allowable, provided there

is an agent to pay tax or that where the employer has deducted the tax at source, otherwise salaries paid outside are inadmissible.

Interest, Salaries etc. :

Section 10 (*2*) (*iii*) lays down that interest paid by a firm to a partner is not deductible, but sub-section (*4*) (*b*) goes further enjoining disallowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm.

Paid—meaning of :

'Paid' means actually paid or incurred according to the method of accounting followed. It therefore follows that notional payment is allowable in the mercantile system of accountancy.

Plant :

Section 10 sub-section (*5*) lays down that plants includes vehicles, books, scientific apparatus and surgical equipments purchased for the purpose of business, profession and vocation. In the absence of any definition we quote what Justice Rowlatt said : It is impossible to define what is meant by plant and machinery. It conjures up before the mind something clear in the outline, at any rate, it means apparatus, alive or dead, stationary and movable, to achieve the operations which a person wants to achieve in his vocation. Under the Indian Act books have been included within plant but in the United Kingdom law it has been held that books are not plants.

The terms machinery and plant are not synonymous. In the United Kingdom law the extension of the allowance to professions, employments, vocation, or offices, that is to say, to all the schedules and all parts of them, involves an extension of the ordinary commonsense meaning of the word plant.

Written down value :

The system in operation in the previous Act made it a matter of great difficulty to keep track of the various items of plants purchased at different dates and of the years in which they should drop out of the depreciation computations by reason of the full cent. per cent. allowance having already been made. The written down value basis automatically secures that the aggregate allowances can never exceed cent. per cent.

Assets acquired before or after :

When assets are acquired before the previous year but after the commencement of the Amendment Act of 1939, actual cost to the assessee would mean cost actually incurred minus the depreciation allowance allowable to him. The result is that sub-clause (*b*) takes away the right of an assessee for an allowance which he never enjoyed, if it was allowable to him.

In the case of assets acquired before the coming into operation of the amended section, the actual cost to the assessee, less

(i) for all years for which he has been assessed in respect of the business, all depreciation which has been calculated as allowable in respect of those years whether effectively allowed or not ;

and (ii) for all years for which he has not been so assessed, depreciation calculated under the provisions of section 10 at the rates in force for those years, but, for any year prior to the coming into operation of the Income-tax Act, 1922, at the rates in force on 1st April 1922.

Sub-section 10 (*5*) (*c*) takes away from the assessee the right of having his depreciation account of back years revised in a subsequent year and claiming depreciation on the basis of revised figure so determined, as depreciation previously allowed can be claimed in a subsequent year, under section 10 (*2*) (*vi*) (*b*).

Actual cost :

Where assets are acquired in the previous year, actual cost to the assessee should be the guiding factor.

Proviso :

In the case of a change of constitution of a firm, or of succession to a business, profession or vocation, section 26, as amended, provides assessment of the person or persons who owned the firm in the accounting year, instead of the successor, as hitherto the practice was.

It will be found that under the previous Act, there were conflicting decisions.

But in the case of *C. I. T.* v. *Mazagaon Dock, Ltd.*, A. I. R 1938 B. 241 : I. L. R. (1938) B. 374, it was held that the definitions in the Act, are to yield to the context. The word "assessee" in section 10 (*2*) (*6*), in the case of assessment under section 26 (*2*), based on the profits of a predecessor, must refer to such

predecessor. When therefore a company takes over the business of its predecessors from 1st April, 1935, and is then assessed under section 26 (*2*) on the profits accrued during the year ending 31st March, 1935, depreciation allowance is to be allowed on the original cost to the predecessor and not to the successor company (*C. I. T.* v. *Buckingham and Carnatic Co., Ltd.*, A. I. R. 1936 P. C. 5 : 159 I. C. 545 : 9 I. T. C. 114, held not applicable).

The proviso now definitely lays down that when it is a case falling within the purview of the proviso to sub-section (*2*) of section 26, actual cost to the assessee referred to in clauses (*a*), (*b*) and (*c*) of sub-section (*6*) of section 10, means the actual cost to the person who succeeded in the business, profession or vocation, thereby confirming the decision, in the case of *Mazagaon Dock Ltd.*, A. I. R. 1938 B. 241 : I. L. R. (1938) B. 374.

For the purposes of assessment under section 26 (*2*) the assessee must be deemed to be his predecessor in the business and allowance for depreciation must be made on that basis. In the assessment of the successor depreciation allowance is not to be calculated on the original cost to him, that is, the price paid by him, but as if he had been carrying on the business during the previous year and he would be entitled to all the deductions to which his predecessor would have been entitled, including unabsorbed depreciation of previous year. In *re Kamalapat Motilal*, 7 I. T. R. 374. In *re David Sassoon and Company, Ltd.*, A. I. R. 1940 B. 169, it was held that depreciation allowance is to be claimed by the assignee and not by the assignor. But it must be understood that there is no scope for depreciation for purchasing good will.

Trade Association :

Sub-section (*6*) brings under charge the profits of a trade, professional for similar association performing services for its members on remuneration. Where persons do no more than co-operate to provide for themselves social, sporting and similar amenities, there can be no question of such activities attracting tax. Consequently surplus arising from the operations of a member's club, whether incorporated or not, which merely provides social and other amenities, does not attract tax.

Similarly, where traders and professional men had merely united for the purpose of co-operative expenditure for the benefit of their business, of such a nature that the cost thereof would have been allowable as a business expense if it had been incurred individually, such activities cannot be regarded as amounting to the carrying on of a business. But trade and professional associa-

tions whose activities are primarily performance of specific services for its members for remuneration definitely related to those services, the payments therefore being generally allowed as expenditures in computing the profits of those traders. Where such services are performed for members only, those activities should be regarded as the carrying on of business. Under the United Kingdom law, mutual trading undertakings are *not* assessable in respect of the profits arising from their activities so far as these are confined to their own members. They do not however, enjoy exemptions from tax in respect of other income, such as interest receivable and that arising from the ownership or occupation of land. Difficulties sometimes arise with regard to sports club and similar business where members are allowed the use of grounds and other amenities on payment of suitable fees. Liability will attract in respect of the profits arising from such payments.

It sometimes happens that a club is owned by a limited liability company, where the members of the club are identical with those of the company, the principle of mutuality will not be considered as being discharged. Where, however, this is not the case, liability will attract in respect of the entire profits, less expenses of the concern, although a considerable number of members of the company may also be members of the club and *vice versa.*

Thus it is apparent that section 10 (*6*) makes taxable income of a 'trade' professional or similar association' performing specific services for remuneration definitely related to those services. Where such an association charges a fixed annual fee to all members and does certain services for its members, as and when the occasion arises, without making any extra charge, there is no liability.

Whether an ordinary social club is covered by the term "professional or similar association" is extremely doubtful and in my opinion a club which provides social, sporting or similar amenities, or sells food and drinks etc. to members alone, will not be taxed. But where these amenities are given to non-members, question of liability comes in.

Subscriptions to Trade or Professional Associations, Admissibility of :

In the cases of *Karachi Chamber of Commerce* and *Karachi Indian Merchant's Association*, 1939 I. T. R. 575 and 594 respectively, it was held that the income from fees received by these Associations from members for services rendered were not their income but merely surplus or saving. This decision was under the old Act and the present section 10 (*2*) (*6*) renders the above

two decisions ineffective and obsolete. Consequently fees paid to the Association should not be allowed as a deduction to the members.

Used for the purposes of Business :

The main criterion for allowances is that machineries etc. should be used for the purposes of business during the accounting year.....*Radha Kissen and Sons* v. *C. I. T.*, 3 I. T. C. 73. But where machineries etc. lie idle, although there may be depreciation, still the allowance is not permissible... . *Bhikaji Venkatesh* v. *C. I. T.*, 8 I. T. C. 410 and *Central Provinces Manganese Ore & Co., Ltd.* v. *C. I. T.*, 9 I. T. C. 191.

But the new section 10 (*3*) now definitely lays down that where any building, machinery, plant or furniture in respect of which any allowance is due under clauses (*iv*), (*v*), (*vi*) and (*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.

Incurred Solely for Earning Profits :

Sub-clause (*ix*) lays down that expenditure incurred solely for the purpose of earning profits or gains, is to be allowed. Section 10 provides various reliefs but section 10 (*2*) (*ix*) is rather an omnibus clause.

In the case of *J. W. Smith* v. *Incorporated Council of Law Reporting for England and Wales*, 6 T. C. 477, it was held : "the question whether the money was wholly or exclusively laid out or expended for the purposes of trade must depend upon a knowledge of the facts of the trade, of the way in which it is carried on, of the effect of payment made in that trade, all of which are questions of facts."

In *Strong* v. *Woodfield*, 5 T. C. 215, it has been definitely laid down that a disbursement to be admissible must be for the purpose of earning profits only. Disbursement out of profits or in the course of business is irrelevant.

In the case of *Anglo Persian Oil Co., Ltd.*, 37 C. W. N. 434 . 6 I. T. C. 419, it was held that money paid by a company in a lump sum to certain Selling Agents as compensation for loss of agency, whereby the company relieved itself of future annual payments, had been held to be not income, profits or gains in the case of selling agents. Payment of such lump sum can still be allowed as a proper deduction from the company's income under

section 10 (2) (*ix*) as non-capital expenditure incurred solely for the purpose of earning profits or gains.

Section 10 (2) does not say and does not mean that expenditure must be made with a view to produce profits in the year of account (*In re Tata Iron and Steel Co. Ltd.*, 64 I. C. 12 : 1 I. T. C. 125 ; *Vallombrosa Rubber Co., Ltd.* v. *Farmer*, 5 T. C. 529 *referred to.*)

Other Charges :

Insurance on account of theft, accident etc. would all be allowed, provided the loss when realised from the Insurance Company is paid into the profit and loss account.

Losses sustained by a Railway Company in compensating passengers for accident in travelling might be allowed—*Strong & Co. Ltd.* v. *Woodfield*, 5 T. C. 215.

In *Royal Insurance Co.* v. *Watson*, 3 T. C. 500, Lord Shand expressed the opinion that damages awarded to an employee for wrongful dismissal would be allowable as deduction. Damages for libel against newspaper proprietor would appear to be loss in the ordinary course of business of proprietors of newspaper —(Pratt and Redman's Income-Tax Law, 10th. Edition)—*In re Rama Swami Chettiar*, A. I. R. 1930, Mad. 808 : 52 M. 194.

Taxability of Amount Received for Libel to Business Reputation :

Petitioners got an amount in settlement of an action for an alleged libellous injury to their banking business. The Commissioner of International Revenue ruled that the compensation was taxable as income and his decision was sustained by the Board of Tax. On appeal the decision was reversed—*Farmer and Merchant's Bank* v. *C. I. R.*, 59 F. 912 (C.C.A.) 1932.

"Income" excludes the concept of return of capital, but what return of capital involves is not always very clear. Goodwill or business reputation is regarded as an asset, and it follows that should this be destroyed, there would be a loss of capital.

Not being in the Nature of Capital Expenditure :

"Capital Expenditure" can be defined as one which swells or improves the capital, when such expenditure is not recurrent but is incurred once for all, and is opposed to current or revenue expenditure—*Nope Chand Magniram*, 2 I. T. C. 146.

Expenditures may be incurred for initiating business, which can be done by investing capital, by purchasing business, goodwill etc.

Where business is purchased, the amount spent on that score is capital outlay—*London Bank of Mexico* v. *Apthorpe*, 2 K. B. 378 ; *Royal Insurance Co.* v. *Watson*, 3 T. C. 500, *vide* also the case of *Raghunandan Prasad Singh* v. *Commr. of I. Tax*, 4 I. T. C. 123.

Purchase of Unexecuted Contract Rights :

In the case of *City of London Corporation* v. *Styles*, 2 T. C. 239, it has been held that the price paid for such contracts cannot be allowed (see also the case of *John Smith and Son* v. *Moore*, 12 T. C. 266, and also *Allianza Co.* v. *Bell*, 5 T. C. 60.

In *Countess Warwick Steamship Co., Ltd.* v. *Ogg.*, 8 T.C. 652, it has been held that where a company secures a contract for the construction of a new ship, but owing to heavy slump in trade, the contract is cancelled on payment of £60000, the entire amount is a capital receipt and hence cannot be deducted—*vide* also the case of *Devon Mutual Steamship Insurance Association* v. *C. I. R.*, 13 T. C. 184, and also the case of *Giridhar Das Hariballav Das*, 3 I. T. C. 83.

Purchase of Goodwill :

Depreciation of goodwill seems to be loss of "fixed capital" and cannot be held to be a loss of the circulating capital and as such it is an admissible deduction—*Wilmer* v. *M'Namara & Co., Ltd.*, (1895) 2 Ch. 245.

Buying off Competitors :

In *Alagnan Chetty*, 3 I. T. C. 44, it has been held that amounts paid by an assessee to keep out a competition in the matter of obtaining contracts are capital expenditure (*City of London Corporation* v. *Styles*, 2 T. C. 239, and *John Smith & Sons* v. *Moore*, 12 T. C. 266 *referred to*).

Advertisements :

Ordinary advertisements are allowable expenditures as incurred solely for earning profits but the case is otherwise where initiation of business by advertisements is made.

In *Gillat and Watts* v. *Colquhoun*, 2 T. C. 76, Justice Grove says that normal advertisement cost is allowable. "But there must be a limit to the principle."

Reference is invited to *Watney Co.* v. *Musgrave*, 1 T. C. 272 : *Grainger & Sons* v. *Gwough*, 3 T. C. 462 and *Brickwood* v. *Reynolds*, (1898) 1 Q. B. 95 : 3 T. C. 600.

Addition to Business :

Where an Electric Light and Power Company on the security of its total assets, raised a debenture loan of Rs. 6 lakhs required for changing the system of supplying current from direct current to alternating current and for discharging loan, sums of money paid as brokerage, registration and legel expenses for raising the loan, are not allowable—*Nagpur Electric Light and Power Co, Ltd.*, 69 I. C. 29.

Where business is stabilised by the creation of Sinking Funds or Reserve Fund, the amounts spent cannot be allowed, simply because these are capital expenditures—vide *Blake* v. *Imperial Brazalian Railway*, 2 T. C. 58, and *Collins and Sons* v. *C. I. R*, 12 T. C. 773.

General reserves and reserves for capital purpose (debenture, redemption, provision for expiration of leaseholds, etc.) will be disallowed.

Reserves for anticipated losses and for expenditure not actually incurred cannot be allowed—*Young* v. *Commissioner of Inland Revenue*, 12 T C 827 and *Naval Colliery Co.* v. *C. I R*, 6 A. T. C. 351 12 T. C. 1017.

Compensation for Loss of Office :

In each case, liability will attach when the payment in question is in consideration of services rendered and has a cash value.

When, for instance, a lump sum payment is made in respect of services given over a considerable period of time, the payment is not considered as a capital receipt but as part of the remuneration for the year in which it is made. The position where a lump sum is paid by way of compensation for loss of office, on the other hand, is of a different character and such payments will not attract liability—*Chibbet* v. *Robinson*, 3 A. T. C. 521.

Whether or not any particular payment is in the nature of a profit arising from the holding of an office, which is the deciding fact, is a question of fact In *Cowan* v. *Seymour*, 7 T. C. 372, where a liquidator was paid by the share-holders for his satisfactorily winding up the business, it was held by the Court of Appeal not to be any profit of the office but a testimonial for past services and not assessable. It is an admittedly fine line which was drawn in coming to this decision and the fact that the payment arose after the completion of the office was possibly a deciding factor—*Duncan's Executors* v. *Farmer*, 5 T. C. 417

and *Beynon* v. *Thorpe*, 7 A. T. C. 190. When a sum of money is given to an incumbent, it accrues to him by reason of his office.

Lump sum payments in lieu of pension or by way of testimonial to retiring employees are allowable expenses—*Smith* v. *Incorporated Society of Law Reporting for England and Wales*, 6 T. C. 477, and *Hancock* v. *General Reversionery and Investment Co., Ltd.*, 7 T. C. 358. In *Royal Insurance Co.* v. *Watson*, 3 T. C. 500, it was held that damages paid to a dismissed servant were deductible.

In *Mitchel* v. *Noble Ltd.* 11 T. C. 372, it was held that lump sum payment to a retiring Director was a permissible deduction and in the case of the *C. I. R.* v. *The Anglo Brewing Co. Ltd.*, 12 T. C. 803, it was held that payments of compensation for loss of office to employees and *ex gratia* payment of annuities could not be allowed as not made for the purposes of trade.

In a case when payments were made after closing down the business the payments were rightly disallowed (Attention is invited to *Turner Morrison & Co.*, 117 I. C. 689 : 33 C. W. N. 1123 · A. I. R. 1929 All. 212 F. B. ; *Shaw Wallace & Co.*, 136 I. C. 743 : 36 C. W. N. 138 and the case of *Panchapagesa Ayer*, 62 M. L. J. 656 : 6 I. T. C. 69).

Personal or Private Expenses of the Assessee :

Of course salaries charged in respect of the services of the proprietor or of a partner in a firm cannot be allowed, but all other items of this nature, including wages to the wife or children, of a proprietor or partner, will be allowed. In the case of wages paid to the wife or children, it is usual for the taxing authorities to insist on a declaration that there has been actual payment in cash before allowing the amounts—*Thompson* v. *Bruce*, 6 A. T. C. 326.

Share of Profits in lieu of Salary :

An assessee is entitled to claim deductions for wages paid to employees. Where an employee does not get any pay but is remunerated by a share of profits, it does not stand to reason, why this should not be allowed. The Madras High Court in the case of *Mahomad Kasim Rowther*, 106 I. C. 308, held that agreement to work for share of profits, where there is no right of control, does not constitute partnership and is not deductible.

If the assessee is not eligible to claim the one, he is reasonably entitled to claim the shares paid as if it were salaries, (Reference is invited to the cases of *Johnson Bros. & Co.* v. *C. I. R.*, 12 T. C. 147 and *Eyres* v. *Finnieston Engineering Co.*, 7 T. C. 74).

Losses, Embezzlement, Theft :

In the case of *Jagannath Theranı* v. *C. I. T.*, 2 I. T. C. 4 · 4 Pat. 385, it was held by Justice Ross that embezzlement by an employee was not a loss in the nature of capital expenditure but was a loss incidental to the conduct of the business, and allowance should be made on this account. But in *Mulchand Hıralal* v. *C. I. T.*, 17 Pat. 102 : 1938 I. T. R. 151, Chief Justice Courtney-Terrel held that the decision in *Jagannath Theranı's* case was erroneous and the Patna High Court held that a loss by theft is not one of the allowances available to the assessee under section 10.

But after the Amendment Act of 1939, clause (*xıı*) of sub-clause (*2*) of Section 10, corresponds exactly to the wording of the United Kingdom Income-tax Act, 1918, and the above decisions are not applicable ; rather the English decision in the case of *Curtis* v. *J. & G. Oldfield Limited*, 9 T. C. 330, should be followed. The only point for the determination of the taxing authorities is whether they are fully satisfied from the evidence that the theft or embezzlement has in fact taken place and that the claim is genuine.

It may not be out of place to state here that in the case of *Ramaswamı Chettıar* v. *C. I. T.*, 4 I. T. C. 438 : 53 Mad. 904, the loss incurred by theft in the money-lending business was disallowed. In the case of *L. N. Gadodıa & Co.*, 7 I. T. C. 393 16 Lah. 494 : 1934 I. T. R. 322, loss of cash by dacoity committed by an employee in collusion with others was held to be a capital loss.

But since the incorporation of clause (*xıı*), this should be treated as an expenditure incidental to business.

At page 921 of Konstam's Law of Income-tax, 5th Edition, occurs the following passage.

There are also specific prohibitions against the deduction, in computing profits, of any loss not connected with or arising out of the trade in profession , in order to be deducted the loss must be in the nature of a commercial loss and therefore damages for personal injuries due to the negligence of the trader's servants and penalties for the breaches of Customs laws are not to be deducted, nor is a loss by defalcation or by excessive drawing on the part of a director, such payments are not necessarily incurred, nor do they form a necessary risk, in earning the profits.

It follows that loss of money by armed dacoities cannot be deducted. It was not necessarily incurred nor did it form a necessary risk in earning profit. It was not a commercial loss

In *re Rama Swami Chettiar*, 52 M. 194, two of the Judges held that loss by theft of money due to money-lending business and in business premises, should not be allowed, while the third Judge dissented. He apparently held that in money-lending business cash might be looked upon as the stock in trade.

But where the assessee carries on the business of piece goods and for that purpose accepts deposits from various people and pays interest on those deposits, the money being used in the business, no money-lending business is carried on so that, if there is any force in the contention that money would be the stock in trade of such a business, it does not arise here. It is not the stock in trade neither it is incurred for earning profits.

The loss is clearly a loss of capital and no allowance can be made for it.

Assessment of a Lawyer :

But where the assessee is a lawyer himself, the basis of accounting must be cash basis. The professional income which he derives practically represents the gross receipt and not the net income. As a matter of fact lawyers are entitled to claim deductions of the amount paid as license fee because the license fee is a condition precedent of his being allowed to practise as a lawyer. The amount of fees which are not recoverable within the year of account must not be added to his total income. He is further entitled to claim deductions for the boarding expenses of his clerks, for the salaries, if any, paid to them and further for any miscellaneous expenses he incurs for his clients. Where a lawyer purchases a motor car and claims deduction for depreciation and other expenditure as a lawyer, the income-tax authority cannot possibly allow any deduction at all for his motor expenses in view of the fact that it is not at all possible to ascertain how much was spent for his professional purposes. Where a lawyer resides in a rented house, he can claim deductions of the house rent on the ground that the house rent paid is for earning profits. It seems that the income-tax authorities must try to ascertain whether the whole house is essential for his business premises. If it is a rented business premise under section 9, he can claim full deductions, but if on enquiry it is found that he practicaily lives there with his family members setting apart a room for his profession, the income-tax authorities should allow a proportionate deduction of the rent paid. It is out of place for the authorities to suggest that a smaller house with less rent would have served his purpose. In the case of *H. S. Gour* of Nagpur, 3 I. T. C. 333, 350 : 6 I. T. C. 317, it was held that an estimated assessment is justified for

sale of books during several periods of years in a closed account and such sale of legal treatises is not a casual income within the meaning of the Income-tax Act.

Book-Sellers and Authors :

When an author publishes a book and is asked by the Income-tax Officer to file his return, he must show the net income or loss arising out of the sale of books. Take for instance *A* publishes 100 copies of books and sells within the year of assessment 50 books only and incurs an expenditure much more than the sale price . the Income-tax Officer must not take the sale price as net income and the closing stock together with it, inasmuch as the closing balance represents the capital.

Directors of Limited Companies :

When directors receive remunerations for their work, the amount of remuneration is an income within the meaning of the Act. Where the Managing Director makes any defalcation, the sum defalcated cannot be deducted inasmuch as this is not an embezzlement by an employee. This is according to the English ruling, and is quite in keeping with the ruling in *In the matter of Ramaswami Chettyar*, A. I. R. 1930 Mad. 808, 52 M. 194 ; but it seems proper that a loan company can claim deductions for such defalcations where the company can show that managing directors or directors are employees of the company whether they receive anything by way of salaries or not.

Contribution to Trade Associations :

Where businessmen form association for their own intererest and pay subscription for the maintenance of the association, the amount of subscriptions paid should form a legitimate trade expense.

Charities :

"It is a well known and long established custom for Indian traders and businessmen generally in all parts of the country to charge their customers or clients a small fee on each transaction, for example, so many pies on each bag of some commodity sold, the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes and, it is believed, are generally so applied ultimately.

"The legal position in regard to such receipts and expenditures is often very doubtful but considerable discontent has been caused by the disallowance of deductions claimed

by income-tax assessees on account of expenditure of this class.

"The Central Board of Revenue has now decided that in future, customary subscriptions by clients and customers for religious or charitable (including educational) purposes and the corresponding expenditure by the assessee, shall be left out of account altogether in computing the taxable income, provided that the Income-tax Officer is reasonably satisfied that the sums in question are really applied by the assessee ultimately (and not necessarily in the year of collection) to the object for which they were ostensibly collected.

"It has also directed that such subscriptions should not be separated from the business expenses of the subscriber and disallowed in assessing him." (Press Communique, dated the 25th February, 1928.)

After this announcement, in the 8th Edition of the Income-tax Manual the following has been inserted :

"Indian traders and businessmen charge their customers or clients a small fee on each transaction, for example, so many pies per bag of some commodity sold—the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes. Such customary receipts and the corresponding expenditure should be left out of account altogether for income-tax purposes."

Have the Taxing Authorities power to say whether expenditures incurred are reasonable or not :

It may be stated here that the Calcutta High Court in the matter of *Lakshminarayan Sen & Son, Ltd.*, 40 C. W. N. 833, held that the Income-tax authorities can go behind the accounts and ascertain for themselves whether or not the payments made were reasonable sums by way of remuneration and they can consider what payments are made for similar services in similar business and allow deductions which they consider proper and reasonable.

With great respect to the learned Judges, it may be pertinently pointed out that whether the directors were in reality overpaid or not is a matter of no moment, but the logical outcome of this theory is chaos. Where a larger sum for salaries or commission is debited with a view to the avoidance of tax by the employer, and where there are genuine grounds for suspecting, the question of determination arises, otherwise such an attempt will be an impossibility.

Where salary is paid *bona fide* for services rendered, the Taxing authorities should not attempt to place their valuation on the services but should allow the amount charged in the accounts unless there is evidence of attempted tax avoidance.

It may be mentioned herein that the Department is applying this principle in assessments.

Assessment of Insurance Companies :

Under sub-section (7) of Section 10, the statutory rules relating to the assessment of profits of Insurance companies have been withdrawn and the liability is now to be computed according to the rules contained in the Schedule of the Act. It may be mentioned here that the present rules differ materially from the old rules and these will be dealt with when the Schedule of the Act is discussed.

Whether the deductions specified in Section 10 (2) are exhaustive :

It is no doubt true that computation of profits is to be made after making certain allowances, but the question is, if the allowances specified are exhaustive or not. The Bombay High Court in the case of *Tata Industrial Bank Ltd.*, 1 I. T. C. 152, and in the case of *Dinshaw* v. *C. I. T.*, 6 I. T. C. 150, held that the list is exhaustive. The Calcutta High Court in the case of *Howrah Amta Light Railway* v. *C. I. T., Bengal*, 2 I. T. C. 509, and in *Lakshminarayan Sen & Sons* v. *C. I. T., Bengal*, 9 I. T. C. 329, held that so far as allowable expenditures are concerned, the Legislature having made express provisions for the purpose, only those items that are enumerated can be allowed.

The Patna High Court in *Jyoti Prasad Singh Deo*, 1 I. T. C 103, and in *Mulchand Hiralal* v. *C. I. T.*, 17 Pat. 102, practically agreed with the Calcutta decisions. But a dissentient note came from the Madras High Court in the case of *Ramaswami Chettiar* v. *C. I. T.*, 4 I. T. C. 438, where it was held that the list is not exhaustive, because profits are to be ascertained according to the ordinary commercial methods. Similar views were expressed by their Lordships of the Privy Council in the case of *C. I. T.* v. *Chitnavis*, 6 I. T. C. 454.

11. *Professional earnings.—Omitted by s. 12 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939).*

[The income under the head has been incorporated in section 10].

Other sources.

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

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

(*a*) any personal expenses of the assessee, or

(*b*) any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under section 18, or

(*c*) any payment which is chargeable under the head 'Salaries', if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18.

(*3*) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (*iv*), (*v*), (*vi*) and (*vii*) of sub-section (*2*) of section 10.

"Other Sources" :

Section 12 is an omnibus section, it is compendious and is an attempt to attract within the scope of a single section all taxable income which is not specifically provided for elsewhere in the Act. It must be remembered that it is a residuary section.

To describe what falls within the purview of section 12 as 'other sources' is an uphill task, because the list cannot be

exhaustive ; but the following classes of income fall within the category of "Other Sources" :—

(*a*) Interest on loans and Bank deposits.

(*b*) Royalties, annuities, alimony etc.

(*c*) Illegal cesses, Abwabs, non-agricultural Zemindary income, ground rent, Bastu rent, Zalkar (Fishery), Nazar and Hat rent etc.

(*d*) Income from markets, ferries, salt manufacture, quarries etc., Partnership profit or loss.

(*e*) Leasehold, income from brick fields, Examination fees

Nimak Sair :

An income from the settlement of the right to collect a particular kind of earth in particular area during a particular season for the purpose of extracting saltpetre and which is not casual or non-recurring, is income received from 'other sources'—*Mahadeo Asram Prasad Sahi Bahadur* v. *C. I. T., B. & O.*, 6 Pat. 29 A. I. R., 1927 Pat. 133.

Brick Fields :

It has been held that income from brick fields is not a capital receipt, but is an income from 'other sources' and as such is assessable under section 12—*In re Maharani Janki Kuer*, 133 I. C. 88.

Non-agricultural Zemindary income :

"The words of section 12 (*1*) are clear and emphatic and are expressly framed so as to make the sixth head in section 6 describing a true residuary group, embrace within it all sources of income, profits or gains, provided the Act applies to them, that is, provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India as provided by section 4 (*1*) and are not exempted by virtue of section 4 (*3*). Therefore sections 6 and 12 bring into charge for the purposes of income-tax, the income derived from Zemindary and the Zemindar is assessable in respect of income, profits or gains derived from that source after making allowance for the jama assessed and paid :" *In re Prabhat Ch. Barua*, 5 I. T. C. 1 : A. I. R. 1930, P. C. 209 : 125 I. C. 871.

Examiner's fees :

Fees received by an Examiner in University examinations, are assessable as income from 'other sources'—*In re H. S. Gour*, 3 I. T. C. 350.

Maintenance of a dramatic troupe :

In the case of *P. S. Varier* v. *C. I. T., Madras*, 8 I. T. R. 628, it was observed : "it is manifest that the assessee maintains this troupe on a commercial basis, whether he does so for the pupose of advertising his Ayurvedic medicines, matters not. If this troupe earns a profit, the profit would obviously be income from 'other sources' within the meaning of section 6 and is liable to be assessed under section 12."

Income from Lease-hold :

In the matter of *Busanta Ray Takhat Singh*, A. I. R. 1930 All. 288 it was held that "land taken on lease for one year with interest to sublease in smaller plots, the income of lessee is neither property nor business but income falling under the head "other sources".

Selami :

In *In re* : *Guptoo Estate, Ltd.*, 34 C. W. N. 327 : 50 C. L. J. 375 : A. I. R. 1930 Cal. 1 : where the assessee received a lak of rupees on the advantage of forfeiture clause of re-entry, the Calcutta High Court decided that the sum so received is selami and as such is not liable to assessment. This represents the capitalised value of the land.

Bonus Shares of Company :

Distribution of profits accumulated by a company in the form of bonus share was given to shareholders without any option to have the profit in any other form. These bonus shares do not at all represent "income, profits or gains" to the shareholder within the meaning of sections 2 (*15*) and section 12 : *In the matter of Steel Brothers & Co., Ltd.*, 82 I. C. 665 : 2 Rang. 211.

The words "other sources" in the Act indicate that anything which can properly be described as income, is taxable unless expressly exempted.

Similarly, the words "profits and gains" are an amplification and not a limitation upon the word "income",—"profits and gains" are varieties of income—*C. I. T.* v. *Gopal Sharan Narain Sinha*, 8 I. T. C. 340. (Since upheld by the Privy Council.)

Annuity :

In the Indian Act, annuities have not been expressly taxed except as salary, before an annuity can be taxed it must be shewn to come within the preview of "income, profits or gain" as mentioned in section 12. The Indian law has used a very wide term "income" and annuities are assessable, provided they are income,

but not if they are capital. [See *Foley* v. *Fletcher*, 7 W. R. 141; *Minister of National Revenues* v. *Spooner*, (1933) A. C. 684 and *Secretary of State* v. *Scoble*, 19 T. L. R. 550 *relied on*].

In the case of *C. I. T.* v. *Gopal Sharan Narain Sinha*, 8 I. T. C. 340, subsequently upheld by the Privy Council—commonly known as 9 annas Tikari Raj, the principle of taxation of life annuity was thoroughly discussed.

By an indenture dated 29th March, 1930, and made between the appellant and the Rani, the appellant conveyed the greater portion of his estate to the Rani for valuable consideration. The indenture recited, among other facts, that the appellant was absolute owner of the estate and that, for the purpose of discharging certain of his debt and of obtaining for himself an adequate income, he had agreed with the Rani for the absolute sale and transfer to her of a portion of his estate in consideration of the Rani covenanting to pay the debts and to pay to him a sum of Rs. 4,73,063 in cash to meet the expenses of his daughter's marriage and other necessities, and further covenanting to pay him annual sums, during his life time, of Rs. 2,40,000, such payment being secured by a charge upon the property thereby transferred.

The question for decision was whether the appellant was assessable to income-tax and super-tax in respect of the annual sum of Rs. 2,40,000 payable to him during his life.

Their Lordships of the Privy Council held that it was impossible to hold that this annual payment was "agricultural income". It could not be construed as rent or revenue derived from land—it was simply money payable under a contract imposing a personal liability on the covenantor, the discharge of which was secured by a charge on land. It was, their Lordships thought, clearly a case when the owner of the estate had exchanged a capital asset for a life annuity which was income in his hands. It was not a case in which he had exchanged his estate for a capital sum payable in instalments.

In their Lordships' opinion the life annuity was "income" with in the words used in the judgment of that Board in the case of *Commissioner of Income-tax, Bengal* v. *Messrs Shaw Wallace & Co.*, 59 Indian Appeals 212, (Reported in 8 I. T. C. 638. *In re Lal Suresh Singh of Kola Kankar*, 2 I. T. L. 277, it has been held that maintenance allowance is not exempt under section 14 (*1*), the payment of allowance cannot in any sense be regarded as rent or revenue derived from land within the meaning of section 2 (*1*) read with section 4 (*3*) (*viii*) of the Act (*Rani Sultanat Begum*, 10 W. N. 1003, *Captain Maharaj Kumar Gopal Saran Narain Singh*, 8 I. T. C. 340 (P. C.): 1935 C. W. N. 810 *followed*).

Royalty :

It is necessary to describe in some details, the question of 'royalty' on the basis of decided case laws on the point. In *In re Jyoti Prosad Singh Deo*, 6 Pat. L. J. 62 : 1 I. T. C. 103, the question whether royalty was income was discussed by the learned Judges and it was held that income derived from rents and royalties of collieries falls not within income derived from business, but within income from 'other sources'.

In *Siva Prosad Singha* v. *Emperor*, 4 Pat. 73 : 1 I. T. C. 384, Chief Justice Dawson Miller observed "Royalties paid to the lessor, although they may be regarded in one sense as instalments of the purchase price of the minerals forming part of the land are treated in England as income and have been so treated in this Court. They are nonetheless income merely because they are paid for rights the exercise of which involves a waste of the capital. As was pointed out by Lord Halsbury, L. C., in *Secretary of State for India in Council* v. *Scoble*, 4 T. C. 618, "where you are dealing with income-tax upon a rent derived from coal (and the same would apply to royalties) you are in truth taxing that which is capital in this sense that it is a purchase of coal and not a mere rent', but he adds "the income-tax is not and cannot be, I suppose, from the nature of things cast upon absolutely logical lines."

A similar view was expressed in *Mahadeo Asram Prasad* v. *C. I. T., B. & O.*, 2 I. T. C. 281, in which it was held that income derived from nimak sair (*i.e.* income from the settlement of the right to collect a particular kind of earth in a particular area during a particular season for the purpose of extracting saltpetre) is indistinguishable from the rents or royalties arising from the letting of coal or other minerals in the earth, and, therefore, is income from 'other sources' within the meaning of section 12 of the Act. The same view was taken in *Janki Kuar* v. *C. I. T.*, 51 T. C. 42, in which it was held that sums received on account of royalties for preparing bricks are assessable to income-tax just as royalties on quarries or royalties on coal.

In the case of C. I. T.. B. & O., v. *Kumar Kamaksh Narain Singh, Maharaja of Padma*, 8 I. T. R. 563, it was held that the royalties received by the assessee under the mining leases constituted income and were liable to be assessed to income-tax, that they were not "income from property" but 'income from other sources". Income is nonetheless income for purposes of income-tax because it is produced by embarking capital in a wasting subject-matter.

Though in income-tax cases the substance of the matter may be looked into, it may be impossible for the Courts altogether to

ignore the form in which the parties have chosen to express their contract.

Scope of the Section :

Section 12 covers any income, profits or gains which are not chargeable under sections 7 to 10. All incomes other than those mentioned in sections 7 to 10 should be assessed under this section as income derived from "other sources".

Scope of Sub-section (2) :

Sub-section (*2*), as amended, disallows interest (other than interest on a public loan issued before 1st April, 1938) and salaries payable without British India from which tax, etc., has not been deducted.

Allowances :

Capital expenditures and expenditures incurred solely for the purposes of earning income have been dealt at length under section 10, and there is no difference in the meaning or outlook, so far as Capital expenditure is concerned. In the matter of *Amulyadhan Singha*, A. I. R. 1937 Cal. 369, it was held that interest payable in respect of mortgages on the *bustee* lands cannot by any stretch of language be accurately described as expenditure incurred solely for the purpose of earning the income which is derived by the joint Hindu family from the *bustee* lands.

Scope of Sub-Section (3) :

Sub-section (*3*) which is a new introduction in the Act, is based on the recommendation of the Taxation Enquiry Cimmittee of 1936. It grants depreciation on machinery, plant and furniture let out on hire. If the business of the assessee is letting machinery, plant and furniture on hire, he will be entitled to the allowance under the provisions of section 10 (*2*) (*iv*), (*vi*) and (*vii*). But this relief could be claimed by the previous Act, as will be obvious from the following decisions :

Depreciation :

In *Doddington* v. *Hallet* (1750) V. S. 497, Lord Hardwicke said : "It must be admitted that the ship may be subject of partnership as well as anything else, the use and earnings thereof being proper subject of trades and letting a ship to freight is as much a trade as any other.

In the case of *Rai Bahadur Sahu Har Prasad Raja Radha Raman* v. *C. I. T.*, 10 I. T. C. 83, the case of *Sadhucharan Roy*

Choudhury v. *C. I. T.*, 8 I. T. C, 177, was discussed. As stated above, there it was held that the letting of jute press at a rent is as much a business as the letting of a ship to freight or the letting of a motor car or any other kind of machine or machinery for hire and the fact that the lessor originally intended to work the press himself was immaterial.

It was held further that the owner assessee was entitled to depreciation, the lessees were liable only for repairs. Property belonging to one of the partners does not become property of the firm merely by being used—*Devis* v. *Devis* (1894) 1 Ch. 393. It was held that the assessee was entitled to the entire depreciation on the oil mill machinery loaned to the firm. In the case of *P. R. A. L. M. Muthukaruppan Chattiar* v. *C. I. T.*, (1938) A. I. R. 1939 Mad. 357 the claim of the assessee in respect of depreciation of the machinery in the Wakena Mill, he having leased the mill, was disallowed as the assessee admittedly failed to give the particulars required by the proviso (*a*) of section 10 (*2*).

It may be stated in this connection that under the previous Act, there were several decisions under section 10, on this point and as a matter of fact, these decisions will now come under section 12 of the Act : these cases are given below :

Machinery etc., Let out or Leased out :

The depreciation allowance cannot be claimed where machinery, plant, etc., are leased out or let out. The sole test for granting depreciation allowance is that a property must belong to the assessee at the time of assessment and where it is let out or leased out, the lessor, not being virtually in possession, can not claim any allowance thereunder ; neither the lessee is competent to put forth a claim simply because the machinery does not belong to him.

Where a limited company is formed for Rice Milling business and acquires buildings, mill, machinery, plant etc., and subsequently the company leases out the mill at a fixed annual rental up to a fixed period, the lessee undertaking to run the mill and to do all necessary repairs, the company is to bear all losses for depreciation ; as the company is carrying on rice milling business, it is entitled to claim deductions for depreciation—*Mongalagiri Sreeruma Maheswary Gin and Rice Factory*, 97 I. C. 850.

Where business consists of letting out house property on rent and premium, and profits thereof are assessed, the assessee is entitled to claim depreciation allowance on such buildings, machinery and plant, etc., as mentioned in section 10 (*2*) (*vi*)—*In the matter of Guptoo Estate Limited*, 34 C. W. N. 327 : 50 C. L. I. 375, A. I. R. 1930.

Hired Machinery, Plant and Furniture :

It is now to be found that this section is applicable where the assessment is not under section 10 of the Act. Sub-section (*3*) of section 12, which is a new insertion in the Act, is primarily based on the recommendation of the Taxation Enquiry Committee of 1936. Under this sub-section, an allowance for depreciation is given to an assessee who lets on hire machinery, plant or furniture. This allowance is to be given whether or not the activities of the assessee who owns the machinery amount to the carrying on of a business.

Under section 10 (*2*) (*vi*) of the Act, allowances in respect of depreciation of such buildings, plant or furniture being the property of the assessee, are permissible ; whereas section 12 (*3*) lays down that where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (*iv*), (*v*), (*vi*) and (*vii*) of sub-section (*2*) of section 10.

Apparently where the machinery, plant or furniture, belong to the assessee and are utilised for his business, section 10 comes in, but where the assessee lets them out on hire, relief shall have to be granted under section 12 of the Act.

In the case of C. I. T., Madras v., *Bosotto Brothers Ltd.*, 8 I. T. R. 41, the Madras High Court relying on the decisions of *Mangalgiri Rice Factory* v. *C. I. T.*, 2 I. T. C. 251 : 51 M. L. J. 360 : A. I. R. 1926 Mad. 1032 : 24 L. W. 680, and of *Sadhu Charan Roy Chowdhury and others* v. *C. I. T., Bengal*, 8 I. T. C 177 : 62 Cal. 804 : A. I. R. 1935 Cal. 344 : 39 C. W. N. 739 : 156 I. C. 394, held that the letting of the premises was part of the business of the company and so it was entitled to an allowance of depreciation. Chief Justice Leach observed :—"I can see no difference in principle between the letting out of a rice mill and its machinery and the letting out of a building built and fitted for the purposes of a hotel business."

Accounting Principles :

If the expenditure required to obtain the income from the capital assets is negligible, the case is the simple case of a man in receipt of a clear revenue therefrom. If some considerable expenditure is necessary before the annual return can be obtained, then the history of the year will be stated in the form of a "trading" or "revenue" account or account of the receipt and expenditure during the year. It is essential when accounting on this basis, to exclude from either side of the account matters which in substance represent only a rise or fall in the value of the assets from which revenue is derived as distinct from net

revenue itself or which represents only a change in the form of the investment, whether the change be a change to money or some other form of property : *In re : Guptoo Estate*, 50 C. L. J. 375 ; 34 C. W. N. 327 : A. I. R. 1930 Cal. 1.

Managing Agency Commission.

12-A. Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the 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.

Managing Agency Commission :

The insertion of section 12-A is an improvement, which allows deduction of managing agency commission paid to third parties under an agreement made for adequate consideration. But it is incumbent on the agent and on the party sharing commission to file a declaration showing the proportion in which such commission is shared between them.

When this condition precedent is fulfilled, each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

This is a new provision for the special case in which managing agency commission is shared among two or more recipients and provides a means by which each of the recipients may be charged only on the share which he is actually entitled to receive. But the sharing of the managing agency commission with a third party or parties should be for adequate consideration, otherwise it shall not be allowed.

The Privy council in the cases of *C. I. T.* v. *Macdonald & Co.*, 37 B.L.R. 126 and *Tata Hydro Electric Agencies* v. *Commissioner of Income-tax*, 64 I. A. 215 : 1937 Bom. 388 : 41 C. W. N. 774 : A. I. R. 1937 P. C. 139 : 1937 I. T. R. 202, held, as already stated, that part of a managing agency commission payable to another, was not an allowable deduction in the assessment of Managing Agents.

But before the incorporation of section 12-A, in the case of *C. I. T.* v. *Tata & Sons Ltd.*, 7 I. T. R, 195, the Bombay High Court held that in view of the assignment, the income assigned ceased to be any further the income of the managing agents; and even in the absence of an assignment, the commission paid was of the nature of expenditure incurred solely for the earning of profits and gains and as such deductible in the hands of the managing agents.

Section 12-A now enjoins that before such an allowance can be availed of, the share of commission should be payable under an agreement for adequate consideration and that the managing agent and the co-sharers under the agreement should file a declaration before the Income-tax Officer showing the proportion in which the commission has been shared between them.

Principle :

In the previous Act, under section 10, there were several decisions on a border line. The question was whether an agreement to pay a part of commission amounted to an expenditure incurred solely for the purpose of earning profits or gains.

In *C. I. T.* v. *C. Macdonald & Co.*, (1934) 37 B. L. R. 126 and *the Tata Hydro Electric Agencies* v. *C. I. T.*, (1937) L. R. 64, I. A. 215, payment to third parties was not allowed by virtue of the decision of the Privy Council in *Pondichery Ry. Co.* v. *C. I. T.*, (1931) L. R. 58, I. A., 239. Their Lordships of the Privy Council in the Tata Hydro Electric Agencies and the *Indian Radio Cable Communications Company* v. *C. I. T.*, (1937) 39 B. L. R. 1025 (P. C.) enunciated the principle. The English Court of Appeal in *British Sugar Manufacturers Ltd.* v. *Harris*, (1938) 2 K. B. 220, also enunciated the principle that the question whether the payment of part of a commission to a third person could be regarded as expenditure incurred solely for the purpose of earning that commission was a question which must be answered on the facts of each case, and on a commercial basis.

But when it is clear that the assessees are bound either to lose the commission or to arrange financing when the agreement to share their commission with the burden is part of the terms on which they manage to obtain finance, it is a payment for the purpose of earning profits in a commercial sense and it must be allowed—*C. I. T.* v. *Messrs. Tata & Sons Ltd.*, 7 I. T. R. 195.

The principle enunciated in the above case will now govern the cases coming under section 12-A.

In the Income-tax Manual, the following appears :

This is a new section and provides that where a managing agent of a company, under the terms of an agreement made for adequate consideration, parts with a portion of the managing agency commission, each party to the agreement is, on the filing of a declaration and on satisfactory proof of the facts, to be taxed only in respect of the amount which he is entitled to retain under the agreement.

Adequate Consideration :

In the absence of any definition in the Act, we must fall back for its interpretation in the Indian Contract Act. Section 2 (*d*) of that Act runs as below : "When at the desire of the promisor the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise." Thus it is apparent that no money value can be estimated for consideration. The expressions "good consideration" and "valuable consideration" occur in the English Contract Act. "A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other" : *Currie* v. *Messa*, L. R. 10 Ex. Ch. 162. But consideration need not be adequate to the promise, but must be of some value in the eye of the law. Courts will not make bargains for the parties to a suit and if a man gets what he has contracted for, will not inquire whether it was an equivalent to the promise which he gave in return. Equity treats inadequacy of consideration as corroborative evidence of fraud or undue influence, such as may enable a promisor to resist a suit for specific performance, or get his promise cancelled. But mere inadequacy of consideration, unless it is so gross as "to shock the conscience" and amount in itself to conclusive evidence of fraud, is not of itself a ground on which specific performance of a contract will be refused—*Lobs* v. *Thecothick*, 9 Ves. 246. The distinction between good and valuable consideration or family affection as opposed to money value, is only to be found in the history of law of Real Property. Motive is not the some thing as consideration. Consideration means something of some value in the eye of the law. (For detailed discussion see sec. 16.)

Method of accounting.

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

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

Cash and mercantile Systems :

There are two main systems of keeping accounts. There is firstly the cash basis system, where a record is kept of actual receipts and actual payments, entries being made only when money is actually collected or disbursed. There is secondly, the mercantile accountancy system under which a profit and loss account is maintained and a comparison is made of the value of the stock in hand at the beginning and at the end of each year. Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transactions irrespective of the date of payment. When goods are sold, for example, an entry is made at once on the receipt side of the account, although no cash may be received at the time in payment of such goods ; and an entry is similarly made on the debit side when a liability is incurred although payment on account of such liability may not be made at the time. It will be the method of accounting adopted for or by the tax-payer, therefore, that will determine the period within which any item of gross revenue or any deduction therefrom is to be accounted for, and which will determine whether particular allowances are or are not permissible.

It is for this reason that the Act does not contain a complete statement of the deductions or allowances that are permissible or not permissible in working out business profits or professional earnings, since certain allowances or deductions can only occur where the mercantile accountancy system is adopted. There can, for example, be no allowance for "bad debts" where the cash basis is the method of accountancy employed. Under the mercantile accountancy system, as noted above, an entry is made on the receipt side when a sale is concluded, although the money on account of such a sale has not been paid, and in making up the accounts at the end of the year such entries are treated as receipts, and the tax is levied on these 'book profits'. It may happen that some of these 'book profits' cannot be recovered , they are written off as 'bad debts' when found to be irrecoverable and since such "book profits" have been included in the income assessed to income-tax, the 'bad debts' must be written off

against the 'book profits' in the year in which they are written off in the accounts as irrecoverable. Where the cash system is adopted there can be no 'bad bebts'.

Again, it will be the method of accounting that will determine the particular year in which allowances common to both systems of keeping accounts may be made. In sub-section (*2*) of section 10 of the Act provision is made for allowances on account of rent paid, interest paid on capital borrowed, the amount of premium paid in respect of certain classes of insurance, amount paid on account of current repairs, etc , and sub-section (*3*) of section 10 states that the word 'paid' means 'actually paid, or incurred' according to the method of accounting upon the basis of which profits or gains are computed, *i.e.*, where the cash basis is adopted, it will be the date of actual payment that will determine the year in which such allowances may be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay accrued. (I. T M.)

Method of Accounting "Regularly Employed."

The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible, be the method adopted for working out his profits for income-tax purposes ; but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it is such as to reflect clearly the taxable profits for the "previous year". In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two instances are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and their customers ; provided that the same system is continuously employed, there appears to be no reason why this particular practice should not be considered to be a "method of accounting regularly employed". Again there are cases where the various branches of business are only closed down once in three or five years and where the accounts of the branches are not annually incorporated in the head-quarters business accounts. In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing down in particular years.

The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income-tax Officer in considering it should, as in the similar case of a demand for a change in the "previous year" (paragraph 6), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change. While section 13 leaves it to the discretion of the Income-tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed. the discretion of the Income-tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, *i.e.*, it may be made one of the grounds of appeal in contesting the assessment of the profits.

Method of Accountancy :

The method of accounting regularly employed by an assessee for the purpose of his business, profession or vocation or for the purpose of arriving at his income from other sources is to be followed for determining his income for Income-tax purposes.

It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on a cash basis in the case of transactions with other customers. If this system is continuously employed and if taking one year with another the full income is shewn on a consistent basis it may be followed for Income-tax purposes. (I. T. M.)

The Two Methods :

In matters of accountancy, two main systems are in vogue, one is the cash basis and the other is mercantile. Cash basis system denotes actual receipts and disbursements whereas mercantile system is popularly the one where a profit and loss account is maintained including the cash and credit sale realised and unrealised amounts. Take for instance the case of a grocery business. Here the assessee sells articles on cash and on credit ; entries are made on the receipt side although there may not be any payment and similar entries are kept in the debit side. Allowances, if any, whether permissible or not, depend on the system adopted by the aseessee. Thus where the method of accounting is clearly mercantile the income-tax authorities are competent to add back any interest which is said to have arisen or accrued during the year under assessment ; but such interest cannot be added to the total income where the basis of accountancy is cash. Strictly speaking limited companies *e.g.*, banks and loan offices, adopt the mercantile system. Of course this does

not mean that cash system is unknown to these companies. In the mercantile system "bad debts" are deducible expenditures but this cannot be allowed where the syetem is cash.

As to the basis of accounting, it is open to a trader to adopt either the mercantile basis of accounting or the cash basis. He is not forced to adopt one in preference to the other, but he cannot adopt both, and once an assessee has adopted the mercantile basis of accounting, it is upon that basis and upon that alone that he is to be assessed, as has been held in the case of *Subromaniam Chatteyar*, 50 Mad. 765 : A. I. R. 1927 Mad. 841.

Section 13 further enjoins on the assessee that mere booking is not always a conclusive evidence. Stock must be valued either on the market value or at its purchase price. Closing balance of a year must tally with the opening stock of the next year, as has been found in the decision in the case of *Chengal Vaiaya Chetty*, 48 Mad. 836. The assessee is further estopped in adopting one system in his book and claiming another at the time of assessment. An assessee is not competent and not justified in keeping his account in one way for his benefit and then to claim computation of profits in a different way. This theory is the outcome of the Madras High Court decision in the case of *Subromaniam Chettyar*, 40 Mad. 765. Similarly, method of valuing stock for one year cannot be changed in taking the value of the stock for the succeeding year as laid down in A. I. R. 1925 Mad. 1242.

Where compound interest in default is added to the principal for non-realisation, such interest is not taxable : *In the matter of Venakata Chalapatty Garu*, 1 I. T. C. 185. But where interest has fallen due to an assessee but has not been paid to him although he shows the amount in his interest ledger on the credit side for himself according to the mercantile system of accountancy which he had adopted that amount so shewn is not income, profits or gains under section 13 of the Act : *In the matter of Nanhelal*, 111 I. C. 159 : A. I. R. 1928 Nag. 241.

But the rule as it stands, taxability entirely depends on the system of accountancy adopted by the assessee. It may be mentioned that where an assessee receives interest of several years in a particular year when the basis of accountancy is cash, he is entitled to set off losses incurred in all those years : *In the matter of Shivo Prosad*, 124 I. C. 467 : A. I. R. 1929 All. 819.

Applicability of the Section :

Where the method of accounting is one regularly employed by the assessee, the proviso to section 13 is imperative : *In the matter of Feroz Saha*, A. I. R. 1930 L. 197. The proviso is

applicable when there is no method of accounting. When nothing is written in the order about the method employed but it is not written that the business is prosperous and profitable and, doubt is expressed as to the genuineness of the accounts, an estimated assessment is illegal—*In re : Kesri Das & Sons*, A. I. R. 1926, L. 201.

If the account books furnish any method of computation of profits, the Income-tax Officer may apply such methods as appears to him best. But he has got to employ some basis or method and he cannot assess arbitrarily : *In re : Radhey Lal Balmukunda*, 130 I. C. 634 The fact that the Income-tax Officer has justifiably proceeded on a basis and in a manner of his own in computing profits, does not, of course, exempt his computation from examination in appeal and if it appears that he has adopted a wrong method, the assessment may be set aside, *In re : Kameswar Singh*, A. I. R. 1933 P. C. 108.

Losses :

An assessee is entitled to deduct from his estimated income actual losses suffered in particular year and the amount of irrecoverable debts that should have been discovered in particular . *In the matter of Shivo Prasad*, 124 I. C. 467.

Computation of Income :

Where the computation of incomes, profits or gains for a particular year has been made under the provisions of section 13 upon such basis and in such manner as determined by the Income-tax Officer, the assessee is entitled to show that income, profits or gains included in the assessment for a subsequent year were included in that computation, and as such it is always a question of fact and adjudication must be made on the evidence in each particular case : *In the matter of C. T. V. S. Cheyar Firm*, 122 I. C. 902 : 7 Rag. 644.

Decision about Method of Accounting :

The Income-tax Officer is the sole arbiter on the question of the possibility of deducting the profits from the method of accounting employed and the assessee is not entitled to challenge his opinion : *In the matter of Firm Gokul Chand*, 94 I. C. 128.

Equitable Estoppel :

Where method of accounting has been accepted by the Income-Tax Officer in one transaction, he cannot object to the same method in similar other transactions. Until income-tax

authorities acting under the proviso to section 13, issue specific orders disapproving assessee's system of accountancy as an unsuitable and improper one and directing the adoption of a different method, the assessee is entitled to be assessed and to claim set off for losses on the basis of his special method of account keeping : *In the matter of Banshilal Abirchand*, 108 I. C, 805 : A. I. R. 1928, Nag. 102.

Accounting Partly Cash and Partly Mercantile :

Section 13 relates only to the method in which income, profits or gains are to be computed. It has got nothing to do with assessment of accrued interest : *In the matter of Nanakchand*, 96 I. C. 368.

Valuation of Stock :

In the Privy Council case of the *Ahmedabad New Cotton Mills Co., Ltd.*, A. I. R. 1930 Privy Council 56 : 51 C. L. J. 129, it was held that where the opening and closing stocks of a business are both under-valued and real profits cannot be ascertained, the income-tax authorities cannot make an assessment by raising the valuation of the closing stock without taking into consideration similar under-valuation of the opening balance, (A. I. R. 1928 Bombay 510 *affirmed*. But where the assessee values the closing balance at cost price and does not claim any loss on the ground that market price is less, assessment is to be made on cost price *In the matter of Banshilal Abirchand*), 108 I. C. 805. But it must be borne in mind that method of valuing a stock for one year cannot be changed in taking value of the stock for the succeeding year : *In the matter of Chengal Varoya*, 91 I. C. 137.

Unadjusted Books of Account :

The income-tax authorities cannot resort to an estimated assessment merely because the books are found to be unadjusted. He is not certainly entitled to make an estimated assessment if profits can be easily ascertained therefrom. Chief justice Dawson Miller observes in the case of *Raghunath Mahadeo*, 89 I. C. 675 : "the facts as set out in the petition and as stated by Mr. Jayaswal on behalf of the assessee are, that the accounts produced in support of the cloth, gold, silver and jute businesses, although not balanced or not closed in the sense I have already referred to, do, undoubtedly, show by taking very slight trouble and carrying out a very simple sum in arithmetic, what the actual profits made for the year in question were. If that is so, it seems to me quite clear that the Income-tax Officer was negligent in his duty in failing to carry out that simple matter himself and to ascertain what was the effect of the books."

Assessment Procedure and Evidence :

The Income-tax Authorities, as a matter of rule and practice, should always be governed in their procedure by judicial consideration. Assessment must be made on the basis of legal and not hearsay evidence although such evidences are forthcoming from members of the public. He is not justified in making an estimated assessment on a purely hearsay evidence. But where on scrutiny it is found that a substantial item is missing the authorities are entitled to treat the whole account as unreliable : *In the matter of Brizanath*, 94 I. C. 156.

Random Assessment :

Section 13 does not dispense with a notice under section 23(2) —*In re* : *Rampratap Sukdayal*, 3 I. T. C. 362.

But where an assessee does not make an honest statement, he cannot complain if a random assessment is made : *In the matter of Chang lo Chwan*, 115 I. C. 697. When the principle of assessment at flat rate is not contested, its amount must be for the Income-tax Office to determine—*In re* : *Feroze Saha*, A.I.R. 1933 P. C. 198.

Estimated Assessment How and Why Made :

Where an assessee maintains a regular method of accounting, section 13 is inoperative. But where no method of accounting has been regularly employed, the question of assessment on estimate comes in. Not that the assesee is bound to follow either of the two approved methods, he is entitled to keep his accounts in his own peculiar way provided it is regularly maintained and adopted and profits therefrom can be easily deducted. The Income-tax Officer is the sole arbiter on the question of deducing profits. Decisions are not wanting that in arriving at an assessment the Income-tax Officer should handle the matter in a judicial spirit. Section 13 further contemplates that the Income-tax Officer must have access to the books of account and he must not make any arbitrary or random assessment when the assessee produces all available evidences.

In practice, however, the income-tax authorities, while making an assessment, on a turn-over basis take their stand, firstly, when the books are found unadjusted and not squared up : this means that where no profit or loss accounts are maintained and where there is no apportionment or allocation of profits or losses in the books ; although in the case of *Raghunath Mahadeo*, 86 I. C. 675 it has been said that where accounts are found not properly balanced, the Income-tax Authorities are not justified in making any estimated assessment, they cannot reject the accounts

simply because the books are unbalanced. But they are competent to take recourse to section 13 where books are found unadjusted and not closed. All that an assessee is to do is to see that books are closed up, profits and losses, if any, are entered and allocation of profits or losses made. It is not at all a difficult task to square up the books and show the gross profits in the ledger.

Secondly, when business accounts are found without any details of the closing stock, weight, etc. : In these cases the income-tax authorities are justified to take recourse to section 13 and to make an estimated assessment notwithstanding the fact that the assessee has maintained the system of accounting regularly.

Thirdly, when the assessee does not produce the ledger showing the volume of sales and purchases. The Income-tax Officers are entitled not only to take an estimated sale but also an estimated percentage of profits. But where sale figures are forthcoming the income-tax authorities must have the estimate on the actual sale figures excluding the closing stock. Where estimated assessment is made on the sale figures along with the closing balance the assessment is *ultra vires* and bad in law.

It is certainly not desirable that income-tax authorities should charge different rates in the same locality for same business Judicial considerations should be the guiding factor and must weigh with them. They should not deal a wholesale businessman in the same way as a businessman dealing in retails. While making an assessment under section 13, due regard must be paid to all admissible expenditures incurred by the assessee, otherwise the gross profits may appear to something which no trader can earn.

Section 23 (4) has no Application :

Books of accounts must not be rejected simply because they are unadjusted or are not supported by vouchers. Where there is any default, assessment must be under section 23 (*4*). But if an assessment is made under section 13, section 23 (*4*) has no application. Neither the Income-tax Officer is competent to dispense with a notice under section 23 (*2*) while making an assessment under section 13, as has been reported in the case of *Rampratap Sukdial*, 122 I. C. 238 : A. I. R. 1930 L. 272. Business, which in its nature, is by way of forward contract cannot be assessed on estimate—*Jugal Kishore Mukatlal* v. *Commissioner of Income-tax, U. P.*, 6 I. T. C. 185.

Principle of Assessment of Flat Rate :

A mode of accounting might be perfectly regular in the sense that it follows one of the standard methods and yet not be the

one regularly employed by the assessee : *C. I. T.* v. *Achrulal Munalal*, 1938 N. L. J. 172. Where there is an omission to enter purchases, the I. T. O. can reject the accounts and apply a flat profit. Where it is found that the sales in the last three years decreased considerably but there was no consequent decrease in the staff employed by the assessee or in the overhead charges, an estimate is justified—*Paras Das Manwalal* v. *C. I. T.*, A. I. R. 1938 L. 209. It is not open to him to argue merely the question of the reasonableness of the extent of the percentage adopted—*C. I. T.* v. *Joynarayan*, A. I. R., 1929 Nag. 243. In *Gunda Subbaya* v. *C. I. T.*, 7 I. T. R. 21, it was held that if the method of accounting employed by the assessee is a method which does not properly disclose the income, profits or gains of the assessee, the I. T. O. can adopt his method. But in doing so he must have reference to the account before him as section 13 does not contemplate the rejection of accounts.

Decisions—For or Against :

Where the principle of assessment at Flat Rate is not contested, the I. T. O. is the sole arbiter to determine the amount —*Feroze Saha* v. *C. I. T.*, 144 I. C. 886 : 65 M. L. J. 335.

Receipt of amount by assessee in respect of mortgage decree :— Income-tax Officer can treat the amount first towards interest outstanding for assessment. Where mortgaged property is purchased by the assessee, he must be deemed to have received equivalent of interest due on mortgage. But the method of computation employed by the Income-tax Office is open to examination on appeal.

Where accounts are kept on the cash basis, if the Income-tax Offiicer accepts the basis, calculation must be on actual receipt. But where the assessee keeps books on hybrid system *e.g.*, entry in the deposit register in such a way as without discriminating between interest and capital, and subsequently treating certain portion as income, the Income-tax Office is entitled to take into account interest entered for that year by transference from deposit register and interest actually received—*Kameswar Singha* v. *C. I. T.*, 142 I. C. 437 : 12 Pat. 318 A. I. R. 1933 P. C. 108.

Where account books do not disclose true state of affairs and income, profits or gains cannot be deduced thereform, Income-tax Officer is the sole arbiter to compute profits and even High Court has no authority over computation made by the Income-tax Officer and it must be understood that the High Court is not a Court of appeal—*Premsagar* v. *C. I. T.*, 138 I. C. 214 : 33 P. L. R. 10.

Where regular accounts of one business are kept but no accounts are kept of investments, Income-tax Officer is justified in

making assessment on investments under the proviso to section 13. —*Iswar Das* v. *C. I. T.*, 132 I. C. 523 : A. I. R. 1931 Lahore 432.

When assessees elect to treat the interest due under the original loans as having been received and paid on the execution and delivery of fresh promissory notes by the debtors, and the interest is entered as having been received both in the interest account and in the personal accounts of the respective debtors and the creditors, accepting the obligation of the debtors under the fresh promissory notes in substitution for the old debts and the interest thereon, and in past years being content that the interest accruing in this manner should be assessed to income-tax, in view of the circumstances, it cannot be said that there were no materials justifying the Income-tax Officer to hold that the sum in question is taxable. The remedy for the difficulty in which the assessees find themselves lies with the assessees themselves ; but if they want to avoid tax, they should adjust their accounts as to make it clear that the acceptance of fresh promissory note is not taken as effecting payment of the interest due under old loan. *C. I. T.* v. *V. S. R. Firm*, A. I. R. 1935 R. 109. (*Raghunandan Prasad Singha* v. *C. I. T.*, 1933 P. C. 101 and *C. I. T.* v. *Maharaja of Darbhanga*, 1933 P. C. 108 *Dist.*) ;

Where a money-lender shows accrued interest, although he is assessed on cash basis on sums actually received, he cannot complain if he is assessed on subsequent year on interest realised on decretal amount—*Hiralal Saha* v. *C. I. T.*, 7 I. T. C. 471. Under the Proviso to section 13, the Income-tax Officer is the sole arbiter on the question of the possibility of estimating income, profits and gains of the assessee from the methods of accounting employed by the assessee and no question of law arises. When complete accounts are not forthcoming, the Income-tax Officer is justified in proceeding to estimate the income under the proviso to section 13.—*Ruhamal Raunak Ram* v. *C. I. T.*, A. I. R. 1905 1539 : 7 I. T. C. 352. Where an assessee has got income from money-lending business and also from sale of second hand tyres and tubes, if on scrutiny the Income-tax Officer finds that in the tyre and tube business no goods accounts have been maintained, purchases made during the accounting period are not accounted for and the sales declared have been sorted out in a sheet of paper, and as to money-lending business, proper accounts are not produced and the books do not show the disposal of large sums of capital realised : *Held*, that under the proviso to section 13, the Income-tax Officer is the sole arbiter on the question of the possibility of deducing income, profits and gains of the assessee from the method of accounting regularly employed by him (*Gokul Chand Diwanchand* v. *C. I. T.*, 7 I. T. C. 358 : A. I. R. 905 L. 841. *Jagannath* v. *C. I. T.*, 2 I. T. C. 180 *approved*).

Where an assessee claims that a certain amount shown as interest has not been actually received, if the Income-tax Officer finds in the accounts that the interest has been added to the principal bearing interest thenceforward and has been shown as income in the books, the claim fails and the assessee is liable to tax, specially because he maintains a mercantile system of account : —*Ahamadin* v. *C. I. T.*, 7 I. T. C. 346. In *Raghunandan Prosad* v. *C. I. T.*, 1929 Pat. 476, it was held that where a mortgagee keeps his accounts on the cash system and his books of accounts contain entries showing that he has realised or treated as realised the interest stipulated for in a bond which provides for unpaid interest to be added to the principal loan at the end of stated periods; the interest is assessable only when it is actually received by the mortgagee. Their Lordships of the Privy Council are of opinion that when a mortgage has been accepted in discharge of the principal and interest due, and earlier mortgage and the mortgagee's books do not treat the interest as being thereby paid, the interest does not become a profit or gain assessable to income-tax until the amount is realised. It follows that it depends upon the method of accountancy as to whether the interest is taxable when it accrues or when it is paid.

Where accounts are found irregular and not properly kept, the Income-tax Officer is justified in making in assessment under section 13. Where accounts are rejected as unreliable, interest due on mortgage can be treated as income—*Ziwashaha Maya Shaha* v. *C. I. T.*, 7 I. T. C. 403 · A. I. R. 1935 L. 840. Whether in a transaction in which a fresh loan is taken for an accrued debt, the assessees adopt the mercantile system of accounting and on the acceptance of the new promissory note, treat the interest which forms part of the capital loan under the new promissory note having been received by the assessees from their debtors, in effect what happens is that assessees are content to stay their hands in connection with the recovery of the loan and interest under the old transaction in consideration of the obligation undertaken by the debtors under the new promissory note which consists of interest due under the old loan, capitalised for the purpose of new transaction ; the assessees were investing the old interest as capital in the new loan and as such it is liable.—*C. I. T.* v. *M. A. L. Chettiar Firm*, 156 I. C. 653 : A. I. R. 1935 R. 171 : 8 I. T. C. 182.

Where the Income-tax Officer had found that the income of the assessee could not be deduced from his books and consequently made an assessment charging the assessee a fair rate of interest on the capital shown in his books, it was held that the computation was proper—*Narayan Atmaram* v. *C. I. T.*, 7 I. T. C. 207 : A. I. R. 1934 B. 378. In *Rachiram* v. *C. I. T.*, 6 I. T. C. 127, an estimate of income made by the Income tax

Officer on the grounds that the accounts were incomplete was maintained. In *Ebrahim Bhai Mulla Badruddin* v. *C. I. T.*, 5 I. T. C. 302, the learned Additional Judicial Commissioner of Nagpur upheld an assessment made on the basis of personal experience, gained by the Income-tax Officer from the working of other factories and refused to issue a mandamus to the Commissioner of Income-tax a holding that no question of law was involved.

The mere filing of a verified statement by an assessee and his statement on oath in support of it are not sufficient to discharge the onus which lies on him to prove the correctness of the return submitted by him, the onus is not under such circumstances shifted to the taxing authorities to disprove the correctness of the return—*Bhikaji Vyankatesh* v. *C. I. T.*, A. I. R. 1927 N. 283. The mere fact that an assessee may choose to charge a low rate of profits is no reason for the Income-tax Officer to reject the total profits. The economic blizzard which affected trade in the year under review and still prevails would explain reduction of profits—*Pioneer Sports Ltd.* v. *C. I. T.*, 7 I. T. C. 386 : A. I. R. 1934 L. 876.

The Income-tax department must always bear in mind that the normal presumption is in favour of good faith and not of bad faith on the part of the assessee. The applicant is therefore entitled to ask the Crown to start with a presumption that the entry in the khata was made in the ordinary course and with no intention to conceal the income and it was for the Crown to prove the contrary—*Jambudas* v. *C. I. T.*, A. I. R. 1927 N. 336. Where an assessee produces his books for the year of account and complies with any other requirements as to the specific documents so that he is assessed in the ordinary way under section 23 (*3*) and not as being in default, the Income-tax Officer can not assess him upon any figure of profits not warranted by evidence which he has before him—*Binjraj Hukumchand* v. *C. I. T.*, A. I. R. 1931 Cal. 683 : 58 Cal. 1446. *In re Bhagat Halai*, 3 I. T. C. 48, it was held "The assessment proceedings are judical proceedings in the colloquial sense, because the taxing authorities have to make up their minds judicially, with fairness to the public and to the assessee, before whom they stand, after taking all the facts or such facts as they can, into account ; but they are not judicial proceedings in the strictly scientific sense of the term, so as to raise questions in appeal to some higher tribunal as to whether the gentleman making the assessment has decided against the weight of evidence or decided a fact of which there is no evidence or has disregarded evidence which he ought to have taken in the account. To open the door for one moment to such contention would turn this Court into a Court of appeal

of fact with regard to every assessment in which the assessee was dissatisfied with the decision. But where the Income-tax Officer finds that the books produced do not contain any account of certain large debts owed by various people named by him, nor do they contain any capital account which will indicate the extent of the assessee's investments, the Income-tax Officer is entitled to proceed on estimate—*Niki Devi* v. *C. I. T.*, 2 I. T. R. 365. Where an assessee shows in his accounts new bonds for old ones and debits the interest in debtors accounts and credits it in the profits accounts, assessment on such interest although not realised, is legal in view of the system of accountancy he regularly maintains—*Jupudi Kesava Rao* v. *C. I. T.*, 4. I. T. C. 217. Where books of accounts contain trading accounts for two years and profits cannot be easily deduced from the trading account, the Income Offieer-tax is justified to act under section 13 and make an assessment on the difference between the profits as disclosed in the accounts and the sum assessed in the previous year—*Hazi Ali Jan* v. *C. I. T.*, 7 I. T. C. 372 : 164 I. C. 1018. Whenever an estimated assessment is to be made, the taxing authority should employ methods which are admissible in evidence. Of course the Revenue officers have a large discretion to make private enquiries and from the very nature of proceedings it is apparent that such enquiries are essential. It is, however, necessary that principles of natural justice should not be violated and the assessee should be permitted to meet the case as revealed by enquiries. The taxing authorities are authorised under sec. 13 and also otherwise to make private enquiries, but they are not permitted to take the result of such private enquiries into account in making the assessment without giving an opportunity to the assessee to meet them, and, in the words of their Lordships of the Privy Council, "to displace the taxing officer's estimate". Owing to a difference of opinion between the two Judges, it was referred to the 3rd Judge who observed as below :

"There is no objection in the Income-tax Officer or the Assistant Commissioner acting upon the assessment for the previous year if no better evidence is forthcoming. In the absence of any better evidence he is certainly entitled to fall back on the assessment of income made during the previous year even though that assessment might have been best judgment estimate. The fact that during the previous year the income was assessed on a certain figure is certainly some evidence on which he can proceed, even independently of any presumption of continuity. If the assessee fails to produce a satisfactory evidence, he fails to displace the previous year's estimate, which is certainly admissible against him. But so far as the assessment is based on private enquiries. it is improper and is vitiated. But it can be based on other

circumstances, without taking into account the result on the private inquiries, then the finding will not be illegal according to the principle under-lying in section 167 of the Indian Evidence Act.—*In the matter of Gopinath Naik*, 9. I. T. C. 136 : 1936. All 286.

An assessee holds a licence from Government to sell liquor. The basis on which accounts are kept is to enter the amount of liquor purchased and caculation of sale is made not by the cash received but by charging the market price. It was held that the Income-tax Officer was under the circumstances of the case, free to adopt the basis and manner of computing the income of the assessee which he did adopt, but was not entitled to add Rs. 42,791 to the assessee's income by charging him with a criminal practice—*C. I. T.* v. *Hirabai Desai & Sons.*, 8 I. T. C. 246 : 1936 I. T. R. 95. But where an assessee doing Sarafi and money-lending business does not keep proper and regular accounts, but submits the return on estimate, and the accounts do not disclose the name of sellers of ornaments in the Sarafi account, while the cash books and money-lending does not show the advances of loans on interest, an estimated assessment is justified —*Lakshman Das* v. *C. I. T.*, 8 I. T. C. 169.

It is not necessary that the method of accounting followed should be either purely cash or purely mercantile. When an assessee follows a method of accounting which though not normal has been regularly followed, and the profits of the business can properly be deduced from the accounts, the proviso to section 13 does not apply—*C. I. T.* v. *Dhakeswar Prasad*, A. I. R. 936 Pat. 295 : 1936 I. T. R. 71. Proviso to section 13 lays down that computation of profits should be made according to the method of accounting regularly employed. It does not imply that the assessee must necessarily adopt the financial year as the accounting period or must adopt a method which would avoid two dates of the 31st March falling within the one accounting period—*Melamal Shibdayal* v. *C. I. T.*, A. I. R. 1936 L. 546 : 1906 I. T. R. 206.

Where the assessee does not produce any voucher or any other material which may enable a detailed check of his account books, the value of the account books produced by him is no higher than his mere word. Where business was found rapidly increasing but gross profit dwindling, in such circumstances there must be held to be material justifying the rejection of accounts. When the sale was not a part of the business the assessee cannot claim a loss in expenditure under section 10 (*2*) (*ix*) read with section 13 : *Badri Shah Sohon Lal* v. *C. I. T.*, 167 I. C. 464 : A. I. R. 1936 L. 872. A decretal amount, if not actually realised is not taxable—*Jagamandhar Das* v.

C. I. T., 156 I. C. 939 : A. I. R. 1935 All. 378. Section 13 does not prevent the assessee from altering the regular methods of accountancy he has once employed. What he must alter, however, is his regular method and start a new regular method and not merely a new method for a casual period. Where the question is that the Income-tax Officer is wrong not accepting the changed method of accountancy, it involves an actual question of fact and a hypothetical question of law—*Swarup Chand Pannalal* v. *C. I. T.*, 165 I. C. 581 : A. I. R. 1936, 397.

The procedure to be followed by a taxing authority is a judicial one and he ought to act on evidence. But where money is brought into cash account, the Income-tax Officer has the right to require a satisfactory explanation of how and why it came in, and in the absence of a satisfactory explanation or if he receives an explanation which he is unable to believe, he is entitled to regard the account as unsatisfactory. Where he finds a money-lender is in the habit of showing in his books that loans carrying interest have been repaid without interest, or that a loan secured by a hand note has been renewed by a new note of hand without any provision for interest, he is at liberty to consider the account as unsatisfactory . assessment under section13 is therefore justified in such cases—*Pandit Nathuram* v. *C. I. T.*, A. I. R. 1937 All. 981 : 9 I. T. C. 178.

In *A. W. Dalal* v. *C. I. T.*, 9 I. T. C. 195, it was held that the Income-tax Officer had no jurisdiction to reopen the accounts of the past 5 years and as such the amount of interest for the past 5 years, anterior to the accounting year could not be assessed In *Tara Chand Pohumal* v. *C. I. T.*, 9 I. T. C. 256 : A. I. R. 1936 L. 836, it was held that where the Income-tax Officer finds an omission of two hundred rupees as regards interest and finds other omissions as well, he can say that the account does not represent a complete and correct version of the actual business. In *Gopiram Gobindaram* v. *C. I. T.*, 9 I. T. C. 289 : 1936 I. T. R. 157, it has been held that the presumption is that the payment is attributable in the first instance towards the outstanding interest and the Income-tax Officer is entitled to presume that the assessee has first appropriated the money towards interest.

No burden is imposed on taxing authorities to prove by "positive evidence" that the accounts are unreliable or that the figure at which they assess is the correct figure. In the first place, the question of unreliability of account is a question of fact and primarily falls for the determination of the Income-tax authorities alone. If, therefore, it is once decided by them that the accounts are fictitious or unreliable, their finding cannot be disturbed, unless of course, it is altogether capricious and injudicious. Secondly, the Income-tax Officer cannot be fixed with

the knowledge of the state of the assessee's account and cannot subsequently be expected to lead evidence to prove the assessee's transactions for the accounting year. It cannot be denied that there must be some material before the Income-tax Officer on which to base his estimate, but no hard and fast rule can be laid down by any court to define what sort of material is required on which his estimate can be founded. The law nowhere contemplates that the Income-tax Officer is a party to the case in the sense in which an ordinary party to a civil litigation is and he cannot be expected to be in possession of such evidence as would be required from an ordinary litigant to refute the case of his adversary. It is preposterous to say that even the accounts are found to be fictitious or cooked, the Income-tax Officer is bound to assess the author of those accounts on those accounts alone—*Gangaram Bal Mukundu* v. *C. I. T.*, A. I. R. 1937 L. 721 : 1937 I.T. R. 65. (*E. M. Chatyar Firm* v. *C. I. T.*, A. I. R. 1930 R. 4 ; *C. I. T.* v. *Chanlo Chawan*, A. I. R. 1929 R. 102 *referred to*)—*In Ram Kumar Kedar Nath* v. *C. I. T.*, 9 I. T. C. 341, it was held that assessment on estimate on entire commission earned is legal, as the accounts are not closed. Although it is open to an assessee to change the regular basis on which he keeps accounts, still if he seeks to do that he must satisfy on proper evidence that he has in fact changed the regular basis of accounting. *In the matter of Ram Khelwan* (*unreported*), decided on 4-11-31, it was held that the detailed enquiry made by the Income-tax Officer and the general reputation of the assessee are not admissible heads of evidence and the only basis on which the Income-tax Officer could proceed was the evidence of previous records.

An assessee is, no doubt, at liberty to adopt any system of account he likes, but as indicated in para 50 of the Income-Tax Manual, it must be one that clearly reflects his income in respect of the fixed period of the previous year, and that it is the one regularly adopted by him for the purposes of his business. On assessee's own admission that this crediting to the suspense account is not based on any regular system clinches the whole matter . *B. C. G. A., Ltd.* v. *C. I. T.*, A. I. R. 1937 L. 338.

Their Lordships of the Privy Council in *C. I. T.* v. *The Sarangapur Cotton Manufacturing, Ltd.*, 172 I. C. 1, have held that where the method of accounting regularly employed by the assessee comes within the meaning of section 13, it becomes the duty of the Income-tax Officer to consider, whether in his judgment, the income, profits or gains, for the purpose of the section could be properly deduced from the accounts.

The view that Income-tax Officer is *prima facie* entitled to accept the profits shown by the accounts, when there is a method

of accounting regularly employed by the assessee, is not a correct view. So when that method does not in fact show the true income, profits or gains, the Income-tax Officer is not right in computing income, profits and gains in accordance with that method : (*C. I. T.* v. *Ahmedabad New Cotton Mills*, A. I. R. 1930 P. C. 56, *distinguish*).

Section 13 read with Section 23 (3) :

Section 23 (*3*) is not exhaustive and there is implicit in the section, in its context, the power to collect and act on other evidence using 'evidence' in a wide sense of that term, and it is not necessary to invoke the proviso to section 13 of the Act for that purpose, for that section, and in consequence the proviso, relates to the method of accounting and that alone. Section 13 cannot, however, be divorced entirely from section 23 (*3*), because it is only in an enquiry under sub-section (*3*) of section 23, that section 13 can operate. There is no conflict or divorce between section 23 (*3*) and section 13. In proper cases the sections work together. But the proviso to section 13 does not have reference to the manner in which information is obtained either by private enquiries or otherwise. It relates to the manner in which material before an Income-tax Officer shall be used. (*C. I. T.* v. *Maharaja of Darbhanga*, 12 Pat. 318 : 142 I. C. 437 : A. I. R. 1933 P. C. 108 : 37 C. W. N. 598 : 57 C. L. J. 318 : which enunciated that the power to make private enquiries is implicit in the provisions of section 23 of the Act., *relied on*).

The power to make private enquiries is implict in the provisions of section 23 of the Act. Though there is nothing in the Act which requires the Income-tax Officer to disclose to the assessee the material on which he proposes to act or to refer to it in his order, natural justice requires—and he should conduct his proceedings in accordance with natural justice—that he should draw the assessee's attention to any such material and give him a reasonable opportunity to meet the case arising therefrom before making his order. Further, as an order under section 23 (*3*) is appealable, that order should contain with sufficient precision, the material on which the assessment is based so that the Appellate authority can form a just opinion of the fairness of the assessment. There can, however, be no question of the assessee being entitled to demand copies of confidential statements in the possession of the Income-tax Officer, so that they can be cross-examined by the assessee, and the Income-tax Officer is not a 'court' in the usual meaning of the word where he is holding an enquiry under section 23 (*3*). Under section 37 of the Act, he has merely certain powers of Civil Court for the purposes of Chapter IV. *C. I. T., Bombay* v. *Khemchand Ramdas*, 190 I. C.

875, 8 I. T. R. 159. (*Gangaram Balmokand* v. *C. I. T. Punjab*, 177 I. C. 36 : A. I. R. 1937 Lah. 721, *relied on* : *Gopinath Naik* v. *C. I. T.*, 162 I. C. 103, A. I. R. 1936 All. 286 *dissented*)—The case of *Gunda Subbayya* v. *C. I. T., Madras*, (1939) I. T. R. 21, 4 I. R. 1939 Mad. 371 may be looked into.

In *C. I. T.* v. *Badrdas Ramrai*, A. I. R. 1940 Nag. 88 : 7 I. T. R. 613, it is held that section 13 is not an assessment but a computation section. Its provisions instruct the Income-tax authorities as to the method to be adopted in computing the profits or gains of the business in question. Primarily the method is that adopted by the assessee.

Where a return has been made and notice has been given and a corrected 'return' has been put in, the assessee is not entitled to further notice.

In the case of *Gunda Subbayya*, A. I. R. 1939 Mad. 371 : 1939 1. T. R. 21, as has been stated already, it is true that the Income-tax Officer, when making an assessment on material which he himself has, gathered will not be bound to disclose to the assessee the material on which he proposes to act or to refer it in his order, but natural justice demands that he should draw the assessee's attention to it before making the order. It is desirable that the Income-tax Officer should indicate in his order the material on which he has made his assessment, but he is not bound to disclose the source of his information. This case was considered in the case of *C. I. T., Bombay* v. *Khemchand Ramdas*, 8 I. T. R. 159, where practically the principle enunciated in *Gunda Subbayya's (supra)* case was accepted.

Duties and Obligations :

It is open to the Income-tax Department while taxing the assessee either to adopt the cash system or to adopt accrual basis, but having adopted the first system or the second, they cannot be allowed to change their ground whenever it suits them to do so.

What the law requires the Income-tax Officer to see is not a system of account to be kept by the assessee in respect of a particular loan which may have been omitted in that account, but the system of accounting which the assessee regularly employs for his own purposes with respect to all the loans which he discloses. If any loans are deliberately left out from the account kept regularly by the assessee, then it is open to the Income-tax Department to disbelieve the accounts and to proceed in any way they choose by acting under the proviso but on exercising judicial discretion : *C. I. T., Bombay* v. *Sarangapur Cotton Manufacturing*

Co., Ltd. 172 I. C. 1 : 42 C.W. N. 194 : 40 B. L. R. 257 ; *C.I.T., B & O* v. *Jug Saha Munilal Saha*, 185 I. C. 83 : 7 I. T. R. 522.

Under the proviso to section 13 the Income-tax Officer is the sole judge on the question of the possibility of deducing the income from the method of accounting employed by the assessee, and if the principle applying a flat rate is not objected to, its reasonableness cannot be a subject matter of reference to the High Court—*Ramchandra Tolba Teli* v. *C. I. T.*, 7 I. T. R. 154.

Section 13 relates merely to the method of accounting and under this section though the Income-tax Officer may adopt a method of accounting which he prefers where the assessee has no regular or proper method, he cannot reject the assessee's books Nor can the books of an assessee be rejected merely because they do not relate to his foreign business also—*P. R. A. L. M. Muthukuruppan Chettiar* v. *C. I. T., Madras*, 7 I. T. R. 76 : A. I. R. 1939 Mad. 357.

In the case of *Shamrao B. Deshmukh* v. *C. I T., U.P. & C. P.*, 7 I. T. R. 515, it is laid down that section 23 is concerned with assessment, and section 13 with computation. It is not quite correct to say that an assessment should be made under the proviso to section 13 when the assessee's books are found to be unreliable and rejected, though it must, in such circumstances, be in accordance with a computation made under the proviso to section 13.

In *re Nabdipchandra Nagendra Nath Dass*, 7 I. T. R. 488, the Calcutta High Court held that where accounts are made out of previous returns which were found false, it was the duty of the Income-tax Officer to make a computation in accordance with the provisions of sections 13 and 10 of the Act.

Assessment based on 'Local Reputation' under section 13 :

"Local reputation" cannot be said to be a judicial basis or legal basis under section 13 of the Indian Income-tax Act. Consequently an assessment based solely on local reputation and the conditions of the business during the year is not in accordance with the provisions of section 13 of the Act. : *In re Ram Khelawan and Sahu Thakurdas*, 7 I. T. R. 607. (*Gopinath Naik* v *C. I. T.*, 9 I. T. C. 136 : 58 All. 200 : A. I. R. 1936 All. 200 *referred to*)

Absence of Vouchers :

Where the accounts of the assessee, a manufacturer of cigars and *bidi* were rejected on the ground that there were no vouchers for most of the purchases, the entries in the house

chest were suspicious and part of the sale proceeds were suppressed, and an assessment was made on the basis of average rates of profits made by other manufacturers of cigars and *bidis* and also on the profits which the assessee had made in the previous years, it was held that there were sufficient materials justifying computation of profits under section 13 read with section 23—*C. I. T., Madras* v. *Abdul Aziz Saheb*, 7 I. T. R. 647.

Absence of Capital account etc. :

In the Civil Miscelleneous case No. 444 of 1939 of the Lahore High Court, in the matter of *Ganeshi lal Ramchand* (unreported). it is held that where 'capital account' is not kept and list of investments is not incorporated in the books, an assessment under estimate is justified.

Mercantile System of accountancy :

When an assessment is levied at a flat rate the question at what rate the profits should have been calculated is essentially a question of fact. Where a building contractor's accounts were maintained on the mercantile system of accountancy, it was held that he would be liable to be assessed on the profits shown in the accounts even though a portion of the amount spent by him in making the constructions had not been realised—In *re Krishna & Co.*, 7 I. T. R., 513.

Application of flat rates of profits :—At page 75 of the Income-tax Enquiry Report, the following passage occurs :

"Much has been said on the subject of application of standard rates of profits when estimates are made on a turnover basis. The complaints may be reduced in the main to allegations that the rates are not impartially ascertained, that the highest rate of profit found on any business in a given class of trade is treated as representative of that class, and that the rate applicable to one class of trade is sometimes applied to business not strictly within that class or to businesses having special features which make that rate inappropriate.

It is true that some estimation of the rate of profits is necessary in many cases, but it should be remembered that even when fairly ascertained, the 'standard' rate of gross profit for a given class of trade is merely the average of a number of actual rates with possibly a wide range of variation. It follows that these rates, however carefully computed, should be applied with discretion and with regard to the special circumstances of the individual case. A further point that should be mentioned is that it is generally more correct to apply a gross rate of profit and to deduct working expenses from the result than to apply a net rate of profit directly to the turnover."

Exemptions of a general nature.

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

(*2*) The tax shall not be payable by an assessee—

(*a*) if a partner of an unregistered firm, in respect of any portion of his share in the porfits 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 undivded 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.

Hindu Undivided Family :

Several changes have been made in this section by the Amendment Act, 1939, of which the most important one relates to the method of dealing with dividends from companies. Such dividends were, in the past, exempt from income-tax, but the gross dividends were included in total income under section 16. These dividends are, however, no longer exempt from income-tax. Income-tax is to be charged on the gross dividends in the same way as it is charged on interest on securities, and the full amount of tax deemed to have been paid by the company in respect of the dividend (*vide* section 49-B), is to be treated as tax paid on behalf of the shareholder and allowed as a deduction from the tax chargeable [*vide* section 18 (*5*)]. Any excess tax paid over the net amount chargeable is to be refunded (*vide* section 48).

Assessment of Hindus and Hindu undivided families—A Hindu undivided family is treated and taxed as a separate entity for income-tax purposes, and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate income. This applies even in cases

where the amount of income of the Hindu undivided family is less than Rs. 2,000, and is, therefore, not liable to taxation in the hands of the manager of the family.

Where the income, profits and gains of a member of an undivided Hindu family consist of his personal earnings and acquisitions by his own exertions, they must be treated as his personal income and not as joint family income, unless they flow from the employment in business or otherwise of the joint family property.

Khojas (and Cutchi Memons), not being Hindus, joint families composed of such persons are not Hindu undivided families for the purposes of the Act.

Jain and Sikh undivided families will be treated as Hindu undivided families, unless in any particular case, the assessees claim that they should not be treated as such. Where such a claim is put forward, it is for the assessee to prove the existence of some special custom or practice applicable to the family in question which would justify its not being treated as a Hindu undivided family.

The son of a Hindu (governed by any school of Hindu law) does not acquire by birth any interest in his father's self-acquired property. In respect of the income of such property the father is to be assessed as an individual.

In the case of Hindus not governed by the Dayabhaga law the son acquires by birth an interest in his father's ancestral property and therefore after the birth of a son the income from ancestral property is to be assessed as the income of a Hindu undivided family. According to the Dayabhaga law, however, the son does not acquire by birth any interest in ancestral property. His rights arise for the first time on his father's death. In the father's lifetime, therefore, the income from ancestral property is to be assessed as the income of the individual unless the father himself is a member of a coparcenary.

The income of a sole surviving male member of a Hindu undivided family governed by the Mitakshara law is to be assessed as his personal income if he has no son. The existence of a wife and daughters does not alter the position. Under the Dayabhaga law the position is different. According to that law a coparcenary is formed only when the inheritance opens and there must be two or more male heirs before a coparcenary can be formed. But if any of these male coparceners dies leaving surviving him a widow or a daughter that widow or daughter would be admitted into the coparcenary in the place of the deceased coparcener. If, for example, a Hindu governed by Dayabhaga law dies leaving three

sons A, B, and C, the three sons A, B, and C, inherit the property jointly and form a coparcenary (although each inherits a defined share). If before partitioning their shares B, dies leaving a widow, BW, and C, dies leaving a daughter CD, then A, BW, and CD, will be members of the coparcenary originally formed by A, B, and C. It will thus be seen that the Dayabhaga law differs from the Mitakshara in admitting females into the coparcenary in certain circumstances although they cannot originally form a coparcenary. A coparcenary is *a fortiori* a Hindu undivided family and the income from the coparcenary property will, according to the Dayabhaga law, be assessable as the income of a Hindu undivided family notwithstanding that such coparcenary consists of only one male member and one or more female members.

The income from the ancestral property of a Hindu (governed by any school of law) with no son but with a wife and or daughters is assessable as the income of an individual.

Hindu Undivided Family :

The question whether a person is a member of Hindu undivided family is a question of fact. In the case of an impartible estate, the fact that the holder for the time being is exclusively entitled to the estate is not inconsistent with other members of the family being joint with him. Where the family custom does entitle the junior members to maintenance so that in so far as maintenance is paid out of joint family property, the recipient receives it as a member of the family by virtue of his right to it, it is exempted from taxation by section 14 (*1*)—*C. I. T.* v. *Bisweswar Singh*, A. I. R. 1935 Pat. 342. In 57 I. L. R. Mad. 1023, in the matter of *C. I. T.* v. *Zemindar of Chamundu*, it was held that the sum received as maintenance by an assessee as the brother of the last holder of an ancestral impartible estate entitled under the law to receive maintenance out of such estate is a sum received by him as a member of a Hindu undivided family within the meaning of clause (*i*) of section 14. The right to maintenance which the son of a Zemindar still possesses is not a creature of custom but it is an incident to the ordinary joint family property which has been left untouched by custom despite its encroachment on the other incidents.

In the matter of Mooljı Sicka, 40 C. W. N. 577, it appears that Hindu undivided family in the Act means a Hindu coparcenary and not a Hindu joint family in the wider sense of several members living together, irrespective of the existence or non-existence of any coparcenary property. Consequently whether the property in the hands of a Hindu assessee is ancestral or self-acquired when he has no coparceners, there is no Hindu

undivided family within the meaning of the Act. Even when there are members capable of being coparceners, if the property is not in its origin ancestral and neither the property nor its income has ever been thrown into the common stock but has been treated as separate, its income cannot be treated as the income of a Hindu undivided family. A declaration in an affidavit in the course of the assessment proceedings that the property is joint cannot be sufficient to create a coparcenary and warrant assessment on the footing of a Hindu undivided family. In *C. I. T.* v. *Raja of Bobbili*, A. I. R., 1937 M. 515 : 10 I. T. C. 146, it has been held that the object of the exemption is to save double taxation and therefore where the Hindu undivided family has been assessed under section 3 in respect of its income, a member of it is not to be assessed again individually. It is true that he is a member of a Hindu undivided family receiving nothing from the family. The income is received by him as the holder of the impartible estate, it cannot be said that he receives it as a member of Hindu undivided family. The income is his and the junior members have no right therein. The junior member receives maintenance because he is entitled to a share in the corpus and the holder of the impartible estate is bound to maintain the junior member of the family. Accordingly he was rightly assessed as an individual. Section 14 (*1*) applies only to sums received by a member of a Hindu undivided family out of income to a share in which he has a vested right, that is to say, sums which he receives from the joint income of the family ; and that a sum received by an assessee because he is a member of an undivided family does not stand on the same footing as a sum received by him as a member of the family. There is no distinction between a customary impartible estate and an estate granted by the Crown subject to descent by primogeniture. While blending may be possible in the former, it is not so in the case of the latter.

What section 14 (*1*) contemplates is that the receipt should be from the joint income of the family and not otherwise. The unfailing test for the applicability of section 14 (*1*) is to determine whether the allowance would cease if the assessee ceased to be a member of the undivided family, if any. The assessee was granted by his elder brother, succeeding to the impartible estate under the law of primogeniture, certain annual allowance ; the assessee claimed that this income was received by him as a member of the Hindu undivided family and as such an exempt. Both brothers were in receipt of separate income which were liable to separate assessment, and there was no joint family income which was assessed as such ; it was held that the allowance was the gift of the Government and not the gift of the holder of the assignment or in other words, the Karta of the family, and this being so the

assessee was not receiving the income as a member of a Hindu undivided family—*Kartar Singh* v. *C. I. T.*, A. I. R. 1937 L. 905 : 175 I. C. 739. In *Kishen Kishore* v. *C. I. T.*, 114 I. C. 417 : A. I. R. 1933 L. 284 : A. I. R. 1935 L. 661, it was held that the income of the impartible Raj in the hands of the holder is to be assessed on the footing that the income is the income of an individual and not of an undivided family.

Ordinarily, a married daughter is not a member of the family of her father or mother, nor can the daughter's son be said to be such a member, but it is said that the expression undivided Hindu family used in section 14 differs from what is called a Hindu coparcenary body which is a much narrower body and which includes those male members who take by birth an interest in the coparcenary property. The view is supported by authorities in *Vedathini* v. *C. I. T.*, 56 Madras 1 ; *C. I. T.* v. *Laksmi Narayan*, 59 I. L. R. B. 618. In the latter case it was observed that under the Hindu Law an undivided family is composed of (*a*) males and (*b*) females. The males are (1) those that are lineally connected in the male line, (2) collaterals, (3) relations by adoption and (4) poor dependents. Only those members of a Hindu undivided family can claim exemption who either on partition would be entitled to demand a share or are entitled to maintenance under the Hindu Law and who therefore might be said to have an interest in the joint income of the family—*In re* : *Kunar Kedarnarayan Singha, Benaras*, 6 I. T. R. 157.

Scope of Section 14 (2) :

In the previous Act, sub-section (*2*) (*a*), which has now been deleted, exempted from taxation dividends of companies whose profits have been assessed to tax. The deletion was due to the result of a Privy Council decision in the case of *C. I. T.* v. *Hungerford Investment Trust Co., Ltd.*, A. I. R. 1936 P. C. 219, which exempts the whole dividend even when only part of the company's profits has been taxed. Thus the old section 14 (*2*) (*a*) stands deleted with a consequential amendment in section 16(*2*) and section 18 (*5*). The result of these amendments will be that a dividend will no longer be exempt : but it will be on the same footing as interest on securities and credit for the appropriate amount of the tax on it will be given in the assessment.

Sub-section (*2*), clauses (*b*) and (*c*) of sec. 14 of the previous Act exempted the proportionate shares of the taxed profits of firms and association of persons. But owing to the insertion of section 23 (*5*), provision has been made to tax the partners of registered firms directly, the amended sub-section (*2*) (*a*) relates only to unregistered firms and it exempts not the amount (which

stood exempted under previous Act) of the firm's profits proportionate to the assessee's share thereon at the time of making the assessment but the partner of the firms taxed profits which the assessee is entitled to receive. Sub-section (*2*) (*b*) of section 14 exempts not the amount which a member of an association receives but the amount which he is entitled to receive. Take for instance, a firm consists of *A* and *B* with equal shares. The assessment is made thus : after allowing commission of Rs. 700 and Rs. 1000 to *A* and *B*, the net profit computed was Rs. 4000 *A* has got an individual income of Rs. 500, his share in the partnership firm is Rs. 2000 (taxed) and a commission of Rs. 700 (untaxed) ; the sum of Rs. 2000 should not be taxed over again ; similarly the half share of Rs. 2000 of *B* will not be taxed again. Similarly if the said firm resulted in a loss of Rs. 4000, the same procedure would be followed.

Tax has already been paid :

Unless there is a taxable income in the firm or association and unless tax has already been paid, the assessee cannot claim the exemption conferred by section 14 (*2*) (*a*) and (*b*). Under the previous Act the expression was "assessed to income-tax" and it meant "to ascertain or calculate income-tax"—*Seth Kannai Lal* v. *C. I. T.*, 9 I. T. C. 368.

But the amendment has made it wider ; not only there should be an assessable income but tax thereof must have been paid, if any exemption is to be claimed. Similar views were expressed in *Rai Bahadur Saha Hara Prosad Raja Radha Raman* v. *C. I. T.*, 10 I. T. C. 83. It was held that where interest paid to the assessee was disallowed in the firm's assessment and it was correctly included in the computation of the assessee's share in the profits of the firm, the assessee was not exempt under section 14(*2*).

It must be understood that where a firm's assessment is not possible for want of jurisdiction or other ground of limitation, there is no bar to assess the individual—*In re Nimchand Daga*, A. I. R, 1931 Cal. 686 : 5 I. T. C. 286. Although it was a case of a partner in a registered firm, still the partner in an unregistered firm is not affected thereby.

Computation of 'Total Income' under section 14 :

In the case of *Gordhandas G. Mehta*, 8 I.T.R. 80, it has been held that when maintenance and education expenses are received under a will from the executors of the estate, it does not stand to reason why it should not be regarded as part of his

income. The money was paid out of the income of the estate and it should be properly included as part of his income. In *re Sreemati Kamalabala Dassi*, 8 I. T. R. 404, it was held that as the assessee was no longer a member of the family of her brother-in-law and as the amount was received by her by virtue solely of the deed of relinquishment and in consideration of her surrendering the whole estate of her deceased husband, the sum was not received as a member of a Hindu undivided family within the meaning of section 14 (*1*) of the Act.

In the case of *Shri Maharani Lakshmi Pat Mahadevi Ganu, Dowager Maharani of Jaypur* v. *C. I. T., C. P. & U. P.*, 8 I. T. R. 489, the fixed allowances payable to the widow, were held by the Commissioner, to have been received not as a member of the Hindu undivided family, relying on the decisions of *Bejoy Singh Dudhuria*, 6 I. T. C. 449 and of *Charusila Dassi*, 5 I. T. R. 1, 9 I. T. C. 321 ; but the Oudh Chief Court held that as the Privy Council had deliberately abstained from deciding the question and the decision of the Calcutta High Court was not binding on the Oudh Chief Court, the Commissioner was bound to refer the question to the High Court.

But in the case of *Commissioner of Income-tax* v. *Rani Rudh Kumari*, 8 I. T. C. 607, it was held that if the assessee had received her allowance under the will of Rani, it would not be exempt from tax under section 14 (*1*), but as she received it by virtue of her position as the mother of the proprietor and not under the will, the allowance was exempt under section 14(*1*). The following cases may be looked into—*Bejoy Singh Dudhuria* v. *C. I. T.*, 60 Cal. 1029 (P. C.) ; *C. I. T.* v. *Lakshmi Narayan*, 3 I. T. R. 367 ; *Kedar Narain Singh* v. *C. I. T.*, 6 I. T. R. 157 and *Vedathanni* v. *C. I. T.*, 6 I. T. C. 267.

Deduction on Dividends when Company is not liable :

In the case of *Bai Lalita* v. *Tata Iron and Steel Co., Ltd.*, 8 I. T. R. 337, it has been held that the arrears of dividend remain arrears of dividend and can only be paid out of profits, and that neither such arrears nor the interest thereon become a debt due from the company different in character from the obligation to pay current dividends.

Income-tax has to be discharged out of profits before any distribution can be made, and where tax had been paid the company must apportion the burden amongst the different classes of shareholders, according to their legal rights. Where no income-tax is payable by the company and there is no burden to adjust, the company is not justified in making any deduction in respect of income-tax from the dividends paid.

In the case of a company the tax has to be paid by the company direct and not on behalf of the shareholders inasmuch as the scheme of the Indian Act is that a company is assessed to income-tax for its profits.

The provisions of section 20 are mandatory, but they only apply where the company is liable to tax. Where no income-tax is payable by the company a certificate to the shareholders under section 20 is not necessary. The penalty imposed by section 51 on a failure to furnish a certificate under section 20 only arises where the failure is without reasonable cause or excuse, and the fact that the certificate would be untrue as no income-tax was payable by the company would provide a reasonable cause for not issuing it.

The words 'assessed to income-tax' according to their ordinary or natural meaning do not cover the case where a company is assessed to no income-tax.

Exemption in the case of life insurances

15. (*1*) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee, or as a contribution to any Provident Fund to which the Provident Funds Act, 1925, applies.

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.

(*3*) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the second proviso to sub-section (*1*) of section 7 and any sums exempted under sub-section (*1*) of section 58-F exceed in the case of an individual, one-sixth of the total income of the assessee, or six thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less.

Scope :

The new amendment does not practically alter the law as it stood under the old Act. It lays down that the tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee, in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband.

Under the previous Act a husband assessee was entitled to claim abatement of the insurance of his wife, but now it is *vice versa*. Similarly contribution to Provident fund to which the Provident Funds Act, 1925, applies in place of the Act of 1897.

A Hindu undivided family as in the previous Act is here also entitled to abatement for any insurance in the name of any adult male member of the family or their wives. Section 10 (*3*) has considerably narrowed the exemptions by embodying that in the case of an individual 1/6th. of his total income or Rs. 6000/- and in the case of a Hindu undivided family 1/6th of Rs. 1200/- whichever is less.

Section 85 :

Contribution of the Widows, Orphans and Old Age Contributory Pension Fund, 1925, are exempt from income-tax since they are deducted from the salaries payable by or on behalf of the Crown to the soldiers concerned, being sums deducted in accordance with the conditions of their service, for the purpose of securing to them a deferred annuity and of making provision for their wives and children.

Compulsory allotments from a soldier's pay made to his wife in England under Article 886 of Royal Warrant for Pay, are exempt from income-tax since they are also deducted from the salaries 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 making provision, whether present or future, for his wife.

The restriction imposed by the second proviso to sub-section (*1*) of section 7 and by sub-section (*3*) of section 15 applies to the above contribution also. No allowance is due in respect of "voluntary" allotments made by soldiers for the above purpose.

Deductions at source on account of contributions made by an officer to provide passage money for his widow and orphans under the Indian Military Service Family Pension Regulations and the Indian Military Widows and Orphans Funds Regulations are

exempt from income-tax. Under the rules, a certificate of health is required before an officer can contribute and the contribution which he has to pay is regulated according to the age of the officer concerned.

Out of the premiums paid in respect of a policy that covers the risks of sickness and accidental injury and also the risk of death, only so much as is attributable to the risk of death (from whatsoever cause) is admissible as deduction from the income liable to tax. The portion of the premiums so attributable should be settled in consultation with the Insurance Company concerned.

No rebate of income-tax is allowed on any sum withdrawn by an assessee from his Provident Fund in order to pay his life insurance premium.

Although insurances, *on the life of a child* do not entitle the assessee to the concession, it should be noted that certain kinds of insurance which are *for the benefit of the child* should be treated for the purposes of section 15 as insurances on the life of the assessee. Policies are often taken by assessees with a view to securing a provision of a lump sum for their children for their marriage, education or other purposes at a stipulated time and the sum assured becomes payable on that date even if the subscriber dies after paying one premium only. An insurance of this kind is really an insurance on the life of the assessee as it is designed to secure in the event of the assesee's early death (though not immediately after his death) a benefit considerably greater in amount than the annual payments which he has made and consequently contributions to such policies are eligible for rebate under section 15(*1*). The criterion that should be adopted in such cases is whether or not there is a contract *dependent on the life of the assessee.* A fixed term policy under which neither the premiums nor the sum payable by the Insurance Company at the end of the term are dependent on the life of the assessee is not a life insurance policy.

For the purpose of an abatement claimed by an assessee under this section insurance premiums payable in sterling should be converted at the rate of exchange in force on the day on which the premium payment was made in cases where the assessee is unable to state the actual cost of remittance. No relief is admissible on premiums paid out of income accruing or arising outside British India where such foreign income is not chargeable to Indian Income-tax. Where, however, in the case of non-residents, foreign income is included in the 'total world income', and it is not possible for the assessee to allocate definitely from which income—Indian or foreign—the premium was paid, the relief

admissible will only be proportionate, *i e.*, in the same proportion as the Indian income bears to 'total world income'.

A claim for abatement under this section must, if the payment is made otherwise than by a deduction from salary, be supported either—

(*a*) by the original receipt, of the insurance company or fund ;

(*b*) where the claim is made by a Government servant or a servant of a local authority, by a copy of the original receipt presented along with the original to the officer who pays the salary and attested by that officer who should, after such attestation, return the original with a note endorsed upon it that it has been produced and allowed for, a copy being attached to the bills sent with the list of payments ,

(*c*) by a duplicate receipt or certificate of payment given by the insurance company or provident fund, provided a certificate is given that the original receipt is lost or not forthcoming ; or

(*d*) where an insurance company does not issue a formal receipt, by a certificate of payment of the premium.

Where the Income-tax Officer is satisfied that none of the above prescribed documents can be produced without an amount of delay, expense or inconvenience, which under the circumstances of the case, would be unreasonable, he will accept such other proof of payment of the premium as he deems sufficient.

Abatement on account of insurance can be given effect to by the person deducting income-tax under section 18 (*2*) from salary at the time of payment.

Where the payment on account of insurance premiums, etc., is not claimed at the time when tax is deducted from salary, it may be claimed in the assessment and in the return given by the assessee under section 22 (*1*) or 22 (*2*) or if no assessment is made, a refund on account of such rebate may be claimed.

While the persons responsible for deducting income-tax at the source under section 18 (*2*) of the Act should allow an abatement where claimed, they need not carry out a check to see whether the abatement claimed under this section exceeds one-sixth of the salary of the officers or Rs. 6,000 or Rs. 12,000, as the case may be. This will be investigated by the Income-tax Officer to whom returns are furnished under section 21.

It is to be particularly noted that this abatement does not apply to super-tax, section 15 being made inapplicable to super-tax by section 58. (*I. T. M*)

Application :

Policies which are effected outside British India should be excluded altogether. A person who has taken out a policy of assurance, or a contract for a deferred annuity, on his life or the life of his wife, is entitled to have the amount of tax payable by him reduced by a sum representing tax at the appropriate rate on the amount of the premium or premiums payable in the fiscal year concerned. A similar allowance may be claimed where a policy is taken out by the tax-payer's wife in respect of her own or her husband's life.

Where part of the premium remains on loan, only that portion which is actually paid in cash is entitled to the allowance—*Hunter* v. *Rex*, 5 T. C. 13. This of course does not affect policies against which loans have been granted whether the premiums have been paid in cash or not. Premiums on joint lives, in respect of partners, co-directors, husband and wife are not entitled to the allowance, although in practice premiums on joint lives of husband and wife are invariably allowed—*Wilson* v *Simpson*, 5 A. T. C. 450. Section 15 enjoins that in order to claim exemption, payment must be annual or recurring and where payments are made in commutation of future premiums, no allowance is permissible—*Turton* v. *O'brien*, 7 T. C. 170. The whole of the premiums paid on a life policy which provides or payment of a sum at the expiration of a fixed number of years for of a lesser sum in case of death before the close of that period is deductible—*Gould* v. *Curties*, 6 T. C. 293 : 29 T. L. R. 469.

Computation :

Sub-section (*4*)—a new provision—prescribes that the foregoing exemption shall be given at the average of the rates applicable to the total income. This method of giving the exemption is based on the "slab" system which it is proposed to adopt in future in prescribing rates of income-tax in the annual Finance Act. Under the present system of rates of income-tax, tax is charged at the same rate on the whole income ; under the slab system progressive rates are applied to successive slices of income. This the system now in operation for the charge of super-tax.

Joint Life Policies :

Premiums on joint life policies (*e.g.*, in respect of partners, co-directors or possibly husband and wife) are not entitled to the allowance—*Wilson* v. *Simpson*, 5 A. T. C. 450. But as a matter of practice, premium paid on joint lives of husband and wife are allowed. Section 15 enjoins that in order to claim

exemption, the payment must be annual, but no allowance is permissible where payments are in commutation of future payments.—*Turton* v. *O' Brien*, 7 T. C. 170. Life assurance policies include endowment policies—*Gould* v. *Curtis*, 29 T. L. R. 469 : 29 T. C. 293.

16. (*1*) In computing the total income of an assessee—

Exemptions and exclusions determining the total income.

(*a*) any sums exempted under the second proviso to sub-section (*1*) of section 7, the second and third provisos to section 8, sub-section (*2*) of section 14 and section 15 shall be included ;

(*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 disponer, shall be deemed to be income of the settlor or disponer, and all income arising to any person by virtue of a

revocable transfer of assets shall be deemed to be income of the transferor :

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or in any way gives the settlor, disponer or transferor a right to reassume power directly or indirectly over the income or assets :

Provided further that the expression 'settlement or disposition' shall for the purposes of the clause include any disposition, trust, covenant, agreement, or arrangement, and the expression 'settlor or disponer' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made.

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the 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, and shall be increased by the amount of income-tax (but not super-tax) payable thereon calculated at the rate applicable to the total income of a company for the financial year

in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed :

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the income-tax to be added under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.

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

(*a*) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(*i*) from the membership of the wife in a firm of which her husband is a partner ;

(*ii*) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner ;

(*iii*) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart ; or

(*iv*) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration ; and

(*b*) so much of the income of any person or association of persons as arises from assets

transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both.

Partnership Profits

Clause (*b*) of sub-section (*1*) of this section lays down the method of allocation of partnership profits amongst the various partners of a firm. The total of all sums received by a partner from a firm is to be treated as his income from the firm. Even when a firm has made a loss, the result of allocation might show a positive profit in the share of a partner.

The basis of dividing the aggregate profit of the firm is the basis upon which the profits assessed were in fact divided in the previous year. Whether the firm as a whole makes a profit or a loss, the partners making profits (including interest, salary etc.) are to be assessed on the full amount of their profits and the partners who make losses are to be allowed to set off or carry forward their losses in accordance with the provisions of section 24.

Clause (*c*) of sub-section (*1*) of this section is an important addition to prevent avoidance of tax by making settlements or dispositions.

Assessment of married women.—A married woman is to be separately assessed in respect of her separate income.

Pension received from funds such as the Indian Military Service Family Pension Fund by a widow on account of her children and on account of herself are distinct and separate from one another. The pension of a minor orphan paid to his or her mother or a duly appointed or recognised guardian should not be included in the taxable income of the mother or guardian for the purposes of assessment. (I. T. Manual)

Exemptions and Exclusions in determining the Total Income :

Section 16 (*1*) (*a*) specifies certain exemptions which are to be included in the computation of total income. But there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7 (*1*), contributions to a recognised Provident Fund exempt under section 58-F (*1*), the sums paid on account of insurance premia under section 15, securities issued income-tax free by the Government of India or by local Government, under the provisos to section 8, on which

income-tax is not payable, but all such sums are included in the total income of the assessee for the purpose of determining his liabilities to income-tax, and the appropriate rate at which the tax shall be levied.

Sub-section (*1*) (*b*), a new provision prescribes the way in which the share (whether profits or loss) of a partner in a firm is to be computed. This method is consequential on the amendment of section 10 (*4*) (*b*) disallowing in the firm's assessment, payments to partners. It further provides categorically that the assessee is entitled to set off any loss or carry loss forward under section 24.

Avoidance of Tax by Settlement and Disposition :

On the recommendation of the Taxation Enquiry Committee, 1936, that it is very common amongst the assessees to make legal avoidance, sub-section (*1*) (*c*) has been inserted. This provision is designed to prevent the avoidance of tax by the simple device of settling income upon another person whose rate of tax is lower than that of the settlor, or the transfer of assets, so that the income therefrom arising to such other person. This amendment provides that the income in such a case is to be treated as the income of the settlor or transferor. Where however the assets are irrevocably transferred to another person, other than in the circumstances dealt with in sub-section 3 (*b*) or in Chapter V-B, the income therefrom is not to be deemed to be income of the transferor.

The first proviso in sub-section (*1*) (*c*) categorically lays down for the purposes of this clause that a settlement, disposition or transfer shall be deemed to be revocable if there is any provision of retransfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or if it in any way gives right to the settlor etc. a right to reassume power directly or indirectly over the income or assets.

The expression "settlement or disposition" shall include any disposition, trust, covenant, agreement or arrangement ; while the expression "settlor or disponer" shall include any person by whom the settlement or disposition was made. Settlor or disponer is not liable to tax provided the settlement etc. is irrevocable for a period exceeding 6 years or when the settlor derives on benefit directly or indirectly. But where the power to revoke arises, the settlor shall be liable.

Dividend included in the Total Income :

Sub-section (*2*) of section 16 provides for the inclusion in total income of the tax on the dividend along with the dividend.

As amended, it provides for the inclusion in "total income" of only the appropriate amount of the tax in the case of dividend from partly taxed profit and "Dividend" connotes the meaning as given in section 2(*6-A*).

The proviso to section 16 (*2*) has been enacted to meet cases of the nature of *Hungerford Investment Trust, Ltd.*, A. I R. 1936 P. C. 219 : 40 C. W. N. P. C. 1157. It was held that the phrase "where the profits and gains of the company have been assessed to income-tax" must be given its ordinary and natural meaning and cannot be read to mean "all the profits or gains of the company" or "the total profits or gains" ; and consequently a company whose profits are found to include specified sums to which, in accordance with sec. 4, the Act did not apply and the said company has been assessed in respect of profits to which the Act did apply, such proportion of dividend as the specified sum bears to the aggregate of all profits distributed among shareholders is exempted from taxation to ordinary income-tax in accordance with section 14 (*2*). To avoid a case of the above nature, the proviso to sec. 16(*2*) lays down that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed etc., did not attract tax in the hands of the company, the income-tax to be added under section 16 (*2*) shall be calculated on only such portion 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. The far-reaching effect of the proviso is that when a company has been assessed to income-tax in respect of profits and gains in the relevant year, and is in receipt of sums distributable as dividends, income-tax to be added shall be calculated upon only such proportion of the dividends as the amount of profits and gains of the company liable to income-tax bears. In *C. I. T.* v. *Mohanlal Chhotalal*, 10 I. T. C. 46, it was held that a company is entitled to release its surplus assets in the form of capital, then the return which the shareholder gets in whatever form can never be treated as income liable to income-tax. It is of course open to any company to release surplus profits either by way of capital or by way of dividend or income.

But the definition as given in section 2 (*6A*) sub-cl. (*a*) will now make distribution of the profits in the form of bonus shares, bonus debentures, release or reduction of capital taxable.

The other result will be that cases of the nature of *Hungerford Investment Trust*, *Mohanlal Chhotalal*, (*supra*) and also the Privy Council cases of *C. I. T.* v. *Mercantile Bank of India* (1936) 38, B. L. R. 995, will attract tax. In the last case the undistributed profits were distributed by way of debentures to the holders of the preference share and although it was found that almost

immediately the debentures were redeemed, yet it was held by the Privy Council that the effect of such distribution was a distribution of a capital and not a distribution of income.

Income of Wife and Minor Children :

In the Statement of Objects and Reasons, Sir James Grigg, Finance Member, observed, "Reference is made in sections 1 and 4, of chapter III, of the Income-tax Enquiry Report, 1936, to the practices of avoiding taxation by means of nominal partnerships between husband and wife or parent and minor child or by the nominal transfer of assets to a wife or minor child (or to an association consisting of husband and wife) when there is no substantial separation of the interests of the assessee and the wife or child. These practices are reported to be very widespread already, with considerable detriment to the revenue, and there is little doubt that if they are not checked there will be progressive deterioration.....the present amendment has been so drafted as to deal with only the abuses to which I have referred."

Operation of the Section :

The amendment made in the Act shall not have effect in respect of any income chargeable to income-tax for any year ending before the 1st day of April 1937.

Adequate consideration :

No definition has been given as to what would be "adequate consideration" for the purpose of this section. In the absence of any specified definition, we are to fall back on the definition of the Contract Act.

Section 2 (d) of the Conttact Act : When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

The definition as given by Selwyn is as below : "Any act of the plaintiff from which the defendant derives a benefit or advantage or any labour, detriment or inconvenience suffered by the plaintiff, provided such act is performed or such inconvenience suffered by the plaintiff, with the consent either expressed or implied, of the defendant." "A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other—*Carlill* v. *Carbolic Smoke Ball Co.* (1893 Q. B. 256).

The expressions "good consideration" and "a valuable consideration" which one comes across in English law have not been defined in the Act. Apparently they are to be understood as meaning the same thing as consideration. The Court will not enquire whether the bargain was a good one or not (*Moss* v. *Hell*, 5 Ex. 46) or what benefit the promisor expected to derive. Any benefit, however small, is sufficient (*Haigh* v. *Brooks*, 10 A. & E. 309). Benefit may not only be slight but also problematical. It has been held to be sufficient consideration.

A nominal consideration is a good consideration, the distinction between good and valuable consideration is this, that the good consideration makes the instrument good as between the parties but a valuable consideration makes the conveyance good as against a subsequent purchaser (*Gully* v. *Bishop's Executor*, 10 B. & C. 584). There is an equity which may be founded upon gross inadequacy of consideration but it can only be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about or was the victim of some one in position.

A transfer to a wife in consideration of natural love and affection, and as a security for her future maintenance, in case of assessee's immediate death, is sanctioned by civil law. The giving away implies a complete divesting of the ownership in the property of the donor. The income is the absolute property of the wife. It takes away the freedom of disposition of one's own property in any way he likes. The result is penalising husband for making a gift to his wife.

But the gift to a wife stands on a totally different footing from a gift or transfer to minor child. As soon as the minor child becomes a major, the father assessee is exempt and there is no liability.

Dowry System :

It is a common practice with a large section of Indian people to provide their daughters at marriage (*a*) with a dowry which may take the form of cash, landed property, jewellery or annuity ; in any case it belongs solely to the wife. (*b*) The Maher Money system of the Muslims—when contracting marriages they have either to agree to pay, or actually to pay, a sum of money or other assets to the would be wives and it is known as *Maher*. It may be paid in cash or it may be deferred. (*c*) The *Streedhan* system, is prevalent amongst Hindus in general. In every case, it will be a question of fact whether there is adequate consideration.

Sub-Section (3) (b) :

The wording in previous Act, has been found defective as it may be possible for a person to transfer income to an associa-

tion of persons which includes a person other than that individual or his wife but in such circumstances the income becomes the income of the wife or minor child. For these reasons the words "consisting of such individual and his wife" are being omitted and the words "for the benefit of his wife or a minor child or both" are being added.

It will be seen that provisions in sub-section (*1*) (*c*) cover all cases of transfer of income and also covers cases of revocable transfer of assets. The amendment covers further cases of irrevocable transfer of assets where the income accrues to the benefit of the wife or minor child of the transfer.

Determination of tax payable in certain special cases.

17(*1*). Where a person is not resident in British India, and is a British subject as defined in section 17 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income ; and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

(*2*) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the tax payable by the assessee shall be an amount bearing to the total amount of the tax including 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.

Scope :

Section 17 of the previous Act dealt with marginal relief which has been deleted because it becomes superfluous owing to the adoption of the slab system of rates. A new section 17 has been inserted prescribing the way tax is to be determined in certain cases. Sub-sections (*1*) and (*2*) determine the tax payable by non-residents with non-taxable foreign income and persons with exempted income which is included in the total income. The principle adopted is to calculate the tax, including super-tax, on the whole income of the assessee and levy that proportion of it which the liable income bears to the whole income. The important point about this amendment is that the rate applied to the taxable income is the rate applicable to the whole income. In the case of non-British non-residents income-tax will be payable at the maximum rate. The reference to Burma in sub-section (*1*) is made for the purpose of according to the states in Burma the same treatment as is accorded by the Burman law to states in India.

Non-resident in British India :

Section 17 (*1*) brings into charge a person not resident in British India. Apparently the section applies where the person is non-resident during the previous year. But he must be a British subject as defined in section 17 of the British Nationality and Status of Aliens Act, 1914.

Now British subject has been defined in section 27 of the English Act thus :—

"The expression British subject means a person who is a natural born British subject, or a person to whom a certificate of naturalisation has been granted, or a person who has become a subject of His Majesty by reason of any annexation of territory".

Section 3 (*27 b*) of the General Clauses Act (Act X of 1897) as inserted by the Government of India (Adaptation of Indian Laws) Order, 1937, lays down.

"Indian State" shall include any territory, whether described as a State, an Estate, a Jagir or otherwise belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty, and not being part of British India".

Section 3 (*27*) of the same Act as substituted by the Government of India (Adaptation of Indian Laws) Order, 1937, lays down that "India" shall mean British India together with all territory of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such Indian [redacted] tribal areas, and any other territories which His Majesty in

Council may, from time to time after ascertaining the views of the Central Government and the Central Legislature, declare to be part of India."

Sub-section (*1*) enunciates the basis upon which tax is to be calculated in respect of non-residents. Where the non-resident is a British subject or a subject of a State in India or Burma, computation of income-tax shall have to be made on a reference to world income ; while in case of any other non-resident computation is to be made at the Company rate of tax.

Super-tax in both cases is to be computed by reference to the world income, namely, the average rate of super-tax computed upon the total world income is to be applied to the income which is liable to income-tax. The following illustrations will make the position clear :

(1) Where a non-resident British subject has a total income of Rs. 500 and a total world income of Rs. 20000 tax on Rs. 500 will be as at the rate on Rs. 20000 and super-tax will be at 2 pies on Rs. 500.

(2) Whereas in the above case, if the person is a non-resident, non-British subject, income-tax is leviable at the full company rate and super-tax will be as in number (1) above.

Relief on exempted income included in total :

This section provides the method of computing the relief to be given in cases where income which is exempt from payment of tax is included in the total income of a person. As a matter of fact it refers to life insurance premiums etc. and shares in unregistered firms.

CHAPTER IV

DEDUCTIONS AND ASSESSMENT

18. [1]* * * * *

(*2*) Any person responsible for paying any income chargeable under the head 'Salaries' shall, at the time of payment, deduct income-tax and super-tax on the amount payable at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head :

Payment by deduction at source.

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

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

(*2B*) Any person responsible for paying any income chargeable under the head 'Salaries' to a person not resident in British India shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.

(*3*) The person responsible for paying any income chargeable under the head 'Interest on securities'

shall, unless otherwise prescribed in the case of any security of the Central Government at the time of payment, deduct income-tax but not super-tax on the amount of the interest payable at the maximum rate :

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income or the total world income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the miximum rate, the person responsible for paying any income referred to in this sub-section or in sub-section (*2B*), as the case may be, to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

(*3A*) Any person responsible for paying to a person not resident in British India any interest not being 'Interest on Securities', or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate.

Provided that where the person so payable is a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, and the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section shall,until such certificate is cancelled by the Income-tax Officer, pay the income without

deduction or deduct the tax at such less rate, as the case may be :

Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the first proviso to section 43 not to be an agent of the payee."

(*3B*) Where the Income-tax Officer has reason to believe that the total world income of any person residing out of British India to whom any interest not being 'Interest on Securities' or any other sum chargeable under this Act is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for making such payments to such person to deduct at the time of payment super-tax at the rates determined by the Income-tax Officer to be applicable to the total world income of such person in that year.

(*3C*) Where the person responsible for paying any interest not being 'Interest on Securities' or any other sum chargeable under this Act to any person makes to that person in any year payments exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for making such payments, shall, if he has not reason to believe that the recipient is resident in British India, and no order under sub-section (*3B*) has been received in respect of such recipient, deduct at the time of payment super-tax on the amount by which the total amount of such payments exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

(*3D*) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that

the total world income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

(*3E*) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has 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 (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.

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

(*5*) Any deduction made in accordance with the provisions of this section and any sum by which a dividend has been increased under sub-section (*2*) of section 16 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose

income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

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

Provided further that where such person or owner is a person whose income is included under the provisions of clause (*c*) of sub-section (*1*) or sub-section (*3*) of section 16, section 44D or section 44E in the total income of another person such other person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

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

(*7*) If any such person does not deduct or after deducting fails to pay the tax as required by or under this section, he, and in the cases specified in sub-sections (*3D*) and (*3E*) the company of which he is the principal officer shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax :

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

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

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

Amendments of the section

Section 18 deals with deduction of tax at source and the and the effects of the amending Act of 1933 on it may be noted as follows :—

Sub-section (*2*) as amended provides for deduction of super-tax at source from "salaries" and is otherwise amended to conform with the "slab" system of rates.

Sub-section (*2B*), a new provision provides for the deduction of income-tax at the maximum rate and super-tax at source from "salaries" payable to non-residents.

Sub-section (*3A*), a new provision, provides for deduction of tax at source from interest and other payments made to non-residents. In the case of residents it is not advisable to make such deduction because of practical complications but in the case of non-residents it is advisable to secure the tax in this way if it can be done. Where deduction at source is not practicable, the payments will be disallowed in the payer's assessment [clauses (9), (10) and (12)]. Consequential amendments are made in sub-sections (*3B*), (*3C*) and (*3D*) which are renumbered (*3C*), (*3D*) and (*3E*).

Sub-section (*5*), as amended, includes income-tax on a dividend as a sum for which credit is to be given to the shareholder in his assessment (see notes on clauses 14 and 51).

Sub-section (*7*), as amended, provides, in the case of tax not deducted at source under sub-sections (*3D*) and (*3E*), for its recovery from the company as well as from the principal officer.

Deduction of Tax at Source on Salaries :

The previous Act provided that any person responsible for paying any income under head salaries should deduct income-tax only at the rate applicable to the estimated total income of the assessee. But the Amendment Act of 1939 now provides deduction of income-tax and super-tax at source at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head. This amendment is in conformity with the "Slab" system.

When the rates of Income-tax from a step system to "slab system" are introduced for salaries, as for interest on securities, the provisions will avoid a large number of adjustments by refunds if deduction will be on the following line, *viz.*, treat the successive payments of salary as corresponding to the successive slabs of income to which different rates of tax are applied. Thus with a salary of Rs. 1500, a month, the first month's salary corresponds to the tax-free slab and no tax is deductible : the second month's salary is treated as part of the second slab and tax is deductible at $\frac{3}{4}$ annas per rupee, the third month's salary is treated as part of the second slab and tax deducted at $\frac{3}{4}$ annas per rupee, the fourth as to Rs. 500 as part of the second slab taxable at $\frac{3}{4}$ annas per rupee and as to Rs. 1000 as part of the third slab taxable at $1\frac{1}{2}$ annas per rupee and the fifth is treated as part of the third slab taxable at $1\frac{1}{2}$ annas per rupee and so on.

Section 18 (*2*) further empowers the person deducting income-tax from salaries to rectify, in subsequent deductions, mistakes made in previous deductions. Salaries are sometimes paid or adjusted annually. Meanwhile the employee may draw and overdraw against the salary due or may take advances or loans and employers may claim to deduct as business expenses sums thus drawn or due in that case tax shall be deducted from all such sums.

Salaries out of India :

Section 18 (*2A*) of the Act provides that all payments on account of salary made out of India by and on behalf of the Government shall be included in the amount on which tax is deducted at source in India. All leave salary paid in the United Kingdom or a Colony to Government servants on leave in the United Kingdom, the Colony, which was exempt under notification in the previous Act, is no longer exempt in the Amendment Act 1939. These exemptions have been withdrawn by the Governor-General. But any sterling overseas pay or other sum that may be paid in the United Kingdom or a Colony to an

officer on leave in the United Kingdom or the Colony on account of his salary while on leave, is exempt because sections 315(*4*) and section 178(*3*) of the Government of India Act, 1935, are a bar.

Salaries to Non-residents :

Sub-section (*2-B*) of section 18, provides deduction of Income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee, from salaries payable to non-residents.

Interest on Securities :

Sub-section (*3*) of section 18, enacts that the person responsible for paying any income chargeable under head "Interest on Securities", shall deduct income-tax at the maximum rate on the amount of interest. But super-tax shall not be deducted at source.

Anticipatory Certificate :

The Proviso in section 18 (*3*) gives legal sanction to the Income-tax Officer to grant certificate in writing in every proper case on the application of the assessee, exempting any recipient of "Interest on Securities" being taxed at source, if the Income-tax Officer believes that the income of the recipient (total income or the total world income) will be less than the minimum. Provision has also been made to allow partial exemption where it is found liable to a rate of income-tax less than the maximum.

In all these cases, the person responsible for paying any income chargeable to tax, shall pay the income without any deduction or deduct the tax at such less rate as the case may be.

Interest other than "Interest on securities" to non-residents :

Any person responsible for paying a person not resident in British India any interest, commission, rent etc., which are chargeable under the provisions of the Act, shall unless he is himself liable to pay income-tax thereon, deduct income-tax therefrom at the maximum rate. This relates to interest other than "Interest on Securities".

But sub-section (*3B*) of section 18 provides for deduction of super-tax from interest payable, where the "total world income" will in any year, exceed the maximum amount which is not chargeable to super-tax.

Insertion of provisos in Section 3A :

This first proviso provides for relief in the case of non-residents with small incomes to whom hardship is caused by deduction of tax at the maximum rate.

The second proviso provides that deduction of tax at source shall not apply to transactions such as "hedges and straddles" carried on between a resident broker and a non-resident broker. The amendment carries out the intention of the first proviso to section 43.

Application :

This section provides for deduction of tax at source on salaries, interest on securities, interest or other payments made to non-residents, and dividends paid to non-residents.

Deduction of tax on "Salaries".—The obligation to deduct income-tax (and super-tax where necessary) applies *to all employers.*

If the employee is resident in British India income-tax and super-tax is to be deducted at a rate representing the average of the rates applicable to the estimated total income of the assessee under the head "salaries" only. An adjustment is permitted of any excess or deficiency arising out of any previous deduction or failure to deduct.

If the employee is a non-resident, income-tax is to be deducted at the maximum rate and super-tax is to be deducted at the rate or rates applicable to the estimated income of the employee under the head "salaries" only.

Section 18 (2A) provides that all payments on account of salary made out of India by or on behalf of Government shall be included in the amount on which tax is deducted at source in India. The notifications exempting from tax leave salaries and leave allowances paid in the United Kingdom or in any colony have been withdrawn. The salary of an employee (whether resident or non-resident), is deemed to accrue or arise in British India, wherever paid, if it is earned in British India.

For the meaning of the word "salaries" and the various kinds of receipts to be included in "salaries", see section 7 and also notes and instructions relating thereto.

As regards rebates which can be allowed by an employer at the time of deduction of income-tax (but not super-tax), see notes and instructions on section 15.

For the manner of crediting the taxes deducted from "salaries" and other obligations of the employer, see section 18 (*6*) and Rules 10, 11 (*1*) and 11 (*3*).

Provision has been made, in the proviso to sub-section (*3*) for deduction of income-tax at less than the maximum rate or for no deduction of income-tax when the Income-tax Officer issues a certificate to that effect. This applies to non-resident employees who may claim to be British subjects or subjects of a State in India or Burma. It also applies to tax deducted from interest on securities which is dealt with below.

Deduction of tax from Interest on Securities.—Only income-tax at the maximum rate has to be deducted from interest on securities and not super tax. The "interest", so called, on Treasury Bills is really discount and hence no income-tax is deducted at source thereon.

As regards the manner of crediting the tax deducted from interest on securities and other obligations of the payer, *See* sections 18 (*6*) and 18 (*9*) and also Rules 10, 12, 12-B, 13, 13-A, and 13-C. The last-mentioned Rule applies to the dividends of the Reserve Bank which are treated like Interest on Securities.

It frequently happens, that security-holders hand over their securities and bonds to their bankers for collection. In that event the certificate given by the person deducting the income-tax from the interest on the security would be given to a bank for a whole block of securities. In such a case the Income-tax Officer will accept a certificate from the bank in the following form, and act upon it as if it were a certificate received direct from the persons deducting income-tax from the interest on the security :—

"We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of and that we received payment or were credited with the proceeds thereof (less income-tax) as stated on the other side amounting to Rs. .

The securities specified are covered by certificates issued to the Bank under section 18 (*9*) of the Indian Income-tax Act, 1922.

Signature of Banker
Address.
Date.

(To be signed by the claimant.)

I hereby declare that the securities on which interest as above specified has been received are my own property and were in the possession of at the time when income-tax was deducted.

Signature.
Date.

(*N.B.*—The securities to be produced when required in support of any claim.)"

REVERSE OF FORM

Schedule of securities

No. and description of Securities.	Date of payment of interest after deduction of income-tax	Period for which interest has been paid.	Amount of interest (less income-tax).	Remarks.

The certificate under section 18 (*9*) will be taken by the Income-tax Officer of the area in which the claimant or assessee is assessed or resides (see rule 39) as conclusive evidence of the payment of the tax, both where a refund is claimed in cash and where a set-off against the tax assessed on other income is claimed.

It is desirable that refunds should be avoided as far as possible. There are, for example, certain institutions, authorities and funds the income of which is exempt from tax under the provisions of section 4 (*3*). Similarly there are persons whose assessable income is less than Rs. 2,000 and who are not, therefore, liable to tax. There are other cases where the Income-tax Officer may be satisfied that the income of a holder of security while liable to tax is not likely to fluctuate so widely as to alter the rate appropriate to the total income. The Income-tax Officer will, in all proper cases, on application made by the assessee issue a certificate authorising the person paying the interest on securities to make on deduction of tax or to deduct tax at a lower rate than the maximum. The certificates will be granted to residents outside British India by the Income-tax Officer, Non-residents

Refund Circle, Bombay, and to others by the Income-tax Officers concerned. Such a certificate will be in the following form :—

Income-tax Office.

Dated 19

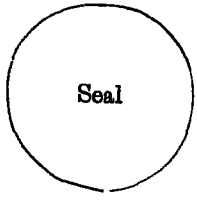
To

.....

.....

.....

I hereby authorise (1)
to deduct income-tax at the rate of (2) pies in the rupee when paying the interest on the following securities to their present holder (3) . The authorisation will remain in force until cancelled by me.



Income-tax Officer.

Description of securities.

Such certificates when issued will remain in force until they are cancelled.

In respect of Government Securities held by Savings Bank depositors in the safe custody of the Accountant General, Posts and Telegraphs, the usual certificates granted by certain Income-tax Officers authorising deduction of tax at a rate less than the maximum rate are not suitable. The following points will therefore be observed in issuing the certificate in the form referred to above :—

(1) The Accountant General, Posts and Telegraphs will be treated as the person paying the interest.

(2) The Savings Bank depositor will be treated as the person receiving the interest.

(3) The holdings of separate depositors will be shown separately even though one of them may be minor whose income is included in that of the father for purposes of income-tax under section 16(*3*) of the Act ; and

(1) Name and address of person paying the interest. (2) Rate of income-tax sanctioned. (3) Name of person receiving interest.

(4) descriptive particulars will be taken from the safe custody receipts given by the Accountant-General, Posts and Telegraphs and the numbers of the Government securities will not be called for unless it is otherwise necessary.

The person who should apply for exemption certificates in respect of interest on securities belonging to estates vested in the Administrator-General or the Official Trustee, is the beneficiary when his share is known. Where the individual share of the beneficiaries are unknown or indeterminate, the income is chargeable to tax at the maximum rate and no question arises of securing an exemption certificate.

When the owner of a security to whom a certificate is granted according to these instructions has endorsed the security to his bank for collection of interest, the officer responsible for paying the interest regards the bank as the real holder of the security and takes no cognisance of any arrangement that may have been entered into between the real owner of the security and the bank with the result that the certificate standing in the name of the real owner of the security granted by the Income-tax Officer becomes inoperative. Again sometimes the collecting banks purchase securities on behalf of their constituents and hold these in their own names and do not endorse them in favour of their constituents who are the actual owners. In such cases the owners obtain exemption certificates from the Income-tax authorities on production of the bank's Safe Custody Receipts issued in their favour and other proofs if necessary. To avoid the possibility of paying officers refusing to act on the exemption certificate in all such cases, Treasury Officers have been instructed to act on such certificates, when presented in respect of securities referred to above, if together with the exemption certificate a declaration by the bank is presented to the effect that the security continues to be the property of the person named as the owner in the exemption certificate.

Securities held by Indian States or by Ruling Princes or Chiefs : An Indian State is not assessable to any income-tax or super-tax except under the Government Trading Taxation Act, 1926 (III of 1926), that is to say, unless the State carries on a trade or business. Interest on securities held by Indian States is, therefore, not taxable, but this exemption does not apply to interest on securities held by a State Bank which is a separate entity from the State itself. Interest on Government securities

(4) Holdings of separate members should be shown separately even though the income of one holder is to be included in the income of another under section 16.

held by Ruling Princes or Chiefs as individuals, that is, not as the property of the State is taxable under the law, but it has been exempted under section 60 of the Act—*vide* Part II of this Manual. It is, therefore, no longer necessary that the authorities responsible for the payment of interest on Government securities should be supplied with information enabling them to discriminate between those that are the property of the State and those that are the property of the Ruler ; but it is still necessary that such authorities before paying the interest without deducting income-tax should have evidence that the income-tax authorities are satisfied that the particular security in question is eligible to exemption on one or other of the grounds already mentioned. No such evidence is required where Government securities are held in the names of the Rulers of Indian States in the special non-transferable form prescribed by Rule 38 of the Indian Securities Rules, 1920 ; but in other cases, a State or its Ruler claiming the payment of interest free of income-tax should forward a certificate that it is, or he is, the owner of the securities in question through the Political Agent, or Resident of the State (*a*) if the security is in the form of a stock certificate, to the Income-tax Officer within whose jurisdiction is situated the Public Debt Office which issued the stock certificate ; (*b*) if the security is in the form of a Promissory note or a Bearer Bond,—

(*a*) When the interest is payable at a Public Debt Office or a treasury in British India, to the Income-tax Officer, within whose jurisdiction such Public Debt Office or treasury lies ; and

(*b*) When the interest is payable at a treasury outside British India, to the Income-tax Officer, Non-residents Refund Circle, Bombay.

The Income-tax Officers mentioned will in turn grant, exemption certificates in the form prescribed above. The exemption certificates will be issued in duplicate in regard to securities in the form of stock certificates or Promissory notes, one copy being sent to the State or the Ruler concerned and the other for purposes of registration direct in the case of stock certificates to the Public Debt Office of domicile where the stock certificates are registered and in the case of Promissory notes to the Public Debt Office or the Treasury Officer responsible for paying interest thereon.

As regards Bearer Bonds, the certificates will be issued in triplicate, the original being sent to the State or the Ruler concerned, the duplicate copy to the treasury responsible for payment of coupon relating thereto and the triplicate copy to the Public Debt Office within whose sphere such treasury is situated.

The exemption certificate pertaining to securities in the form of Promissory notes or Bearer Bonds given to the State or the

Ruler concerned should be produced before the Public Debt Office or the treasury each time the Promissory note or the coupon attached to the Bearer Bond is presented for payment of interest.

In the case of stock certificates or Promissory notes, an exemption certificate will remain valid until either—

(*a*) it is cancelled by the Income-tax Officer, or

(*b*) the security is transferred to some other person than the State or the Ruler in whose name it stood at the time when the certificate was issued, or

(*c*) the security is changed from one form into another, *e g.*, from a stock certificate into Promissory notes or Bearer Bonds or *vice versa* or is renewed.

In the case of Bearer Bonds, a fresh certificate will be required to cover each interest payment.

The above orders refer to Government securities only, the interest on which is exempt in the case of Indian States as well as Indian Princes or Chiefs as stated above. As regards other securities, *viz.*, those of local authorities and companies referred to in section 8 of the Act, only Indian States are exempt. In order to have exemption certificates for such securities, the State concerned will similarly send a certificate stating that it is the owner of the securities for which exemption is claimed through its Political Agent or Resident to the Income-tax Officer within whose jurisdiction the Public Debt Office or the office of the local authority or company is situated and on receipt thereof that officer will grant an exemption certificate in accordance with the above directions sending a duplicate thereof at the same time to the authority empowered to pay interest on the securities concerned. *Nothing in these instructions relates to dividends of companies.*

The procedure laid down in the preceding paragraph may also be adopted in the case of interest not being "Interest on securities" which is liable to be taxed at source under section 13 (*3A*) and (*3C*) when it is to be paid to an Indian State in respect of money belonging to it and when such income is not liable under the Government Trading Taxation Act, 1926 (III of 1926).

Deduction of tax from interest (not being Interest on Securities) or any other sum chargeable to tax paid to a non-resident :— Income-tax at the maximum rate is to be deducted by the person responsible for payment of any sum described above to a non-resident, unless the payer is himself liable to pay tax thereon as agent. The words "any other sum" in sub-sections (*3A*), (*3B*) and (*3C*) of section 18 cover all income paid to a person not resident in British India *if that income is chargeable to tax.*

Under section 42 (*1*) all income, profits or gains accruing or arising, whether directly or indirectly through or from any business connection in British India or through or from any property in British India or through or from any asset or source of income in Brstish India, or through or from any money lent at interest and brought into British India in cash or in kind is deemed to be income accruing or arising within British India. The provision for deducting income-tax covers payments to persons in Indian States as well as payments to persons resident outside India. Where, however, the contract for the payment of interest is made abroad and the interest is payable and paid abroad deduction of Indian income-tax cannot be insisted upon by the payer unless there are specific conditions in the contract to this effect. (In this connection the provision of section 10 (*2*) (*iii*) should be considered.

Super-tax on sums aforesaid is to be deducted under sub-section (*3B*) at the direction of and at the rates determined by the Income-tax Officer in accordance with that sub-section. But when no such direction has been received from the Income-tax Officer, it should be deducted at the rate appropriate to the excess of the sums payable over the exemption limit for super-tax. Thus if the payee is an individual, the appropriate rate should be calculated on the excess over Rs. 25,000 of such payments, but if the payee is a "company" within the meaning of section 2 (*6*) it should be deducted at the flat rate of 12 pies per rupee even if the sum paid is one rupee only.

As regards the manner of crediting taxes deducted at source on interest or other payments (not being Interest on Securities) and other obligations of the payer, see sections 18 (*6*) and 18 (*9*) and Rules 10, 12A, 12B and 13B.

Deduction of super-tax from dividends.—The obligation of companies paying dividends to deduct super-tax therefrom applies only when dividends are paid to non-residents (including residents in Indian States). As in the case of interest or other payments, super-tax is to be deducted either at the direction of the Income-tax Officer, or in the absence of such direction by the company paying the dividend direct. When the non-resident payee is a company within the meaning of section 2 (*6*) super-tax should be deducted even if the amount of dividend paid is below Rs. 2,000.

As regards the manner of crediting tax deducted at source on dividends and other obligations of the payer (company), see sections 18 (*6*) and 18 (*9*) and Rules 10, 12A and 12B.

Sometimes large blocks of shares are registered in the names of banks, and held by them on behalf of the real owners for various reasons, though the banks have no proprietary or bene-

ficial interest therein. The aggregate dividends on a block of shares in a single company thus held by a bank may exceed the maximum amount exempt from super-tax, though the dividends payable to some or all of the real owners individually may not exceed that amount. In such circumstances super-tax should not be deducted at source from the dividends payable to the bank irrespective of the liability of the several real owners of the shares. If, therefore, a bank in such circumstances furnishes the Income-tax Officer assessing the company from time to time with a list giving the names and addresses of the beneficial owners of the shares and the number of shares held by each, the Income-tax Officer will inform the principal officer of the company, under section 18 (*3D*), of the rate of super-tax to be deducted in respect of the dividends payable to the banks, or that no super-tax is to be deducted therefrom, as the case may be, having regard to the liability of the individual shareholders.

General—Failure to deduct the tax, or after deducting it, failure to pay it as required by section 18 may result in the following consequences .—

(*a*) the payer will be deemed to be an assessee in default in respect of the tax concerned and will be liable to be penalised under section 46 (*1*) ;

(*b*) the payer may be prosecuted under section 51 (*a*).

Failure to furnish the certificate required under section 18 (*9*) is an offence punishable under section 51 (*b*).

Section 65 indemnifies the persons deducting taxes under section 18. [I. T. Manual].

All Employers shall deduct Tax at Source of Their Employees if Assessable :

It is obligatory on the principal officers to make deductions under section 18 ; but the principal officer is authorised to allow abatement on insurance premium or such a rebate can be claimed on the following year by way of refund or set off as the case may be. The provisos of this section are inapplicable to cases where payment is made out of British India, *e.g.*, interest on securities in foreign soil or in Native State, payment of salaries to employees of foreign Ruler residing in British India. But under section 19 these are chargeable to income tax—no matter resident or not. Payments made for for some oblique or improper purpose out-side the course of business is a payment for which no deduction is permissible—*In re* : *Anglo Persian Oil Co.*, A. I. R. 1933 Cal. 777.

Duties and Obligations of persons responsible for deduction at source :

A general survey is essential to make the position of persons responsible for deductions at source. The following deductions must be made :—

	Resident.	Non-resident.
Salaries.	(1) Appropriate rate of income-tax and super-tax.	(2) Maximum income-tax and appropriate super-tax.
Interest on Securities.	(3) Maximum income-tax.	(4) Maximum income-tax.

Under the proviso of clause (*3*) of section 18, the Income-tax Officer can give a certificate authorising deduction of income-tax at less than the maximum rates.

It must be understood that the person responsible for deduction at source from 'salaries' paid to residents, may adjust any excess or deficiency in the next deduction but adjustments must be confined to the current year. But in case of excess deduction. the disbursing officer cannot give any refund for that ; the employee may however apply to the Income-tax Officer under section 48 for a refund.

Other interest not being "Interest on Securities" or any other sum chargeable. (5) Maximum amount of income-tax unless payer is an agent under section 43.

Here also the Income-tax Officer can ask for deduction of super-tax at a rate specified by him as being appropriate to his total world income and in any case, if the amount paid by the payer is large enough to attract super-tax, the payer shall deduct tax at the rate appropriate to the payments made if he has not reason to believe that the recipient.

Dividends. (6) Appropriate rate of super-tax must be deducted by the payer if he has not reason to believe that the shareholder is resident. Income-tax is paid by the Company and credit is given in assessment of shareholder.

The Income-tax Officer can order deductions at higher rate in case of non-residents, but computation shall be on gross figures

All sums thus deducted are treated as income received in the assessment of the employee or payee. The disbursing officer must deposit the amount of deduction within 7 days to the Government, and payers stand in the shoes of Government agents. The person responsible for payment and in case of Dividends, the Company paying dividends, are responsible for failure to deduct. Where there has been a wilful failure to deduct, they are liable to penalties equal to the amount of tax and even to prosecution (*vide* section 51) clause (*a*).

The first proviso of section 3A provides for relief in the case of non-residents with small incomes to whom hardship is caused by deduction of tax at the maximum rate.

The second proviso provides that deduction of tax at source shall not apply to transactions such as 'hedges and straddles' carried on between a resident broker and a non-resident broker.

This new amendment gives authority to the Income-tax Officer to order the payer to deduct at less than the maximum rate or not to deduct at all and deductions must be made as per directions.

Payment in other cases.

19. In the case of income in respect of which provision has not been made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct.

Residuary Section :

Section 19 is an omnibus section which provides that where no provision is made under section 18 for deduction of income-tax at the time of payment, and in any case where tax has not been deducted in accordance with the provisions of that section, tax shall be payable by the assessee direct.

The following instructions from the I. T. Manual will be of some help ;—In all cases where provision is not made for deduction of tax under section 18, or where tax has not been deducted at source under section 18, the income will be liable to direct assessment in the hands of the recipient.

Applicability :

The provisions of section 18 cannot apply to cases where payments are made outside British India, as for example, the payment of "interest on securities" in Indian States or foreign

countries or the payment of salaries by foreign employers to residents in British India. The provisions of direct assessment also apply to cases where owing to assessee's salary being less than Rs 2000 income-tax has not been deducted or where a non-resident individual's dividend income (gross) from a company being less than Rs. 25,000, super-tax has not been deducted and such other cases.

Supply of information regarding dividends.

19-A. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of share-holders maintained by the company, of the share-holders 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 share-holder.

Scope :

This section is evidently intended to make the share-holders liable for super-tax by adding up the dividend. It is obligatory on the principal officer of every company to furnish the Income-tax Officer with the names and addresses of share-holders receiving dividends in the prescribed form.

The prescribed form of return is given in Rule 43 and the minimum amount of dividend for which this return is to be furnished is given in Rule 42.

Rule 42 runs thus :

42. A return shall be furnished by the Principal Officer of a company under section 19A in respect of a dividend or aggregate dividends if the amount thereof exceeds one rupee in the case of a shareholder which is a company and in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs. 5,000 in the case of any other shareholder.

Rule 43 prescribes the form for the above return and runs thus :

43. The return by the principal officer of a Company under section 19-A shall be in the following form and shall be delivered to the Income-tax Officer who assesses the company :—

Return under section 19-A of the Indian Income-tax Act, 1922, for the year 1st April 19 to 31st March 19 .

Name of Company

Address of Company

(1) Resident Shareholders/Non-Resident Shareholders.

Serial number.	Name of Shareholder.	Address of shareholder.	Date of declaration of dividends.	(2) Amount of dividends	
				Net.	Gross.
1	2	3	4	5	6
				Rs.	Rs.

I, the principal officer of the Company, hereby certify that the above statement contains a complete list of :

(1) the resident non-resident shareholders which are companies to whom a dividend was distributed in the period from the 1st April 19 to the 31st March 19 , and

(2) other resident non-resident shareholders of the Company to whom a dividend or aggregate dividends exceeding Rs. 5,000 was or were distributed in the period from the 1st April 19 to the 31st March 19 .

Signature

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

Note 1.—Separate form should be used for resident and non resident shareholders.

Note 2.—Where dividends are issued "free of income tax", the figure to be entered in column 5 is the sum actually paid, and the figure to be entered in column 6 is the aggregate of the sum so paid and the amount of income-tax payable by the Company in respect of the dividends.

Terms defined :

For the definition of "Provincial Officer", section 2 (*12*) may be seen, "Company" has been defined in section 2 (*6*) and the definition of "Dividend" is to be found in section 2 (*6A*).

Penal Provisions :

Failure to furnish this return is an offence punishable under section clause 51 (*c*). Any false statement made in the verification mentioned in section 19-A is an offence punishable under section 52.

Certificate by company to shareholders receiving dividends.

20. The principal officer of every company shall, at the time of distribution of the dividend, 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.

Scope :

A person receiving dividend is entitled to a certificate from the principal officer of a company to the effect that income-tax has been or will be paid on the profits by the company. This is mandatory on the part of the principal officer and failure to furnish the persons entitled to it, makes the person (principal officer) liable under section 51.

Certificate :

The prescribed form of certificate is given in Rule 14.

It often happens that the holders of shares in Joint Stock Companies like the holders of securities authorise their bankers to collect dividends on their behalf. When they do so, it is the practice of the persons distributing the dividends to issue certificates under section 20 in the name of a bank for the whole block of shares held by the bank on behalf of its constituents so that it is not possible for an individual assessee for whom dividends are collected by his bankers to produce the certificate required by Rule 14. The Income-tax Officer will ordinarily accept a certificate from a responsible officer of a bank in the following form and act upon it as if it were a certificate received direct from the person responsible for distributing dividends :—

We hereby certify that dividends on the various shares specified below were collected by us on behalf of..... and that we

received payment or were credited with the proceeds thereof amounting to Rs.....

The dividends specified are covered by Certificates issued to the Bank under section 20 of the Income-tax Act, 1922.

IMPERIAL BANK OF INDIA, DEPOSITORS' DEPARTMENT

Calcutta, 19 .

Superintendent.

Description of shares.	Holding.	Period.	Date of declaration of the dividends.	Date of receipt of dividends.	Amount of dividends.

To be signed by claimant.

I hereby declare that the shares on which dividends as above specified have been received are my own property, and were in the possession of the Imperial Bank of India, Calcutta, at the time when these dividends were realized.

Signature.
Date.

N.B.—The safe custody receipts and the Bank's pass book to be produced in support of any claim.

The following directions may with advantage be followed by persons granting certificates prescribed by section 20 of the Act :—

(1) The statutory form of certificate of deduction of income-tax prescribed by rule of the Indian Income-tax Rules should invariably be used.

(2) Either (*a*) the certificate should be printed on the same sheet of paper as the actual warrant with a line of perforation to permit of its being detached, or (*b*) the dividend warrants should be machine-numbered while every certificate relating to a particular dividend should be given the same number as the corresponding warrant. There are cases in which Banks collect dividends on behalf of their constituents, and companies send the banks consolidated dividend warrants in payment of all the dividends due in respect of the block of shares for which the bank is acting, and at the same time send separate certificates for the shareholders by whom the shares are owned. In such a case if certificates are issued to a Bank for say twenty constituents, relating to dividend warrant No. 1, the certificates should be numbered by hand 1/1, 1/2, 1/3 to 1/20.

(3) The practice adopted by certain companies of either attaching red slips to the certificates drawing the attention of recipients to the need for their careful preservation for several years or of printing this caution in red ink on the face of the certificate may be generally followed.

(4) A note should be printed on the certificate to the effect that shareholders may claim refund of tax under section 48 (*1*) of the Act in respect of their dividends if the amount of tax with which they are properly chargeable is less than the amount of tax deemed to have been paid on their behalf.

Failure to furnish a certificate as required by this section is an offence punishable under section 51 (*b*) (I. T. M.)

Certificate Utility of :

It has already been stated that Rule 14 prescribes the form of certificate and the certificate in question is essential for claiming refund under section 48 or for a set off under section 24 of the Act. Of course the form of certificate is a prescribed one but there is no bar in accepting a certificate if it is in conformity with the prescribed certificate as laid down in Rule 14. Original certificates are to be filed, but in case of loss or destruction, duplicate certificates may serve the purpose, if the Income-tax Officer is convinced that no refund has been granted for the certificates produced.

Deduction at source and claim for refund without dividend warrant :

As a matter of practice when a claim for refund or set off is made, it is for the assessee to show by production of the warrant that deduction at source has been made. Usually where such certificates are not forthcoming, no allowance is given, neither the amount is added back. But it appears that from the assessment year 1940-41, the Income-tax authorities in the absence of such certificates, after giving some reasonable opportunity to the assessee for production, again tax the amount from which deduction has already been made. In my humble opinion this procedure should be very cautiously used so that undue hardship may not be caused to the assessees. The assessees need be very cautious in this matter.

Certificate by a company to shareholders receiving dividends

(*i*) The profits of a company are charged to income-tax at the maximum rate irrespective of what the amount of the profits may be (see Finance Act), and the shareholder of a company, is under section 48 (*1*) of the Act, entitled to claim a refund on proof to the Income-tax Officer that the maximum rate of income-tax is greater than the rate applicable to his "total income". In order to get such a refund he must produce the certificate required by section 20 and prescribed in rule 14.

(*ii*) Certificate should however be accepted if they supply all the prescribed particuliars, even though they may not be identical in phraseology or arrangement with the statutory form of certificate given in Rule 14. The shareholders claiming refunds in respect of dividends paid out of profits of which a part is not liable to Indian income-tax, will only be able to enter approximate figures in the refund application and in the return accompanying it, in respect of the amount of tax paid by the company on the dividends, and the amount of refund due ; but this should not prejudice the claimants in any way. The Income-tax Officer will accept the certificate but will apply the correct percentage. Any certificate will be accepted that is otherwise in order if it shows *either* that the entire profits of the company are liable to Indian income-tax *or* that *only part* is liable—irrespective of what the part may be. Duplicates of certificates should be accepted if the claimant satisfies the Income-tax Officer who has to sanction the refund that the dividends in respect of the tax on which the refund is claimed had actually been paid to the claimant and if the Income-tax Officer has no reason to believe that a refund has already been granted in respect of the same dividends. Duplicates should not be accepted unless a convincing reason is given for not

producing originals. Duplicates may be accepted, for example, if it is alleged that the originals have been lost and the Income-tax Officer has no reason to doubt the statement ; on the other hand, duplicates should not be accepted if the originals can be produced though after some delay. As in the case of the certificate regarding tax deducted from interest on securities mentioned in paragraph 78, where a shareholder, in a company is assessed to income-tax on account of income in his own hands, he may, instead of claiming a refund, ask that any rebate to which he is entitled should be set-off against the tax which he is personally liable to pay, and the form of return of income for individuals prescribed in rule 19 permits of this set-off.

(*iii*) The form of the certificate prescribed in rule 14 differs from the form of the certificate prescribed in rule 13 for income-tax deducted from interest on securities in that it simply contains a statement that income-tax has been or will be duly paid by the company and that the dividend was declared on a certain date. It contains no statement as to the rate at which tax has been or will be levied or as to the amount of tax paid or to be paid. The reason for this is that in many cases it is impossible to state at what rate tax has been or will be levied on the particular profits out of which dividends are paid. The dividends of a company may be distributed from profits made during the course of a financial or commercial year before the rate of tax is known, or may be distributed from reserves maintained for the equalisation of dividends and composed of profits earned in previous years. It should, therefore, be assumed by Income-tax Officers in connection with these particular certificates that tax has been levied in respect of the dividends at the rate current on the date on which the dividends were *declared* since this is the rate to be taken into account in dealing with a claim for a refund under section 48 (*1*).

(*iv*) The form of certificate also provides for cases such as that of the tea companies which do not pay income-tax on their entire profits and gains distributed as dividends.

(*v*) The amount of income-tax so assumed to be payable by the company in respect of the dividend declared has, under the provisions of section 16 (*2*) to be added to the net dividend received in calculating the total income of the individual shareholder.

Supply of information regarding interest.

20-A. The person responsible for paying any interst not being 'Interest on Securities' shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and

addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than four hundred rupees as may be prescribed in this behalf, together with the amount paid to each such person.

Scope :

It is mandatory on the person responsible for paying any interest, not being "Interest on Securities" on or before the 15th day of June each year to furnish 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 year he has paid interest or aggregate interest exceeding rupees four hundred.

The Amendment Act of 1939 has reduced the amount from Rs. 1000 to Rs. 400 the minimum amount.

Importance of Section 20-A :

Rule 43A prescribes the form of return required under section 20-A and Rule 42A prescribes the minimum amount of interest for which the return is to be made. For this the Rules portion may be looked into.

Failure to render this return is an offence punishable under section 51 clause (*c*). Any false statement made in the verification mentioned in section 20-A is an offence punishable under section 52.

It may not be out of place to repeat that the upper limit of Rs. 1000, has been reduced to Rs. 400 and in submitting the return under sections 22 (*1*) and 22 (*2*) the assessees are required to state in writing all details as laid down in Rule 43A. The verification clause below the form must be signed.

Annual return.

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

verified in the prescribed manner, a return in writing showing—

(*a*) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received or to whom was due during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed ;

(*b*) the amount of the income so received or so due by each such person, and the time or times at which the same was paid or due, as the case may be ;

(*c*) the amount deducted in respect of income-tax and super-tax from the income of each such person.

Effect of Amendment :

Under the previous Act, the only condition was to deliver in the prescribed form a return in writing. But at present the annual return to be submitted must be verified.

Annual Return :

Under section 21 read with rules 15, 16 and 17 a return in the form prescribed in rule 17 must be made of all employees deriving an income from salaries of Rs. 1,600 *per annum* or over by the Government Officers mentioned in rule 15, by every private employer and by, in the case of local authorities, companies or other public bodies or associations, the "Principal Officer" or the "Prescribed person". Where a company has got several places of business, it may be more convenient for the company for the returns under this section to be made not by the principal officer at the headquarters of the company but by officers at different branches, since this return has, subject to what is said in the next paragraph, to be made to the local Income-tax Officer, *i.e.*, to the Income-tax Officer of the place where the employees happen to reside. The liability for making this return remains under section 21 with the principal officer

unless another person is prescribed. The object of the return is to enable Income-tax Officers to see that the tax has been deducted at the source under section 18 (*2*) or 18 (*2B*), to arrange for adjustments where the collections at the source have not been made correctly and to assess 'salaried' persons under section 23, whether the tax has been collected at the source or not, where the salaried persons have other income than 'salary'.

Return, to whom to be delivered :

This section prescribes that the return must be delivered to the Income-tax Officer but does not state to which particular Income tax Officer the return should be made. Every Income-tax Officer has, under the provisions of section 64 (*4*), all powers conferred by or under the Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed irrespective of whether the particular income is assessed by him or not. In most cases it is convenient for this return to be made to the Income-tax Officer of the area in which the employees reside, but in some cases it may be more convenient that the return should be made to the Income-tax Officer of the area in which the headquarters of a wide spread business is situated. It is for the Commissioner of Income-tax in each doubtful case to decide to which Income-tax Officer this return should be sent.

Submission of Return is obligatory :

The return prescribed under this section is the return of all employees who during the period of 12 months ending on the preceding 31st of March were in receipt of an amount of salary which, together with the amount of salary due for but not paid in the year, is not less than Rs. 1600, and the return must be furnished to the Income-tax Officer in the proper form before the 1st of May.

The obligation to make this return is a statutory one and no preliminary notice from the Income-tax Officer is required. Failure to furnish this return is punishable under section 51 clause (*c*) of the Act. Any false statement made in the verification mentioned in section 21 is an offence punishable under section 52.

Return of income

22. [(*1*) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the [illegible] and by publication in the prescribed manner, requiring every person whose total income [illegible]

previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year :

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

(*2*) In the case of any person whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income and total world income during the previous year :

Provided that the Income-tax Officer may in discretion extend the date for the delivery of the return.

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

(*4*) The Income-tax Officer may serve on any person who has made a return under sub-section (*1*) or upon whom a notice has been served under sub-section (*2*) a notice requiring him, on a date to be therein specified, to produce, or cause to be

produced, such accounts or documents as the Income-tax Officer may require :

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

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

Compulsory voluntary return :

Section 22 (*1*) as amended, prescribes compulsory return and section 22 (*2*) in consequence makes optional the issue by the Income-tax Officer, of the notice, heretofore compulsory, calling for a return of income. The change in the law follows the law of the United Kingdom and it is intended, as in the United Kingdom, that the Income-tax Officer should as under the previous Act issue notice to each person whom he believes to have as assessable income. The object of the provision prescribing compulsory voluntary returns is to enable the Income-tax Authorities to deal with defaulters who conceal the fact that they have taxable income. It is not considered right that the onus of finding out such persons should be on the Income-tax Authorities and these provisions coupled with the penalty provisions in section 28 and that for the extension of the time for intitiating assessments under section 34, is designed to put the Income-tax Authorities in a position to deal adequately with the defaulter.

A Public Notice for making Return of Income :

Sub-section (*1*) of sec. 22 introduces a new rule on the law of notice. It relieves the Income-tax Officer of the statutory obligation in case of every person other than a company, who in the opinion of the Income-tax Officer, has taxable income, of

serving a notice for the making of a return of income. Previously unless there was service of notice, no assessees could be brought under charge. But the law as it stands replaces the notice sent to each assessee by registered post or service through peon, by a public notice by publication in the press and by publication in the prescribed manner. As there could arise cases of collusion by which service of notice under the previous Act could be avoided and also of technical objections as to whether the notices were proper or sufficient, so the Amendment Act of 1939 has introduced this new rule on the law of notice.

Return under Section 22 (*1*) is Mandatory :

Under the previous Act there was no statutory obligation on the part of an assessee other than a company to submit return unless notice was served on him, but return by a company was a statutory obligation and was mandatory.

The Act of 1939 takes away the statutory obligation of the Income-tax Officer and imposes the statutory obligation on the tax payers, thereby including within its purview all persons (company, association of persons, firm, and Hindu undivided family etc). There is absolutely no obligation on the part of the Income-tax Officer of being satisfied whether an assessee has actually been aware of the contents of the notice published in the press and in the prescribed manner.

Form of Notice :

As there cannot be any question of service of Notice under section 22 (*1*), necessarily the form of notice *ipso facto* goes out of consideration. Publication in the Press and in the prescribed manner is the sole criterion and it seems proper that it should be simultaneous. The notice thus published should give assessees 60 days' time from the date of publication. There is no bar to give time more than 60 days but it should in no case be less. In the case of *Kajori Mal Kalyan Mal*, A.I.R. 1930 All. 209 : 122 I. C. 741, it was held that if this minimum time is denied the notice becomes an illegality and even subsequent extension of time will not cure the defect that initially lay in the notice. A company has no special right or privilege of not filing a return within due date on the ground that the audit is not complete—*In re Manbhum Transport Company, Ltd.*, 6 I. T. C. 204.

Duties and obligations of Income-tax Officer :

The Income-tax Officer shall on or before the 1st day of May in each year give notice by publication in the prescribed manner requiring every tax payer whose income exceeds the maximum

which is not chargeable to income-tax, to furnish return. The said notice should allow at least 60 days' time from the date of publication. No obligation is imposed on the Income-tax Officer of being satisfied whether an assessee has actually been aware of the contents of the notice, before he makes the assessment. Publication later than the 1st day of May will invalidate the proceeding. It is the duty of the Income-tax Officer before he accepts the return signed and verified by agents to satisfy himself about the authority of the signature to do so. The production of books of accounts by the assessee in pursuance to the notice does not constitute ratification in respect of the return of Income : *C. I. T.* v. *Mahomed Mehdi*, 155 I. C. 180 : 8 I. T. C. 210, A. I. R. 1935 O. 305.

The Amendment Act of 1939 imposes no obligation to serve notice under section 22 (*1*), of course section 22 (*2*) allows a discretion to the Income-tax Officer to serve notice on a class or classes of persons. But where the Income-tax Officer issues a notice in the name of an individual assessment must be made on the individual, by that notice on an individual he can not make the assessment on the individual, along with others as Hindu undivided family. In such a case it is incumbent on the Income-tax Officer to issue a fresh notice : *Sardar Kripal Singha* v. *C. I. T.*, A. I. R. 1937, L. 897 : 176 I. C. 22 : 1937 I. T. R. 548. It was held that there it would be perfectly easy for the Income-tax Officer if he came to the conclusion that the separate individual to whom he had issued notice really was a member of a joint family, to issue a fresh notice to the Joint Hindu Family, through the person who may be considered to be its manager or through any other adult male member of the family as provided in section 64 (*2*).

Notice Discretionary :

Section 22 (*2*) as amended is an alternative provision authorising Income-tax Officer to serve notice. Where the Income-tax Officer is of opinion that any person has a total world income exceeding the maximum, he may serve a notice upon him requiring him to furnish within a specified date which must not be less than 30 days, a return of his total world income in a prescribed form duly verified.

Under section 22 (*1*) a minimum of 60 days' time is allowed, whereas under section 22 (*2*) the minimum time allowed is 30 days. Section 22 (*2*) as amended brings within its purview assessees of all denominations and omission of the phrase "other than company" which occurred in the previous Act, confirms that view. Moreover it is discretionary for the Income-tax Officer to issue notice under section 22 (*2*). The proviso empowers the

Income-tax Officer to grant extension of time ; although there was no such provision in the previous Act, it was allowed in practice.

But it is not obvious as to which class of person will come under sub-section (*2*) and which under sub-section (*1*). Section 22 (*1*), it may be construed, covers all cases, and sub-section (*2*) has been inserted to meet hardship during the transition period. But if on the other hand the Central Board of Revenue prescribes that section 22 (*2*) is only applicable to a specified class of person, section 22 (*1*) shall apply to others as well.

But as a matter of practice, notwithstanding such publication of notices, Government intend that notice shall be served on all persons believed to have income liable to assessment.

It has already been pointed out that section 22 (*1*) prescribes a minimum time of 60 days, while section 22 (*2*) provides a minimum of 30 days. What the section lays down is that the Income-tax Officer must give the proposed assessee at least 30 days' time for furnishing the return. If this minimum is denied, the notice becomes entirely illegal and no subsequent extension of time will cure the defect that initially lay in the notice issued : *Jamunadhar Potdar* v *C. I. T.*, 155 I.C. 526 : A. I. R. 1935 L. 201. The case is in all fours with the case of *Kajori Mal Kalyan Mal*, reported in A. I. R. 1930 All. 209. The only exception to this limit is that where the notice is served under section 22 read with section 24-A, a minimum of 7 days' time should be allowed.

Revised Return :

Under the previous Act section 22 (*3*) allowed an assessee to file a return or a revised return at any time before the assessment is completed. The amendment of 1939 maintains his privilege but in order to prevent him escaping the consequences of submitting an original false return or evading the penalty for failure to submit a return, the closing words of the sub-section "and any return so made shall be deemed to be a return made in due time under this section" which occurred in the previous Act have been omitted and suitable proviso has been inserted in section 28.

Notice to Produce Documents :

Sub-section (*4*) of this section provides for service of notice on any person who has made a return under section 22 (*1*) and upon whom a notice under section 22 (*2*) has been served, for production of books of accounts and documents for a period not exceeding three years prior to the previous year.

Under sub-section (*4*) of section 22 the Income-tax Officer is empowered to call upon any person who has made a return under section 22 (*1*) or upon whom a notice under section 22 (*2*)

has been served, to produce such accounts or documents as he may require. Where the services of competent and reliable Accountants are employed by assessees, steps will be taken to see that those services are utilised to the fullest extent by the Income-tax Officers. Where a statement of profit and loss and a Balance Sheet filed by an assessee have been certified as correct and complete by such an Accountant, the Income-tax Officer will, unless he sees any reason to the contrary, and entirely at his discretion, accept them as correct and complete, although he will frequently have to call for details showing how various figures are made up. In such cases, however, the Accountant himself when authorised by the assessee to appear on his behalf will, normally, be asked to supply the details.

The proviso to sub-section (*4*) of section 22 prevents any Income-tax Officer from calling upon an assessee to produce books of accounts going back for a period of more than three years prior to the 'previous year' on the profits of which the assessment is based. When therefore the Income-tax Officer is assessing or reassessing the income of a past assessment year, the period of three years is counted from the 'previous year' in respect of such past assessment year. The limitation applies merely to books of accounts ; it does not apply to documents. No limitation is placed by the Act upon the power of the Income-tax Officer to call for documents of any date.

Balance Sheet :

The from of return prescribed in Rule 19 contains explicit note for the guidance of assessees. It is important that the assessees should complete their returns properly and in particular should attach with the returns, statements of profit and loss accounts and Balance Sheets where accounts are kept in the Mercantile accountancy or book profit system.

Income-tax Return and Right of Inspection :

An Income-tax return is not a "public document" and therefore no one has any right to inspect or receive copy of it. The following persons will, however, in practice be allowed to do so :—

(*a*) in any case the person who actually made the return ;

(*b*) any partner (known to be such) in a firm registered or unregistered to whose income the return relates, and

(*c*) the manager of a Hindu undivided family to whose income the return relates, or any other adult member of such family who has been treated as representing it that is, on whom a notice or requisition has been served under section 63 of the Act. (*Vide* I. T. Manual).

Place and particulars of business :

Sub-section 22 (*5*) is a new provision which requires an assessee to furnish particulars of the business and its branches, if any, and the names of partners and their shares. Default in furnishing particulars will make the assessee liable to the penal provisions of section 28. The amendment introduces statutory declaration to be given by an assessee of the names of partners in a firm, and their respective shares. But section 22(*5*) is meant for an assessee who has got business and who is assessable under section 10 only. The new sub-section replaces section 38(*3*) of the previous Act.

Return, Form and verification of :

When submitting a return of income, it must be verified either by the assessee himself or by his lawfully authorised agent. It is not obligatory on the assessee to sign the return himself. A return can be submitted by (1) in the case of a Firm, by any of the partners, (2) in the case of a Hindu undivided family, by any member thereof and (3) in the case of a company, by the principal officer.

It seems that it is the duty of the Income-tax Officers before they accept returns signed and verified by agents to satisfy themselves about the authority of such agents to do so. When there is no evidence to show that the return in question has been filed with the authority or even with the knowledge of the assessee, question of estoppel does not arise.—*In the matter of Raja S. Mohomad Mehdi*, 8 I. T. C. 210 : 155 I. C. 280.

Blank or Unfilled up Return :

Blank return is not return according to law and where the return is not accompanied by details as prescribed in the notes portion, assessment under section 23 (*4*) is justified. This view has been expressed in the care of *Ratan Chand Dunichand*, A. I. R. 1928 L. 944. Similarly, where a return ignores the provisions of rule 19 it is not a return at all, as has been decided in the case of *Chetyar Firm*, A. I. R. 1928 Rang. 108 (this distinguishes the case reported in A. I. R. 1927 Mad. 49). Statutory rule 19 which embodies the form of return to be filed by the assessee has the same force as a section in the Act and a return which completely ignores its provisions cannot be considered as any return . *In the matter of A. R. N. Chetyar*, 110 I. C. 29. [*Vide* assessment notes under section 23 (*4*)].

But where owing to ignorance or anything else, an assessee files a blank return with a profit and loss statement, the Income-tax Officer must not hold the assessee liable to a summary assessment. *In the case of Gangasagar*, A. I. R. 1929 Cal. 919,

the Calcutta High Court held that where a letter with a statement of income attached with an incomplete return was sent to the Income-tax Officer with a request to fill up the return, the said return is to be considered a valid one. This lends colour to the view that in case of incomplete return, the assessee may be asked to rectify it. In *Mohonlal* v. *Hardeo Das*, 5 I. T. C. 128, where an assessee submitted a return on guess, it was held to be a case of "No return". The regulation by note (*5*) requires in the case of mercantile business a return in a particular form setting forth a number of headings of receipt and expenditure. A return which ignores the conditions set out in the rules portion, is no return at all and an assessment under section 23 (*4*) is valid.

In *in the matter of Bir Bhan*, A. I. R. 1933 L. 29, it has been held that when a notice under section 22 (*2*) read with section 34 is served on a partner, who sends the return blank with remarks that being a sleeping partner, he is not in possession of accounts, an assessment under section 23 (*4*) is justified.

A return, which does not contain the signature and verification of the assessee, is not a proper return and this alone is sufficient to bring the assessee within the clutches of section 23(*4*). *In re Mathura Das*, 7 I. T. C. 34. Similarly in the *National Mutual Association Australasia Ltd.* v. *C. I. T.*, 6 I. T. C. 426, the return was held not to have been filled on the prescribed form. It is a necessary ingredient of the return, that it should be in the prescribed form and should be verified in the prescribed manner. Failure to make a return of the branch business tantamounts to noncompliance under section 22—*Abhyram Chunnalal* v. *C. I. T.*, 6 I. T. C. 343. In *Behari Lal Chatterjee* v. *C. I. T.*, 7 I. T. C. 123, 1934 All. 930, it was held that the return which is without verification and signature cannot be called a return within the meaning of section 22 (*2*) Incompleteness, which is contemplated by the sub-section, is not the incompleteness which arises from non-verification and want of signature.

On the principle as enunciated it has been held in the case of *Lal Muhammad Sardar Mamud*, 7 I. T C. 347 : 1934 I. T. R. 358, that where an assessee files a return and in some columns and in total he puts the word "about" before the figure, without accounting period and verification, it cannot be held to be a proper return within the meaning of section 22 (*2*). But it must also be understood that submission of return after assessment, but before the demand notice is served, is not a proper return—*Dhanıram Dharampal* v. *C. I. T.*, 4 I. T. C. 253 : A. I. R. 1936 L. 468.

Accounting period and Status :

Instances are not wanting where assessment under section 23 (*4*) is resorted to simply because the status of the person filing

the return is not properly filled up. On an equitable point of view such a procedure appears to be unwarranted when as a matter of fact it is difficult to say definitely if the notice served is meant for the Hindu undivided family or for the individual. Technical flaws should be avoided provided, these do not run counter to the spirit of the law.

In *Gopaldas Parshotamdas* v. *C. I. T.*, A. I. R. 1940 All. 537, 9 I.T.R. 130 : 192 I. C. 41, the question arose whether the notice under section 22 (*2*) was invalid. The facts of the case are that a notice under section 22 (*2*) was issued to the assessee who was an Hindu undivided family and in that notice, as in all such notices the assessee was required to submit a return and four capacities were indicated one above the other and the notice went to the assessee without any one of these capacities having scored out. The assessee was in doubt as to which capacities of his was under investigation. He had been assessed in previous years as Hindu undivided family. He also submitted the Return without scoring out any of the four capacities.

It was held that the notice issued under section 22 (*2*) was neither irregular nor invalid.

Consequences of failure to furnish a Return of Income :

Where returns are not furnished by the due date, assessees are liable to prosecution under section 51 (*3*). The result is that the case by reason of non-compliance is decided *exparte* according to the best of the Income-tax Officer's judgment under section 23 (*4*). But the wording of sec. 23 (*4*) does not seem to justify a summary assessment for failure to comply with a requisition under section 22 (*1*). Under the previous Act, summary assessment under section 23 (*4*) was not appealable but the assessee was given a privilege to file an application under section 27 within a month from the date of the service of the notice of demand and on his showing "Sufficient Cause", the Income-tax Officer could order a reassessment or he could reject the same. Against this rejection there was a provision for appeal. It was just like an application under order 9 r. 13 of the C. P. Code, and question on merits could not be adjudicated upon in such a proceeding. The Amendment Act provides an appeal against an assessment under section 23 (*4*), while retaining the right of filing objection under section 27. But the right of appeal, call it a privilege if you like, still is fraught with grave danger in view of the fact that the Income-tax Officer, Asstt. Commissioner or the Commissioner can penalise him under section 28, if the return was defaulted without any reasonable cause. The penal provision overshadows the right of an appeal. *In Saraju Prasad Gourisankar*, 5 I. T. C. 263, it has been held that non-compliance alone of the notice under section 22, justifies summary assessment.

Revised or Amended Returns :

Sub-section (*3*) of section 22 is a new provision the effect of which is that where a person has not furnished the return in due time, or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return before the order of assessment is passed so that where such a return or revised return has been made the assessee may not be prosecuted for failing to submit a return in due time under section 51 cl. (*c*) and may not be penalised under section 28 for making a wrong statement in the original return. But in the matter of *Gangasagar*, 120 I. C. 435 : 1930 A. L. J. 26, it has been held that where revised return has been filed, the offence committed in the return originally filed need not be condoned. Where a return is made before assessment, it is a return made in due time under section 22 (*3*) and before such return can be disregarded, the assessee is entitled to a reasonable opportunity. Non-compliance of previous notice under section 22(*4*) does not amount to a default under section 23(*4*)—*In re* : *Sadaram Puram Chand*, A. I. R. 1931 Cal. 729 (Special Bench). It is quite clear that although an assessee may be late in filing his return, nevertheless, if he does file it before the assessment is made, the return has to be considered and dealt with, although out of time —*In re* : *Protap Chand Ganguly*, A. I. R. 1932 Cal. 410. Section 22(*3*) applies to bonafide mistakes. When assessee deliberately submits incorrect return, Income-tax Office can impose penalty under section 22 (*3*). The Income-tax Officer is entitled to look at the previous incorrect return and can impose penalty under section 28—*In re* : *A. R. M. A. L. A. Arunachalam Chettier*, 138 I. C. 291. A return which by section 22 is to be deemed to be a return made in due time cannot be treated as still born because of a previous failure to comply with a notice under section 22(*4*).

By the Amendment Act the words "any return so made shall be deemed to be a return made in due time under the sub-section" which occurred in the previous Act, have been deleted. The result is that a revised return will be a good return, if it is made within due date or the extended date for filing the return, but if it is filed at any time after that but before the assessment, the penal provision of section 28 is attracted, although for the purpose of assessment the revised return alone is to be considered. In the previous Act there was no specific section empowering an Income-tax Officer to impose penalty for filing a revised return after due date, but as a matter of practice and on the authority of High Court decision, there was no bar to impose penalty.

Thus although an amended return can be submitted by an assessee at any time before assessment, there is every chance of his being penalised under section 28 for his original return. On

the other hand it is an impossibility to submit a revised return last date within due date as generally assessees do file their returns on the last date and when these are filed out of time, assessees may be penalised for filing returns out of date. The far-reaching effect is that if a revised return is filed by the due date, the Income-tax Officer may fall on the assessee and may take action under section 28 for his original false return ; if on the other hand he files a revised return out of time, the Income-tax Officer will come up and he may impose penalty under sec. 28.

What section 22 (*3*) permits may be stated in the language as expressed in the case of *C. I. T.* v. *Badridas Ramrai*, A. I. R. 1940 Nag. 88 : 7 I. T R. 613. Section 22 (*3*) is designed to enable a person who has made a return which he subsequently discovers contains an omission or a wrong statement to correct that wrong statement at any time before the assessment is made. It does not apply to the case of a person who has made a false return knowing it to be a false return and whose false resurn is discovered by the Income-tax Officer ; were it otherwise, one would be left with an infinite progression of returns scrutinised, found false, returns altered, found false and so on.

But as the filing of an amended return is fraught with danger, the taxing authorities must be very cautious in imposing penalty under section 28 of the Act. Where, however, the assessee has furnished full information and the inaccuracy of the return is due to no more than ignorance or incompetence, imposition of penalty should not be made.

But it must be understood that there is a gulf of difference between a revised Return and an application mentioning certain omissions in the Return. Where notice under section 23 (*2*) was issued, fresh notice under section 23 (*2*) is not essential, where the assessee submits an application mentioning certain omissions and not an amended return : —*Gopaldas Parshottam Das* v. *C. I. T.*, 192 I. C. 41 : 9 I. T. R. 130.

Accounts—Documents :

The Income-tax Officer has a limited jurisdiction so far as his power to call for accounts is concerned. Accounts in fact mean books of account and documents denote deeds, *hatchitas*, contract papers and vouchers even. Under section 22 (*4*) the Income-tax Officer exercises a limited jurisdiction inasmuch as he can call for accounts of three years prior to the assessment year. But so far as documents are concerned his powers are unlimited.

There may be cases when the Income-tax Officer while scrutinising accounts wants to enquire into any statement made by the assessee, he can call for accounts prior to 3 years and

non-compliance of the requisition under section 22 sub-section (*4*) means presumption against the assessee under section 114 of the Indian Evidence Act. In the case of *Sankara Linga and others*, 126 I. C. 273 : A. I. R. 1930 Mad. 209, it was held that where an assessee claims certain deductions and it becomes necessary for the Income-tax Officer to scrutinise accounts of several years prior to 3 years, the Income-tax Officer can call for those accounts and if the assessee fails to comply, the result will be an assessment under section 23 (*4*). Non-production of those accounts may be considered as withholding of the accounts deliberately and the assessee cannot complain if the Income-tax Officer draws a presumption against the assessee for such non-production and makes a summary assessment under section 23 (*4*).

Branch Accounts :

The Income-tax Officer of the principal place of business has power to call for accounts of an assessee for his branch business where the branch business is outside his territorial limits. If the assessee fails to comply, he may be assessed under section 23 (*4*). The Income-tax Officer may accept the report of the officer within whose jurisdiction the branches are situate, but there is no bar on the part of the Income-tax Officer of the principal place of business to call for the accounts of branch business over again. In *In the matter of Lachman Prasad Baburam*, A. I. R. 1930 All 49 : 126 I. C. 80, it was held that the Income-tax Officer of the principal place of business has power to call for accounts of branch business, whether those accounts have been produced before the local Officer or not. The Income-tax Officer of the principal place of business is not bound to accept the report of the Income-tax Officer within whose area the branch is situate. But the Income-tax Officer should not compel the assessee to produce his branch accounts if already produced there, inasmuch as, it will add hardship in bringing those books to the head quarters from distant places. In *In the matter of Lachmondas Baburam*, 88 I. C. 216 : A. I. R. 1930, All. 49, the following reference was made to the High Court : "*Do the provisions of sub section (4) of section 64 of the Indian Income-tax Act oust the juris diction of the Income-tax Officer of the area in which a principal place of business is situated so far as the assessment of the profits or gains of a branch business which is situated in another area and proceedings relating thereto are concerned ?*" It was held by the Allahabad High Court by Justices Walsh and Mukerjee : "In our opinion the jurisdiction of the Income-tax Officer of the area in which the principal place of business is situated is not ousted. The jurisdiction is concurrent under section 64, sub-

section (*1*), and the Income-tax Officer of the principal place of business has duty of assessing the whole of the income derived from the principal place of business as well as the various branches. By sub-section (*4*) every Income-tax Officer has also jurisdiction to exercise the power of Income-tax Officer with regard to the profits arising in that area. It is of course understood, and ought to be understood by the authorities that the Income-tax Officer of the principal place of business will not exercise his powers oppressively, so that persons willing to submit the requirements of the Income-tax Officer of the particular area in which the branch is situated, should not be deprived of an opportunity of supplying him with all proper material, but exceptional cases may require exceptional remedies. *The question may very well be put whether the Income-tax Officer is bound to issue separate notices under section* 22 (*2*) *for the branch business.* Custom, as it stands, it is not at all necessary to issue separate notices under section 22 (*2*) for each branch. What the authorities usually do, is by way of issuing a notice under section 22 (*4*) calling for the branch account ; on the other hand the officer having jurisdiction over the branch area issues a notice under section 22 (*4*) calling for the branch account for report to officer of the principal place of business. But can an assessment be made under section 23 (*4*) for non-production of branch business accounts where the assessee has complied with all the terms of the notice issued under section 22 (*4*) by the officer of the principal place of business and has also complied with the requisition made by the branch area officer. The Income-tax Officer of the principal place of business did not call for the branch account nor did he receive any report of the branch income. It is submitted that under the circumstances assessment, must not be made in hot haste and where there is sufficient time, the Income-tax Officer must wait for the branch report or issue a fresh notice under section 22 (*4*) calling for the branch account for his examination. The Income-tax Officer at the head office can call for branch account whether produced or not at the branch area and non-compliance of this may result in a summary assessment"—*Lachmondas Baburam*, 4 I. T. C. 61 ; *L. R. M. S. T. Firm*, 3 I. T. C. 416. The Income-tax Officer has power to make a test judgment assessment, even when the income from the branch business is not shown in the return—*Mohanlal Hardeo Das*, 9 Pat. 172 : 5 I. T. C. 128. An Income-tax Officer has jurisdiction to call for branch accounts outside British India (*Somasundram Chettiyar*, 7 R. 595 ; *Radha Krishnam & Sons*, 2 I. T. C. 345, and *Lalita Prasad Chirunjilal*, 6 I. T. C. 182). The Income-tax Officer has jurisdiction to call for a return of the income of all branches. Section 64 (*4*) does not militate against the view. It has been enacted only to safeguard the powers of the local officers, in case it might be contended that sub-section

(*1*) of section 64 takes away that power : *In re* : *Abheyram Chunilall*, 6 I. T. C. 343 : 145 I. C. 562.

Notice under Section 22 (*4*) on Non-resident, etc. :

An Income-tax Officer can serve a notice under section 22 (*2*) on a non-resident or to his agent under section 42 if he is liable to assessment. The Income-tax Authories have power to call for accounts under section 22 (*4*) and service of notice on the agent carrying on the business for the principal is good service. In the case of *Shomosundram*, 123 I. C. 136 : A. I. R. 1930 Rang. 10, it was held that an Income-tax Officer is competent to call on the agent of a non-resident principal to produce books of accounts relating to the principal's business outside British India and an assessment under section 23 (*4*) is not bad in law, if no compliance is made. Similar views have been expressed in the case of *Mahamad Kasim Rowther*, 126 I. C. 595 : A.I.R. 1930 Mad. 763. The scope of sub-section (*4*) is very wide and gives the Income-tax Officer very wide powers. Where profits were received at Rawalpindi from business in Kashmir, it was held that the Income-tax Officer at Rawalpindi is competent to ask the assessee to produce account books relating to Kashmir business as has been decided in the case of *Radhakisan*, 101 I. C. 321 : A. I. R. 1927 L. 5.

Effect of Amendment :

Now that, under the Amendment Act of 1939 in the case of residents, the remittance basis of taxation is abandoned for the accrual basis of both foreign profits which accrued in the previous year and foreign profits which were remitted in the previous year, this alone may be deemed sufficient to justify an Income-tax Officer to call for foreign accounts under section 22 (*4*).

In the case of *Bhiwani Sahi Bishambar Dayal* v. *C.I.T.*, 9 I. T. C. 412, it has been held that the Income tax Officer is entitled to require the production of the account books of the foreign business which will be relevant for determining the *quantum* of profits made therein. Similarly in the case of a person residing out of British India, who has property or business connection in India and is chargeable to income-tax in British India, taxing authorities are not competent to serve notices upon him. Such notices must be served upon his agent in British India. It is not open to the Income-tax Officer to address notices direct to the assessee even when they may be non-residents : *Aditya Narayan Singha Bahadur* v. *C. I. T.*, A. I. R. 1935 All. 318. This decision is in all fours with the case of *Lalta Prasad Chiranjilal* v. *C. I. T.*, 6 I. T. C. 182.

Default under section 22 (4)—Consequence of :

Where there is no compliance of the requisition under section 22 (4), the assessment must be made under section 23 (4)—*Virvan Banksilal* v. *C. I. T.* A. I. R. 1933 L. 290. This is in all fours with the case of *Raghu Karson* v. *C. I. T.*, 5 I. T. C. 389. Even a partial default in complying with notices issued under section 22 (4) or 23 (2) involves the same consequences under section 23 (4) of the Act, as a total default : *Benarsi Das* v. *C. I. T*, 163 I. C. 658 : A. I. R. 1936 L. 489. *In the matter of Mathura Das Chunnalal* 7, I. T. C. 84, it was held by the Allahabad High Court that non-compliance of either of the notice under section 22 (2) or 22 (4) is sufficient to justify an assessment under section 23(4). Partial compliance is no compliance and consequently non-production of complete account alone justifies a summary assessment—*Niki Devi* v. *C. I. T.*, 7 I. T. C. 370. Section 28 lays down that any person who fails to comply with a requisition under section 22 (4) is liable to penalty under that section.

Combined Notice under Sections 23 (2) and 22 (4) :

The issue of a notice under section 22 (4) and 23 (2) presupposes the existence of a valid return under section 22 (2) having been made, but which cannot be accepted as correct without verification. The issue of a combined notice under section 22 (4) and 23 (2) is legal. The weight of authorities is decidedly in favour of this view (*in re* : *Chandra Sen Janai*, 50 All. 589 ; *in re Harmuk Roy Dulichand*, A. I. R. 1928 Cal. 587 ; *in R.M.P. Chatiar Firm*, 7 R. 26 and in *re R. M. P. L. S. Chettyar Firm*, A. I. R. 1930 Mad. 127 ; *C. I. T.* v. *Laxmi Narayan Badridas Agarwal*, 1934 Nag. 183.)

Accounts and Documents as the Income-tax Officer may require :

In the case of *Rai Bahadar Ganga Sagar*, 5 I. T. C. 142, it was held that the word "require" really means require as a piece of relevant evidence and that it does not mean that the Income-tax Officer should ask for documents or account books which he does not think to be relevant at all. But in the case of *Tulsidas Nagin chand* v. *C. I. T.*, A.I.R. 1938 L. 551, it was contended by the assessee that most of the books which were not produced were irrelevant to the enquiry and even their absence was not felt as all information could be gathered from books of accounts produced and reliance was placed on 5 I. T. C. 142.

Reading the section as it is, the only conclusion that can be deduced, is that it is the requirement of the Income tax Officer which is to be satisfied by the assessee under sub-sec. (4) of

section 22 and not what the assessee thinks the Income-tax Officer should have required. In other words, the final arbiter of what is required is the Income-tax Officer and not the assessee. If, therefore, there is any non-compliance with any of the terms of the notice issued under section 22 (*4*), the assessee makes himself liable to an assessment under section 23 (*4*). To put any other construction would amount to substituting the assessee for the Income-tax authorities to determine which materials are necessary to be produced in order to enable the Income-tax Officer to arrive at a just estimate of an assessee's income. This could never have been the intention of the legislature while enacting those provisions. In the case of *C. I. T.* v. *Bombay Trust Corporation*, 179 I. C. 649, it has been held that sub-sec. 22 (*4*) only relates to accounts and documents which are in the possession of or under the control of the persons making the return. The income-tax Officer is therefore not justified in calling upon the assessee to produce books which the assessee is not in a position to produce. It is clear that the legislature could not have intended to impose a penalty on a person for non-production of documents, which he was, in law incapable of producing, (approved by the Privy Council in 41 C. W. N. 33).

Denial of existence of Accounts of Business :

In *Jangi Bhagat* v. *C. I. T.*, 3 I. T. C. 418, it has been held that mere denial of existence of books when they are actually existing amounts to a non-compliance of requisition under section 22 (*4*) In *Mohonlal Hardeo Das* v. *C.I.T.*, 4 I.T.C. 90, it was held that a declaration by an affidavit was not a compliance within the meaning of section 22 (*4*) in the absence of any other convincing proof of non-existence of accounts. In *Raghu Karson* v. *C. I. T.*, 5 I. T. C. 389, it was held that taxing authorities might presume existence of accounts from evidence as to the nature of transaction carried on by the assessee.

A presumption against the assessee under section 114 of the Indian Evidence Act is permissible and legal in a case of non-production of accounts : *Sankarlinga Nadar* v. *C. I. T.*, 4 I. T. C. 226. In *Kritanlal Rasiklal* v. *C. I. T.*, 7 I. T. C. 209, the plea of non-existence of account was negatived and an assessment under section 23 (*4*) was made.

But it must be understood that it is the requirement of the Income-tax Officer which is to be satisfied by the assessee under section 22 (*4*) and not what the assessee thinks. In other words, the final arbiter of what is required is the Income-tax Officer and not the assessee—*Tulsidas Naginchand* v. *C. I. T.*, 181 I. C. 99.

Non-compliance of the Notice under section 22 (4) prior to the issue of Notice under section 23 (2) :

The view adumbrated by the Rangoon High Court that the Income-tax Officer after proceeding under section 23 (2) can make an assessment under section 23 (4) for a default of the notice under section 22 (4) prior to the proceedings under section 23 (2) does not appeal to me at all : (*In re Maganlal Pranjiban*, 7 I. T. C. 39). The reason is, this view will lead to an absurd conclusion. The Income-tax Officer may accept a valid return and proceed under section 23 (1) or if he thinks it incomplete, section 23 (2) is imperative and without a valid notice under section 23 (2), no assessment is legal. A notice under section 22 (4) is permissible before return is filed but an assessment is not permissible before due date for submission of return and where return is filed, and accepted, the mandatory provision of section 23 (2) comes into operation.

When after a return is filed, the Income-tax Officer issues a notice under sections 22 (4) and 23 (2) the assessee may come forward with a revised return ; the Income-tax Officer is bound to issue a fresh notice under section 23 (3) the default in the prior notice does not attract the provision under section 23 (4)

Onus :

Where in a verified return an assessee declares to have no income from a particular source, it is for the Income-tax Officer to prove the existence of income from that source : *In re Bishnu Priya Choudhury*, 1 I. T. C. 261 : A. I. R. 1924 Cal. 337. In *Bhikaji Venkatish David & Co.* v. *C. I. T.*, 1927 Nag. 283, it was held that the Income-tax Officer was perfectly entitled to draw a presumption from the state of matters which had admittedly existed in previous years and the onus was on the assessee. Where assessees were never told that they would be assessed as Hindu undivided family, and notices issued indicated separate assessment, but after enquiry the Income-tax Officer assessed him as Hindu undivided family, it was held that it was improper— *Radhelal Bal Mukunda*, A. I. R. 1931 All. 23.

Summary Assessment for Wrong Status :

A question may arise whether taxing authorities are competent to declare a return invalid as to status on the strength of previous decision when it is submitted, and without taking any explanation. In my humble opinion it is unwarranted to hold the return as invalid only on a reference to the previous record. Status of an assessee may change and a status in a previous assessment purported to have been made under section 23 (4).

Question of estoppel or waiver or *res judicata* does not arise. Consequently if the Income-tax Officer wants to challenge it, he must give the assessee an opportunity and nothing should be done behind his back.

Power to Seize Books :

The Income-tax Officer can call for the books of accounts, and can ask for production by giving opportunities after opportunities but certainly this insistence does not authorise the officer to seize the books. Where the assessee refuses to comply, the Income-tax Officer can assess him under section 23 (*4*). He can visit the shop, can ask for the accounts but he will be guilty of trespass if he insists on staying at the shop, in spite of orders to the contrary as has been reported in the case of *Acchuram*, 95 I C. 308 : 7 L. 104. The Calcutta High Court has also in the case of *Lal Mohon Poddar*, 55 Cal. 423 : 31 C. W. N. 996, adopted the above finding and has expressed the view that the power to seize book by the Income-tax authorities is not contemplated by the provisions of the Income-tax Act. He can issue notice under section 37, thus far, and no further.

Re-opening of Decisions :

Decision about assessment arrived at by a predecessor can be re-opened by the succeeding Income-tax Officer provided fresh facts are forthcoming. The Income-tax Officer, however, is to be guided by the principle of natural justice and assessment cannot be arbitrarily changed, *Deokinandan & Sons*, A.I.R. 1930, L. 605. In the case of *Sankaralinga*, A. I. R. 1930 Mad. 209, it was held that when in a previous year of assessment a decision is arrived at after investigation and inquiry, that certain amounts standing in the name of certain ladies in the petitioner's account were stridhanam belonging to them, and as such the interest paid in respect of the said amounts, is held to be a valid deduction, it is still open to the Income-tax authorities to reopen the question of the ownership of the amounts in a subsequent year of assessment and the authorities not constituting a court, are not bound by the principle of *res judicata*. (Doctrine of *res judicata* under section 23).

Combined Notice under Sections 23 (*2*) and 22 (*4*) :

It may suffice to say that notice under sections 22 (*4*) and 23 (*2*) may be comprised in one document without committing an illegality : *In the matter of Harmuk Roy Dulichand*, 114 I. C. 90 : 56 Cal. 39 : 32 C. W. N. 710 ; [for details *vide* section 23 under head "combined notice under sections 23 (*2*) and 22 (*4*).]

Power of Adjournment :

The power of an officer entrusted with an enquiry to adjourn the proceedings, as occasion requires, is so necessary, convenient and universally conceded that unless it is expressly withheld by statute or ruling having the force of law, it must be taken as having vested in him. An Income-tax Officer, therefore. has the power of adjournment in an inquiry under section 23 (*3*). *In the matter of M. S. M. Perianna Pillai*, 122 I. C. 449 : A. I. R. 1930 Mad. 113.

Can a Notice under Section 22 (*4*) be issued when Enquiry under Section 23 (*3*) is in progress :

The case of *Khusiram Karamchand*, 100 I. C. 774 held that when compliance has been made, the assessee should not be further subjected for any subsequent default to the drastic penalty of summary assessment. (For details *vide* under section 23.)

Notice beyond Territorial Limit :

The question whether notice can be issued to persons residing outside the territorial limit of an Income-tax Officer by post—rather, whether a notice by post to a non-resident foreigner, if served, is valid.

We can look upon the English cases for precedents (*vide Whitney* v. *C. I. R.*, 10 T. C. 88).

Section 63 of the Act provides the machinery by which notice under any of the sections can 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.

Order 5, rule 25 of the C. P. Code runs thus :

> "When the defendant resides out of British India, and has no agent in British India empowered to accept service, *the summons shall be addressed to the defendant at the* place where he is residing and sent up to him by post, if there is postal comunication between such place and the place where the Court is situate".

Thus there is no bar to send by post notice to a non-resident foreigner having no agent in the locality. The jurisdiction of section 22 (*2*) asking an assessee to file his return is not confined to persons resident in British India alone, for the charging sections 3 and 4, do not draw any distinction between residents and aliens. In *Bhanjee*, 41 M. L. J. 991, it has been held that a non-resident can be assessed in respect of income accruing or arising in British India. In *Md. Hazi Sardar*, 5 I. T. C. 159, similar views were expressed.

In Muffusil areas generally two officers are posted for carrying out the administration of the district. Under section 5 these officers derive their powers over areas as sanctioned by the Commissioner of Income-tax. Both the officers reside in the same district, having equal powers of assessment but with different territorial or personal jurisdictions. In such cases an officer having jurisdiction over an area as sanctioned by the Commissioner, cannot have any jurisdiction over another area not sanctioned by the Commissioner and any notice issued by the officer on such an area is clearly *ultra vires*. Consent does not give any jurisdiction. Application for time does not constitute a waiver, for no action of an assessee gives the Income-tax Officer jurisdiction which the law does not give him—*In re. Ramkrishna Ramanath*, A. I. R. 1932 N. 65.

Concurrent Jurisdiction :

It is open to the Income-tax Officer at the principal place of business to call for the accounts of the branches irrespective of whether they have been produced before the local Income-tax Officer or not and whether the assessee has submitted returns of incomes to them. Further the Income-tax Officer at the principal place of business is not bound to accept the report if any, made by the branch Income-tax Officers and he need not refer back to the point which he is not prepared to accept. The same income cannot, of course, be taxed twice, once by the Income-tax Officer of the branch area and again by the Officer of the principal place of business. If the Income-tax Officer of the branch area instead of merely making a report to the Officer that of the principal place of business, makes a final assessment himself in respect of the income within his area, it would seem to be still open to the Officer of the principal place of business, to assess the branch income on a footing different from that assessed by the Income-tax Officer of the branch area, *L. R. M. S. T. Firm*, 3 I. T. C. 416.

The obligation to make a return at the principal place of business is not discharged by filing returns before the Income-tax Officer of the branch area and it is therefore open to the Income-tax Officer of the head office to assess under section 23 (*4*) in the absence of a return without waiting for reports from the branch area Officer. (This is in connection with cases where the return filed before the Income-tax Officer of the head office does not contain the income of the branch business).

Prosecution and Penalty for Invalid Return :

A return, which is invalid cannot be deemed to be a valid one for sustaining a conviction under section 52 for making a false return—but in that case the provision of section 28 is attracted.

Implications of Section 22 (5) :

It has already been stated that sub-section (5) of section 22 makes it obligatory on the person filing a return under section 22 to furnish particulars of the location and style of business, profession or vocation, of his principal place of business and of his branch business, if any. Such a person is further required to furnish the names and addresses of his partners and the extent of his shares and the shares of all such partners.

The importance of the expression "location and style" of the principal place of business lies in the fact that under the proviso to section 64 of the Act, it has been definitely laid down 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 22 (1) 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 making of a return.

Assessees frequently obstruct income-tax proceedings by raising questions of jurisdiction and this is designed to check the practice.

Non-Compliance of sub-section 22 (5)—Effect of :

On a perusal of sub-section (5) of section 22, it appears that there is nothing in the sub-section itself to warrant any penalty for non-compliance. It can be seen that section 23 (4) is also not attracted as no mention of sub-section (5) of section 22 is to be found there; neither the provision of section 28 is attracted.

But it may well be contended on the authority of the decision in *Chettyar Firm*, A. I. R. 1928 Rang. 108, that when a return ignores the provisions of Rule 19, summary assessment under section 23 (4) is justified. Statutory rule No. 19 which embodies the form of return to be filed by an assessee has the same force as a section in the Act and a return which completely ignores its provisions cannot be considered as any return—*In re A. R. N. Chettyar*, 110 I. C. 29.

On the authority of the above principle, it becomes obvious that non-compliance of sub-section (5) of section 22 attracts the provision of section 23 (4) and to some extent of section 28 as well.

Notice when to be issued, before or after the Finance Act :

As a matter of fact no notice can be issued under this section before the Finance Act is passed. The reason obviously is that the Finance Act determines the rate to be applied to the year

of assessment. Further, it is not possible to ascertain the liability of any income to assessment unless the Finance Act announces the minimum limit of taxation. While the Income-tax Act lays down the general procedure for determining the taxable income up to realisation, the Finance Act determines the rate. Thus it seems that notice under the section before the passing of the Finance Act must not be issued. But a notice under section 34 can be issued whether the Finance Act has been passed or not.

Though the Income-tax Act does not come into operation in any year until the Finance Act has been passed, the Income-tax Act must not be treated as a statute which is passed every year. It is a permanent enactment but it may not be enforced in any particular year until the Finance Act has been passed. Section 4 cannot be divorced from section 3—*C. I. T., Madras* v. *Velliamai Achi*, 180 I. C. 270.

But the enactment of section 67-*B* practically nullified the usual procedure and the law has been considerably altered ; and the section is quoted below :

> "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."

So statutory authority to issue notice under section 22 before the passing of the Finance Act has now been provided.

Notice under section 22 (*4*)—When to be issued :

As the law stands, notice under section 22 (*4*) can be issued at any stage, before or after the service of notices under sections 22 (*1*) and 22 (*2*). The decision in the case of *Brijlal Rangalal*,106 I. C. 193 : 2 I. T. C. 458, is no longer a good law in view of the decision arrived at in the case of *Ramkhelwan Ugamlal*, 7 Pat. 852 : 3 I. T. C. 225. The Calcutta High Court in *Harmuk Rai Dulichand*, 32 C. W. N. 710, enunciated that notice under section 22 (*4*) could be issued at any stage. Notice to produce account books after the submission of the return is valid—*Raghunath Das Seolal* v. *C. I. T.*, A. I. R. 1932 Cal. 411. It is open to the Income-tax Officer to issue notice under section 22 (*4*) at any stage (*Md. Hayat Hazi Md. Sundar* v. *C. I. T.*, A. I. R. 1930 All. 49 *relied on*)—In the matter of *Pollumal*, A. I. R. 1933 All. 541.

Notice on Successor and on the Agent of a Non-Resident under Section 22 (2) :

The Income-tax Act does not contemplate any fresh notice under section 22 (2) to be served on the successor, in as much as proceedings once started against the predecessor, continue against the successor, even if the predecessor had ceased to exist. In the absence of any direction to the contrary, no obligation is imposed upon the department in this behalf—*Ram Rakha Mal & Sons* v. *C. I. T.*, A. I. R. 1937 L. 830 : 172 I. C. 821.

It is now necessary to the validity of a notice calling for a return under section 22, when it is served upon a person as agent of a non-resident under section 43, that it should be preceded not only by the notice of intention prescribed by section 43 but he should also be given an opportunity of being heard as prescribed by the proviso thereto, and there should be an order "declaring the assessee to be the agent of a non-resident person and treating him as such an agent." It may be reasonable that "*A*" should not be required to render a return of "*B*'s" income, until it has first been decided that he is agent for "*B*" ; on the other hand, having regard to the circumstances which for the purpose constitute agency, it may well be thought advisable that the information which may be afforded by a return and by books of accounts produced in support thereof should be available for the purpose of deciding as to agency The avoidance of delay may also be a consideration. The matter must be determined entirely on the language of the Act and it does not impose the technical requirement. It is open to the Income-tax Officer under the Act to postpone any final determination of the question of agency until the time comes to make an assessment under section 23. Where the notice under section 22 (2) is served before the expiry of one year (now 8 or 4 years as the case may be) from the end of the financial year, the notice is a valid initiation of proceedings to assess the assessee firm as an agent under section 43—*C. I. T.* v. *Nawal Kishore Khairatilal*, 172 I. C. 332 (P. C.).

Assessment.

23. (*1*) If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(*2*) If the Income-tax Officer is not satisfied without requiring the presence of the person who

made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person, a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

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

(*4*) If any person fails to make the return required by any notice given under sub-section (*2*) of section 22 and has not made a return or a revised return under sub-section (*3*) of the same section or fails to comply with all the terms of a notice issued under sub-section (*4*) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (*2*) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it or may cancel its registration if it is already registered :

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

(*5*) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (*1*), sub-section (*3*) or sub-section (*4*), as the case may be,—

(*a*) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined :

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24 :

Provided further that when any of such partners is a person not resident in British India, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm ; and

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

Assessment under Section 23 (*1*) :

Whenever a return is filed, the Income-tax Officer is to see whether it is correct and complete for the purposes of assessment, and where he is convinced that the return with the profit

and loss statement can be accepted without any reference to the books of accounts, the Income-tax Officer shall assess him on the basis of the return filed, and the formalities of issuing notices under sections 23 (*2*) and 22 (*4*) are not essential. This is an assessment on the basis of the return submitted. In *Asoka Mills* v. *Commr. of Income-tax, Bombay*, 6 I. T. C. 340, the assessee preferred an appeal against an assessment under section 23 (*1*) on the ground that notice under section 23 (*2*) is a condition precedent of an assessment under section 23. It has been held, that an assessment under section 23 (*1*) is valid, when the Income-tax Officer is satisfied that the return is correct and complete and notices under sections 23 (*2*) and 23 (*4*) are not at all necessary. Section 23 (*1*) gives ample power to the Income-tax Officer to make an assessment on the basis of the return submitted.

Applicability of Section 23 (*2*) :

A return which deliberately fails to comply with the rule contained in section 22 (*2*) *viz*, that the return is to be of the total income of the assessee, is no return at all within the meaning of that rule of law. Section 23 (*4*) permits an Income-tax Officer to make a best judgment assessment in case there is failure to comply with a return under section 22 (*2*). The language does not stop with the words "fails to make a return," but the word return is qualified by the words "under sub-section (*2*)" of section 22, There is no contradiction or inconsistency between the provisions of sections 23 (*2*) and 23 (*4*).

Where the assessee makes a return of his total income to the best of his ability and the then information, still there may be room for some omission due to some cause or other, in that and in such cases, section 23 (*2*) would apply—*In re : Abhey Ram Chunilal*, A. I. R. 1933, All. 197.

It is a necessary ingredient of the return that it should be in the prescribed form and should be verified in the prescribed manner. There is a line of demarcation between an invalid return and an incorrect or incomplete return. Sub-section (*2*) of section 23 refers to the case where the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete. It can never be contended that a return which lacks verification and signature is an incomplete or incorrect return. Incompleteness, which is contemplated by the sub-section, is not the incompleteness which arises from non-verification and want of signature—*Behari lal Chatterjee* v. *C. I. T.*, 7 I. T. C. 123.

Evidence :

The word "evidence" as used in sub-section (*2*) of section 23 of the Act obviously cannot be confined to direct evidence. This

word is comprehensive enough to cover circumstantial evidence. Where the sales in the last three years, according to the books of the assessee decrease considerably, but there was no consequent decrease in the staff employed by the assessee or in the over-head charges, the circumstances alluded provide ample circumstantial evident—*Paras Das Munna lal* v. *C. I. T.*, A. I. 1938 L. 209.

Evidence other than Returns and Accounts of Assessee :

In addition to his general power to call for accounts, the Income-tax Officer, where he believes a return made under section 22 (*2*) incorrect or incomplete, has power to call upon an assessee to attend or to produce or cause to be produced evidence of the correctness of his return. If an assessee fails when required by an order under section 23(*2*) to attend or to produce evidence in support of his return, he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who originally made a return [*see* section 23 (*4*)], that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 67. If the assessee is a registered firm the Income-tax Officer may cancel its registration.

Under section 23 (*3*), the Income-tax Officer is empowered to utilise the evidence bearing on the assessment which he may obtain of his own motion, while under sections 37 and 38 he can enforce the attendance of any person for this purpose and compel the production of the information that he requires.

The following special intructions should be observed in calling for information from railway administrations :—

(*i*) The information must be relevant to an individual assessment. Income-tax Officers should not, for instance, ask for a complete statement of all consignments to or from a particular station.

(*ii*) The demand for information must be couched in definite terms. For instance, it must state whether particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected.

(*iii*) The requisition for information should always be sent to the Agent of the Railway administration concerned. There is no objection, however, to Railway officers furnishing information direct to the income-tax authorities without the intervention of the Agent where the Agent has no objection to their doing so. Section 37 gives power to call for railway books.

Except as provided in section 19-A and Rules 42 and 43, a company should not be required to furnish the Income-tax Officer with a return of the persons (with their addresses) for the time being appearing on the share register of the company and the amounts of the dividends paid or payable to such persons during any particular period. Such a duty would be burdensome to the company with no corresponding advantage to the administration. It is for this reason that in section 39 of the Act provision is made that the share register, the register of debenture-holders and of mortgages of any company are open to the inspection of the Income-tax authorities, who may also take copies or cause copies to be taken of any entries in such registers. Since the power to inspect, and take copies of such register is specifically conferred by section 39, no income-tax authorities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

Section 37 also provides for the issue of commissions. The scale of diet money and travelling expenses for witnesses summoned under this section should be that prescribed for attendance in Civil Courts in the Province concerned. (Para 70 of the I. T. M.)

Personal Attendance of Assessee :

While section 23 (*2*) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provisions of section 61 any person required or entitled to attend before any income-tax authority may either attend in person or be represented by a person duly authorised by him in writing. The penalty to which an assessee who failed to attend when required to do so by an Income-tax Officer was liable under the Act of 1918, has been omitted from section 51 of the present Act. While there was no obligation on an assessee to attend in person at any stage of the assessment proceedings or before any income-tax authority in connection with any proceedings under the Act, and while he may be represented at any such proceedings by any person he pleases to authorise in writing, failure to attend or to be represented has the result that the assessee loses any right of appeal against the assessment.

Attendance of Assessee :

There are three alternatives provided by sec. 23 (*2*) :—

(1) to attend at the Income-tax Officer's office,

(2) to produce any evidence on which the assessee may rely, and

(3) to cause to be there produced any evidence on which the assessee may rely.

As the section reads, tho alternatives seem to he for the benefit of the assessee who has got to choose as to which of the options he will exercise. A plain reading of section 23 (*2*) shows that under certain circumstances the issue of the notice under section 23 (*2*) is mandatory. In *Muhammad Hayat Hazi Mahommad Sardar* v. *C. I. T.*, I. L. R. 12 L. 129, it was held "that if the Income-tax Officer, however, considers the return to be incorrect or incomplete he has no authority to reject it and make an assessment then and there, as he is entitled to do when no return is made. The Income-tax Officer must give the assessee an opportunity to prove the accuracy and completeness of the return made by him. A clear injunction is laid on the officer and that injunction must be obeyed. The phraseology of section 23 (*2*) suggests that a valid notice under section 23 (*2*) is imperative and that subsequent assessment on an invalid notice is bad in law and should be set aside.—*In re Rajmoni Devi*, A. I. R. 1937 All. 770 : 172 I. C. 354 : 1937 I. T. R. 63.

Scope of Section 23 (*3*) :

Section 23 (*3*) comes into operation when Income-tax Officer believes the return to be incomplete or incorrect ; sub-section (*3*) provides that when notice under section 23(*2*) has been issued, the Income-tax Officer shall give a hearing to the assessee on such evidence on which he relied and on such other evidence as he may require, and shall make an assessment in writing. Sub-sections (*2*) and (*3*) are inter-connected and the evidence which is required by sub-section (*2*) is being scrutinised under section 23 (*3*). Section 23 (*3*) is thus an important section enabling the Income-tax Officer to make enquiries even

After hearing such Evidence :

The obligation to hear evidence which may be produced by the assessee or may be called for by the Income-tax Officer himself is a clear index to the further obligation to "determine the sum payable by the assessee on the basis of evidence adduced". Where the assessee himself does not produce any evidence, the Income-tax Officer cannot be at a loss to make the assessment, because the law has given him ample powers. Section 37 of the Act empowers him to enforce the attendance of any person and to examine him on oath or affirmation, to compel the production of documents and to issue commission for examination of witnesses.

The next question that arises is what is "evidence", as used in sec. 23 (*3*). It is not defined in the Income-tax Act itself—neither there are any rule under section 50 laying down what should be considered evidence for the purpose of assessment. But it is

certain that the Legislature did not intend that the evidence on which the taxing authorities are to act, should be evidence which fulfills all the technical requirements of the Indian Evidence Act ; on the other hand mere conjecture, surmise, or assumption of fact, as distinguished from inference from proved circumstances, does not amount to evidence within the meaning of sec. 23(*3*) of the Indian Income-tax Act. The result of inquiries behind the back of the assessee is not "evidence" within the meaning of section 23(*3*). Even the Income-tax Officer is not entitled to make the assessment on the basis of the previous assessment made under section 23 (*4*). If a mere conjecture, surmise or assumption, however shrewd, it is no "evidence" within the meaning of section 23 (*3*), such conjecture made in the previous year under section 23(*4*) can be no more evidence.

It is of course open to the Income-tax Officer to rely on the records of several past years which are in his possession, if those assessments were made under section 23 (*3*) and if he takes those assessments as a guide, it cannot be said that his assessment is not based on no evidence. It must be understood that the word used is "evidence" and not other words, like, information, etc. It would seem to follow *prima facie* that what the sub-section authorises the Income-tax Officer to do is to take evidence in rebuttal of the evidence produced by the assessee and which *prima facie* should be in the presence of the assessee and of which the assessee should have knowledge in order that he may be able to meet such evidence. In short, taxing authorities are not competent to make private inquiries behind the back of the assessee.

In the absence of any better evidence the Income-tax Officer is certainly entitled to fall back on the assessment on income made during the previous year, even though that assessment might have been to the best of his judgment—*In re Gopinath Naik*, 9 I. T. C. 136 : A. I. R. 1936 All. 266.

Sub-section (*3*) directs the Income-tax Officer to make the assessments after hearing such evidence as the assesse may produce and such other evidence as the Income-tax Officer may require him to produce on specified points. No direction is given to the Income-tax Officer when assessing under sub-section (*3*) and the assessee fails to produce evidence or produces evidence which the Income-tax Officer considers unreliable or incomplete.

Sub-section (*4*) of section 23 contemplates a more summary method for reason of the deliberate default of the assessee.

The interpretation to be placed on sub-section (*3*) is to be gathered from the judgment of the Privy Council in the case of

C. I. T. v. *Maharajadhiraj of Darbhanga*, 126 I. C. 833 : 9 Pat. 240 : A. I. R. 1930 Pat. 81. In that case assessee stated that he had an income of Rs. 4364 from a certain source. The Income-tax Officer did not accept the figure and passed an order assessing him on an income of Rs. 104364, and Terrell, C. J., in the course of his judgment observed—"Learned Counsel for the assessee has argued that the officer is not entitled to make a guess without evidence and I agree with that contention."

Whether the Income-tax Officer when making an assessment on materials which he himself has gathered shall disclose it to the assessee before making his assessment and give him an opportunity to adduce materials, to rebut and whether the Income-tax Officer should in his order of assessment set out the facts which he has taken to consider when estimating the assessee's income for the year. There is nothing in the Act itself which requires the Income-tax Officer to disclose to the assessee the material on which he proposes to act or to refer to, but natural justice demands that he should draw the assessee's attention to it before making the order Information which the Income-tax Officer has received may not always be accurate and it is only fair when he proposes to act on material which he has obtained from an outside source, that he should give the assessee an opportunity of showing if he can that the Income-tax Officer has been misinformed, but the Income-tax Officer is obviously not bound to disclose the source of his information. From every point of view it is desirable that the Income-tax Officer should indicate in his order the material on which he has made his assessment—*Gunda Subbayya* v. *C. I. T*, 7 I. R. 21.

Verification of Return by Assessee or by Agent : Evidence Act :

It should, however, be particularly noted that the provisions of section 61 merely refer to attendance. Returns and verifications required under the Act must be signed either by the assessee himself or by any duly Authorised person.

It is desirable that tax-payers should be allowed to use whatever agency they please for the purpose of representing their case ; and whatever person they authorise to represent them, whether he be an employee, an accountant or any other person, who has presumably been selected by them as the person having the best knowledge of their accounts and financial position, such person is entitled to appear before any Income-tax Authority and to give explanations and produce evidence regarding any point of doubt that may arise. (Para 71 of the I. T. M.)

Principle of an assessment under section 23 (3)

An assessment under section 23(3) is possible under various circumstances ; but the observations, made in the case of *Binjraj Hukumchand*, 35 C. W. N. 589, should be utilised.

"When, as in this case, an assessee produces his books for the year of account and complies with any other requirements as to specific documents so that he is assessed in the ordinary way under section 23 (3) and not as being in default, the Income-tax authorities cannot assess him upon any figure of profits, not warranted by evidence they have before them."

Notes :

Personal attendance of the assessee is not necessary and a notice under section 23 (2) cannot ask for compulsory attendance of the assessee. Where it is so done, it will amount to an irregularity but not an illegality so as to nullify the whole proceeding, Verifications on Returns can be signed by a person other than on the assessee, provided he has been duly authorised. The Income-tax Officer cannot refuse to accept a return duly verified by an authorised Agent.

The Indian Evidence Act has no applicability with proceedings under the Income-tax Act. "Income-tax Officer is not a Court. He has not the procedure of a Court and he is to some extent a party or judge in his own case. It has been said under section 37 of the Income-tax Act that the proceeding before the Income-tax Officer shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. "If an Income-tax Officer in making an investigation was a Court, there is no necessity for the provision of section 37. It is only for the purposes stated in that section that he is to be deemed a Court."

In Lal Mohan Poddar v. *Emperor*, 55 Cal. 423, it was held that a proceeding before an Income-tax Officer on the production on account books pursuant to a notice under section 23 (2), Income-tax Act, is a judicial proceeding only for the purposes of sections 193 and 228 but not of section 196 of the Penal Code, and that conviction under section 196 for the production of false account is bad in law. The learned Judges, Justices C. C. Ghosh and Cammiade, observed, "As we read section 37, it seems to us to be clear that the Legislature has for the purposes of punishing offences under sections 193 and 228 of the Penal Code (and under no others) converted proceedings before the officers mentioned therein, which are not judicial proceeding ordinarily into judicial proceedings."

In the matter of Hurmuk Roy Dulichand, 56 Cal. 39, the question arose whether an Income-tax Officer is a Court. Chief Justice Rankin observes that "it has been said that the Income-tax Officer must proceed in a judicial manner and section 37 has been mentioned in this connection. Fundamentally, no doubt, the Income-tax Officer must proceed in a judicial spirit and come to a judicial conclusion upon properly ascertained fact though I would point out that the Income-tax Officer is not a Court, he has not the procedure of a Court, and he is to some extent a party or judge in his own case."

Similar views have been expressed in the case *Sankralinga Nadar*, A. I. R. 1930 Mad. 209, that an Income-tax Officer while proceeding to make an assessment after inquiry, as contemplated by the Income-tax Act, is not a Court.

Thus it is clear that except under section 37 and to a limited extent thereto, proceedings before an Income-tax Officer are not "judicial proceedings". Under section 37 an Income-tax Officer is a court in so far as enforcement of attendance of any persons and examination on oath is concerned. He can compel production of document and even issue commissions for the examination of witnesses. Thus even under section 37 where the proceeding is deemed a judicial proceeding the power of an Income-tax Officer is clearly limited. Neither the Evidence Act nor the Civil Procedure Code has any applicability in income-tax proceedings. An Income-tax Officer is not bound by all the formalities of the Civil Procedure Code and of the Evidence Act, while proceeding to make an assessment. The proceedings are quasi-judicial in nature and nothing more. What the Act wants is judicial spirit and nothing more.

Judicial Manner :

Income-tax proceedings being quasi-judicial in nature, the Income-tax Officer must proceed in a judicial manner, and he must come to a judicial conclusion while making an adjudication. But it must be remembered that a judicial conclusion is only possible where all materials are forthcoming. Where accounts are withheld, an assessee certainly cannot complain that the Income-tax Officer has not exercised his judicial discretion properly. It has been held by the Calcutta High Court, in the case of *Harmukh Roy Dulichand*, 32 C. W. N. 713, that the assessment should be made in a judicial manner which presupposes that the assessee must produce all the evidence that the law requires him to produce so that a judicial determination may be possible. A person who deliberately withholds books of account cannot complain if the taxing officer assess him to the best of his judgment.....It is idle and absurd

for a person who has books of account and deliberately withholds them, to complain of not being treated in a judicial manner which proceeds upon evidence and the basis of the statute is to see that available evidence is produced. It is then and then only that the assessment is to be made upon a judicial consideration of the evidence, otherwise it is to be made 'to the best of his judgment' and *'brevimanu'*. But it must be noted that a purely arbitrary assessment by an Income-tax Officer on mere hearsay evidence is not at all justified and the High Court is competent to interfere.

Judicial Considerations :

In *Ganyaram Bal Mukunda* v. *C. I. T.*, A. I. R. 1937 L. 721 : 1937 I. T. R. 65, it has been propounded that Income-tax Officer has not a blank cheque to proceed in utter disregard of all judicial considerations. In *Nathuram* v. *C. I. T.*, 9 I. T. C. 178 : A. I. R. 1937 L. 919, it has been observed by CJ. Monroe "we cannot agree with the proposition advanced by the learned Counsel, though we do certainly agree with his contention that the procedure of the assessing authority is a judicial one and that he ought to act on evidence." In *Tarachand Pohumal* v. *C. I. T*, 9 I. T. C. 256 : A. I. R. 1936 L. 836, the Income-tax Officer had added a sum of Rs. 10,000 to the income shown in the books as he had come to the conclusion that there were omissions in the accounts. While remarking that the Income-tax Officer should have proceeded on judicial principles, the existence of one omission was held to be sufficient by a Division Bench to justify the action taken by the Income-tax Officer. Similarly in *Jambudas* v. *C. I. T.*, A. I. R. 1927 N. 336 : 104 I. C. 336, it was observed that "the normal presumption is in favour of good faith on the part of the assessee." In 14 T. C., 165 (*Hunt & Co.*), Rowlatt J. said : "These are gentlemen who are entrusted with the duty of fairly administering the law and if it had been said that they were merely masquarading, that they had been pretending to do their duty but that they arbitrarily and injudicially said, "we will not listen to you .....and we perversely decline—if that was the sort of case against them, of course I cannot try it there, it would be impossible to try it here. If you want to say anything of that sort, you should go for Mandamus against them to hear a point of law." In *Bhagat Halor* v. *C. I. T.*, 3 I. T. C. 48, learned Judges observed—"They (the assessment proceedings) are judicial proceedings in the colloquial sense, because the Income-tax authorities have to make up their minds judicially, with fairness to the public and to the assessee, between whom they stand, after taking all the facts, or such facts as they can, into account, but they are not judicial proceedings in the strictly scientific sense of the terms.

Burden of Proof :

Where an assessee in a verified return declares that he has no income from a particular source, the burden of proof being on the party who would fail if no evidence were produced, that is, on the officers of the Income-tax department, rests entirely with the department. An assessee cannot be expected to prove a negative statement and "if an assessee states that he has no income from a certain source and the officer of the department disbelieves him it is for him to prove that he has some such income and not for him to prove the reverse. Any assessment based on the liability of the assessee to prove his negative statement and on general assumptions only is bad and should be cancelled" : *In the matter of Bisnupriya Chaudhurani*, 50 Cal. 907 : A. I. R. 1924 Cal. 337. But in the case of *Vithaji Vyankatish Dravid and Co.*, (1927) Nag. 283, a different view has been advocated.

Thus where a verified return denies the existence of any source, the Income-tax Officer is bound to prove that he has income from that particular source. This can be done in the verified return under section 22 (*2*) or in a petition duly presented, denying existence of income from any source. It is not essential to file an affidavit to that effect.

Combined Notice under Sections 23 (*2*) and 22 (*4*) :

Under the law as it stands, income-tax authorities are justified in issuing combined notices under sections 23 (*2*) and 22(*4*). The Patna High Court's decision in the case of *Brijlal Rangalal*, 106 I. C. 193, is no longer a good law. There it was decided that a notice under section 22 (*4*) can only be issued before the filing of the return and thereafter under section 23 (*3*) and section 37. The Calcutta High Court in the case of *Ram Kishan Das Bagri*, 2 I. T. C. 324, and also in the case of *Harmuk Roy Dulichand*, 32 C. W. N. 713, decided that a combined notice is valid and legal and that the power of the Income-tax Officer is not limited to the issue of a notice under section 22 (*4*) when return has already been filed. The Patna High Court subsequently in the case of *Ramkhelwan Ugamlal*, A. I. R. 1928 (Pat.) 529 F. B. : 114 I. C. 211, overruled its previous decision in the case of *Brijlal Rangalal*, 106 I. C. 193. Similar views have been held in the case of *Chandra Sen Janai*, 108 I. C. 234 : 50 All. 598. The cases of *Chetyar Firm*, 117 I. C. 564 and also the case of *Shiva Swami Chettiar*, 124 I. C. 206 : 4 I. T. C., 201, followed the above principles.

An exhaustive discussion on this point with reference to all the existing High Court rulings was made in the case of *Mahamad*

Hayat Haji Mahamad Sardar, 131 I. C. 81, which is reproduced below "..... . ...Mr. O'Connor for the assessee urges that the notice was served upon his client in the course of enquiry which was being conducted by the Income-tax Officer under section 23 (*3*) of the Act, that a notice under section 22 (*4*) would be issued only before the submission of the return by the assessee. The learned Counsel places his reliance upon the phrase 'having made a return' which is used in sub-section (*4*) of section 23, in connection with the third default and argued that the legislature by expressly stating that the third default can take place only after the submission of the return impliedly intended to say that the other two defaults must occur, not after the making of the return but before the stage..... . There is some force in this argument which, it is to be observed, was accepted by a Division Bench of the Patna High Court in *Brijlal Rangalal*, 106 I. C. 193. But that judgment has been overruled by a Full Bench of that Court in *Ramkhelwan Ugamlal*, 114 I. C. 911.

"At any rate, one thing is absolutely clear that the notice contemplated by section 23(*2*), can issue only after the return has been made and the phrase 'having made a return' merely emphasises that fact. It is no doubt an obvious fact and the use of the phrase in question does not add anything to what was already well known. The word 'having made a return' appeared to be superfluous in so far as the sub-section, as at present worded, is concerned.

"Be that as it may, I cannot accede to a contention which would confine the exercise of the power to call for account and documents to the stage prior to the submission of the return when it can be of little or no use, and shuts it out at a stage when it is most needed. It is clear that the account or other document kept by the assessee are, in the majority of cases, best evidence for determining his income, and it is difficult to believe that the legislature intended to render that power practically nugatory by limiting its operation to a stage it can hardly serve any useful purpose.

Marginal Notes : "The learned Counsel for the assessee also refers to the marginal notes against sections 22 and 23 and argues that the use of the phrase 'return of income' as brief description of the provision contained in section 22, when distinguished from the word 'assessment' used in respect of section 23, indicates that the former section prescribing the procedure for obtaining a return from the assessee was intended to apply only to the stage prior to commencement of the inquiry into the assessment of income to be made under the latter section. No serious argument can, however, be built upon the marginal notes which even if they

are treated as forming part of the Act, cannot control its operation.

"The wording of sub-section (*4*) of section 22, is, however, clear and unequivocal and does not suggest any limitation as to the time when the notice requiring the production of accounts and documents should be served. The difficulty has to a large extent, been created by the fact that the law enacted by that sub-section which by reason of its being an independent provision, should have been embodied in a separate section, has been made a part of a section which primarily deals with the return of income and apparently embraces the preliminary stage of proceeding.

"..... ...Coming now to the judicial decision on the subject, I find that the weight of authority is decidedly in favour of the view that the language of the sub-section, uncontrolled as it is by any other provision in the statute, must be given its full scope ; and that the Income-tax Officer can issue the notice contemplated by it not only before, but also after, the submission of the return and even after the commencement of the inquiry under section 23 (*3*) : *In the matter of Chandra Sen Janai*, 108 I. C. 234 ; *Harmuk Roy Dulichand*, 56 Cal. 39 : 32 C. W. N. 710 , *Ramkhelwan Ugamlal*, 114 I. C. 211 and *Ramswami Chetyar*, 116 I. C. 566. The contention urged on behalf of the assessee was accepted by a Divisional Bench of this Court in *Kushiram Karamchand*, A. I. R. 1928 L. 219 : 2 I. T. C. 517, which was followed by Justice Mukherjee in an exhaustive judgment in, *In the matter of Lochman Prosad Baburam of Cawnpore*, 126 I. C. 801. There are no doubt plausible arguments in support of that contention, but after bestowing my careful consideration upon the matter I don't think that they would justify a limitation upon the scope of the sub-section when its language is wide enough to apply to all the stages of the proceeding before the Income-tax Officer.

"As observed by Lord Eshar in *Queen* v. *Judge of the City of London Court*, (1892) 1 Q. B 273, if the words of an Act are clear, you must follow them, even though they may lead to manifest absurdity. The Court has nothing to do with the question whether the legislature has committed an absurdity. When once the meaning is plain, it is not the province of a court to scan its wisdom, or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the word.

"My answer to the first question is that the Income-tax Officer can, even after the commencement of an inquiry under section 23 (*3*) issue a notice under section 22 (*4*) calling upon the assessee to produce his account books for the previous and for

three years prior to it and on the assessee's failure to comply with the notice, assess income under section 23 (*4*)."

Dissentient Note : But Justice Dalip Singh observes : "...on the whole therefore if the matter were *res integra* I would be of opinion that section 22 (*4*) cannot be used after a notice has been issued under section 23 (*2*), and that the answer, therefore, to the first question referred should be in the negative. I am, however, greatly constrained by the weight of authority on the point which is now all the other way, in my opinion, the legislature should intervene and place the question beyond reasonable doubt :" *In the matter of Mohammad Hayat Haji, Mahamad Sardar*, 131 I. C. 81. It is open to the Income-tax Officer to issue notice under section 22 (*4*) at any stage—*In re Pollumal Bholanath*, 6 I. T. C. 463 : 1933 I. T. R. 235. The Calcutta High Court in the case of *Raghunath Das Sewlal* v. *Commissioner of Income-tax, Bengal*, A. I. R. 1932 Cal. 411 has held that notice to produce account books after submission of return is valid and proper.

With due respect to the learned Judges' findings and the observations made by them, it is submitted that when a return is called and the assessee fails to file the same by the due date, a notice under section 22 (*4*) is essential to ascertain the taxable income of the assessee. When the taxable income is thus determined, the assessee will be asked to file a return showing the taxable income as worked out and if he agrees to that, the assessment will be under section 23 (*1*). But where a return has been filed by the due date, notice under section 23 (*2*) is clearly mandatory provided the return is considered incomplete or incorrect. In that case although the weight of authority is that a notice under section 22 (*4*) is not only permissible but clearly legal, it is submitted that the income-tax authorities are to take recourse to a downward course while proceeding to make an assessment under section 23. Had it been so, the legislature would have enacted a different section and not through a sub-section as it now stands. Possibly there cannot be any difficulty to call for accounts under section 37. The words "incomplete or incorrect" will be meaningless unless the officer can have access to the accounts. For, how can he declare a return "incomplete and incorrect" unless he has gone through the accounts.

Result of Non-compliance

(*Practice.*)

It is customary and legal as well to comprise two notices in one document and thus an Income-tax Officer is competent to issue a combined notice under sections 23 (*2*) and 22 (*4*). When-

ever an assessee appears before the Income-tax Officer with a profit and loss statement showing the process as to how the taxable income has been worked out, the assessee is deemed to have complied with the notice under section 23 (*2*). Under section 22 (*4*) the Income-tax Officer usually calls for documents and accounts. Where the assessee complies with the notice under section 23 (*2*), but fails to comply with the terms of the notice under section 22 (*4*), assessment must be made under section 23 (*4*) as reported in the case of *Hurmuk Roy Dulichand*, 32 C. W. N. 710. Similar views have been adopted in the case of *Sibaswami Chettyar*, 124 I. C. 206.

Combined Notice under Sections 23 (*2*) and 23 (*4*)

On assessees having branch business outside the jurisdiction of the Income-tax Officer of the principal place of business and on an Agent of non-resident principal :

Where an assessee carries on business at several places, the Income-tax Officer of the principal place of business shall make the assessment on the entire profits of the business, irrespective of the area where it is situate. The Income-tax Officer is competent to call for accounts of the branch business outside his territorial limit.

Separate Notice on each Branch, if Essential :

It is necessary to issue separate notices on each branch business. The assessee cannot escape an assessment under section 23 (*4*) if he fail to produce branch accounts when requisitioned. But it is not essential for the Income-tax Officer to call for the branch accounts. Those accounts may be called by the Income-tax Officer within whose jurisdiction the area lies and he may send the report of his examination to the Income-tax Officer of the principal place of business. The Income-tax Officer has undoubtedly power to call for the accounts of branch business but the assessees should not ordinarily be compelled to bring their accounts at the head-quarters from distant places, provided the branch accounts have been produced before the officer of the area and provided the assessee himself has no objection to the report of the said officer : *In the matter of Lochman Prasad Baburam*, 82 I. C. 216, and also A. I. R. 1930 All. 49.

Agent :

An Income-tax Officer has power under section 22 (*4*) to call on the Agent of a non-resident principal to produce books of accounts relating to the principal business outside British India with a view to enable him to assess the principal in British India.

An assessment under section 23 (*4*) is not bad in law if the notice is disregarded : *In the matter of Shomosundaram*, 123 I. C. 136 : A. I. R. 1930, Rang. 10.

Doctrine of *Res Judicata* :

In assessment proceedings, questions may arise whether any previous decision works as an estoppel or operates as *res judicata*. It is submitted that the principle of *res judicata* is not applicable to Income-tax proceedings although in the Civil Procedure Code the question of *res judicata* plays an important part. Income-tax Officers are not Court. The proceeding initiated by them are not strictly regulated by judicial principles, and "he has sometimes to depend upon materials which would be wholly inadmissible in a court of law." Thus it is clear that the same Income-tax Officer or a successor in office is competent to re-open a previous decision where fresh fact and tangible evidence are forthing as has been reported in the case of *Sankarlinga and others*, 126 I. C. 273 : A. I. R. 1930 Mad. 209. Similar decisions have been arrived at in the case of *Deokinandan and Sons*, A. I. R. 1930 L. 605. In the case of *Sankarlinga and others* it was held : "The argument for the petitioner is that where an authority is constituted by a statute for determining judicially the legal rights and obligations of parties whether *inter se* or between themselves and the Crown, and where that authority has to determine not only whether an obligation exists but also the measure of that obligation, that authority is a Court and the decisions of that authority are final and conclusive subject to such remedies by way of appeal or otherwise as are conferred by law. For this broad proposition there is no authority. So far as the Income-tax Act is concerned, there is nothing in the Act which states that an Income-tax Officer proceeding to assess the income of an assessee and to determine the amount of such assessment is a Court. On the contrary the provision of section 37 suggests that except from certain purposes the Income-tax Officer is not a Court.....We are of opinion that an Income-tax Officer proceeding to assess an assessee after making an enquiry as contemplated by the Income-tax Act is not a Court and that it cannot be said that the doctrine of *res judicata* applicable to the decision of Civil Court applies." The order of an Income-tax Officer in a particular year allowing the salaries of two of the partners as business deductions does not bind his successor in a subsequent year—*In re* : *Dental Stores*, A. I. R. 1931 Lah. 341. But the Income-tax Officer has no jurisdiction to revise an assessment of previous year, which is complete and final. In *in the matter of U. Lunyo*, 146 I. C. 300 : A. I. R. 1933 R. 359, it has been held that an Income-tax Officer has no jurisdiction to revise an assessment where he disagrees with his predecessor's findings as to the amount of assessable income.

Judicial Proceedings :

This takes us to another question mooted at the Bar as to how far the proceedings before an Income-tax Officer can be called judicial proceedings and to what extent he is bound to conduct himself in the manner in which an ordinary Court of law is expected to proceed. To all intents and purposes, all proceedings before an Income-tax Officer under section 23 (*3*) are judicial proceedings and he is bound by all the rules of evidence which bind an ordinary Court. Reliance has been placed on 2 I. T. C. 176 : I. L. R. 7. L. 201 : 5 I. T. C. 3 : 1936 P. C. 269 and I. L. R. 58, All. 200.

In Baijnath v. *C. I. T.*, 2 I. T. C. 176. it was observed : "we agree with the petitioner that the Income-tax Officer should be governed in his procedure by judicial considerations. He should base the assessment on legal and not mere hearsay evidence, which may be the evidence of his officers or members of the public, but without evidence that items which do not appear in an account should find a place therein, he is not entitled to assume on mere general hearsay that these items should appear in the account." *In Dunichand Dhanram* v. *C. I. T.*, A. I. R. 1926 L. 161 : 7 L. 201, it was held that the Income-tax Officer was not entitled to assume on mere general hearsay. The proceedings of Income-tax Officer were of a judicial nature.

In Binjraj Hukumchand v. *C. I. T.*, A. I. R. 1931 Cal. 683 : 5 I. T. C. 303, it was laid down that the proceedings taken by the Income-tax Officer are not regulated by strict judicial principles, and he has sometimes to depend on materials which would be wholly inadmissible in a court of law. At the same time he cannot act in a purely arbitrary manner. *In C. I. T.* v. *Bombay Trust Corporation Ltd.*, A. I. R. 1936 P. C. 269 : 164 I. C. 18, their Lordships of the Privy Council observed "However sceptical the attitude which the Income-tax authorities may think fit to adopt towards the declarations offered and the entries made in the..... .. . books it is necessary, if the assessment is to be supported, that there shall be some evidence to show . ..." *Vide* also *C. I. T.* v. *Ganga Ram Balmookunda*, A. I. R. 1938 L. 10 : 1937 I. T. R. 464, where all cases have been discussed. In the case of the *C. I. T.* v. *Nawab Sah Nawaz Khan*, A. I. R. 1938 L. 741, the question was discussed. The Income-tax Act is a special piece of legislation dealing with a special subject and so far as it goes, it is self-contained. It will be seen that whereas the powers of a Civil-Court are vested in the Income-tax authorities by virtue of section 37 of the Income-tax Act, they have been restricted to the particular matters dealt with in the body of the section itself. This clearly shows that in all other matters the Income-tax authorities cannot exercise the powers ordinarily vested in a

Civil Court. Similarly they are under no obligation to conform to the procedure laid down in the C. P. Code in respect of matters not expressly mentioned in section 37.

In the matter of Hazi Nur Mahommad Hazi Alimulla, 10 I. T. C. 426, where it appears, that no doubt Assistant Commissioner is a Court within the definition in section 3 in the Evidence Act, because he is legally authorised to take evidence under the provisions of section 37 of the Income-tax Act ; but there still remains the question whether proceedings in his court are judicial proceedings within the meaning of the Evidence Act.

Section 37 of the Income-tax Act says that proceedings before an Income-tax Officer, Assistant Commissioner or Commissioner under chapter IV of the Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the I. P. Code and for the purposes of section 196 of that Code. It would seem to follow that they are not deemed to be judicial proceedings within the meaning of any other section of any other Act or for the purposes of any other section of any other Act. If the provisions of the Indian Evidence Act do not apply to proceedings in the Court of the Assistant Commissioner, there is no other Act which would render any circumstances upon which he relied inadmissible as basis for conclusions at which he might arrive and there would be no meaning in the question whether such circumstances were evidence on which it was permissible for him to find his conclusion.

Incorrect or Incomplete Return—Invalid Return :

Whenever a return is filed by an assessee. it may be accepted or not, and it is only in case of non-acceptance that the question of issuing notice under section 23 (*2*) arises. But difficulties may arise when a return filed by the assessee is treated as invalid and inoperative. Usually a return is said to be invalid when it does not conform to the rules as are required in the statutory form. Thus where a return totally ignores its provisions, it cannot be considered as any return at all. Take, for instance, an assessee files a return but fails to show the accounting year in the verification column as prescribed, the return is incomplete and invalid. Similarly where a return shows in the column the words "blank or nil" without showing the actual loss figure, the said return is invalid. In those cases the Income-tax authorities are not bound to issue a notice under section 23 (*2*) and the assessment can be made by issuing a notice under section 22 (*4*). Even in these cases where the assessee complies with the requisition under section 22 (*4*), still the assessment must be under section 23 (*4*) for the technical defect. As assessment under section 23 (4) is a penal one, it is submitted that Income-tax authorities as a rule

must ask the assessee filing invalid returns, to rectify those returns. It is not the intention of the legislature to take undue advantage over illiteracy of the assessees or to exploit them for technical defects. An important question evolves out of an assessment under section 23 (*4*) for technical defect in the return. *When an assessee complies with the notice under section 22 (4) but he is assessed under section 23 (4) to a fancy figure not supported by the books of accounts, can that assessment stand ?* It is submitted that such a course would be wholly unjustified. The assessment may be made under section 23 (*4*) for the technical defect in the return but there is no reason why the book profits should not be accepted. When compliance has been made under section 23 (*4*) the Income-tax Officer is bound to scrutinise the accounts and to determine the taxable income. The legislature does not intend that even in these cases the Income-tax Officer shall make an assessment to any figure he likes. Where all reliable information and data are forthcoming, the Income-tax Officer is not warranted by law to make an assessment ignoring the book profit altogether. Such a procedure is not only arbitrary but unwarranted as well. There may be omission, technical in nature, due to ignorance and inadvertance. This is why the Income-tax Officer should call for the assessee for proper rectification or even he can, while issuing a notice under section 22 (*4*) call for the account and on that date may ask the assessee to rectify the return.

Assessment u/s 23 (*4*) and its Effect on Depreciation :

In *in the matter of Government Mail Motor Service*, 136 I. C. 707 : 6 I. T. C. 120, it has been held that where an assessment is made under section 23 (*4*), all expenses incidental to business must have been assumed to have been considered in arriving at the net income assessed and the fact that no depreciation accounts has been maintained, as required by the rules, does not give rise to any inference that no allowance for deductions have been made.

With due respect, I beg to differ ; the assessee has every right to claim the previous depreciation allowance next year

Letter with a statement of Income :

It has been held in the case of *Gangasagar*, 120 I. C. 435 : A. I. R. 1929 All. 919, that where an assessee sends a letter to the Income-tax Officer that he has made a mistake in the return and files and encloses a letter together with a prescribed form suggesting therein that the Income-tax Officer may enter the figure contained in the letter and may substitute the fresh

return in place of the old one, the said letter and the enclosure with the blank form constitute a regular return. Where return under section 22 (*2*) has been served but no return is forthcoming, and instead, the assessee writes a letter intimating his non-liability to be taxed under the Act, this conduct amounts to failure to make return under section 22 (*2*) and an assessment under section 23 (*4*) is good in law ; *In re Ananda*, A. I. R. 1931 Pat. 1306.

Voluntary Return :

When a person, without being called upon under section 22 (*2*) to furnish a return of his income for the previous year, voluntarily files a return of such income in the prescribed form and duly verified in the prescribed manner, the question arises whether the return voluntarily filed is a valid return or not. It was held that it is an important question of law and reference to High Court is essential. *In re* : *Gulchand Tulsidas*, 118 I. C. 535 : A. I. R. 1929 L. 246. This question does not arise in view of the new Amendment Act.

Assessment under Sec. 23 (*3*) read with Sec. 13 (Assessment on a Percentage Basis) :

It is under section 23(*3*) that the question of estimated assessment crops up. Where an assessee has fully complied with all the terms of the notice under sections 23(*2*) and 22 (*4*) and where there is apparently no default, the Income-tax Officer cannot fall back on a summary assessment, but he can certainly take recourse to an estimated assessment, provided the books of accounts of the assessee are in such a state that profits therefrom cannot be easily deduced. This procedure is justified where the accounts are in a chaotic condition, totally unadjusted and unbalanced and profits cannot be deduced. Where the assessee produces the day-book and the *khatian* which are completely unbalanced, so much so that neither sale nor purchase figures can be ascertained, an estimated assessment is justified. In such cases the Income-tax Officer is justified to take up any reasonable sale figure as the basis of his estimate. But where accounts are complete but not properly balanced in the sense that profits and loss accounts have not been maintained in the account, it is desirable that estimated assessment should not be made. In the case of *Raghunath Mahadeo*, 89 I. C. 675 : A. I. R. 1925 Pat. 694, it was held that accounts cannot be rejected on ground that these are not balanced and incapable of yielding reliable information. But where accounts for the year under assessment cannot be separated, the Income-tax Officer is legally justified in assessing profits at a flat rate without informing the assessee of the evi-

dence on which the rate is based. But it is desirable that Income-tax authorities should maintain a register of rates so that there may not be any difficulty for the authority to adopt a rate prevalent in the locality in the year under review.

But where no profit and loss accounts are maintained and the accounts do not show either weight or details of stocks, estimated assessment is warranted by law. But this procedure must not be adopted where the accounts are adjusted and balanced. Where an estimated assessment is permissible it must be seen that assessment is made on a flat rate on the actual sale figures alone. Where sale figures are forthcoming, the Income-tax Officer is not competent to take an estimated sale figure first and then to make an assessment, on flat rate. While making an estimated assessment, closing stocks should be left out of account altogether. The Income-tax Officer must have an eye that a reasonable gross profits are worked out with due reference to other cases of the locality and he must also allow the assessee all admissible expenditures for the purpose of business. It has been held in the case of *Siva Prasad Gupta*, A. I. R. 1929 All 819, that an assessee is entitled to deduct from his estimated income actual losses suffered in particular years and amount of irrecoverable debt which should have been discovered in a particular year. Further, the assessee is competent to show that income assessed in subsequent years was included in previous assessment and claim deductions : *In re Chetyar Firm*, 122 I. C. 902 : A. I. R. 1939 Rang. 4. It has been held in the case of *Maharaja of Darbhanga*, A. I. R. 1930 Pat. 81, that it is the duty of an assessee to keep and present his accounts to show the actual profit made by him. If he fails to do this he must put up with the estimate of the Officer, made with the best of ability, although it is true that the officer is not entitled to make a guess without evidence. (A. I. R. 1929 Pat. 476 *relied on*)

In the case of *Lachman Prasad Baburam*, A. I. R. 1930 All. 49, it was held by Justice Mukerjee that "it is the ordinary privilege of a subject that he shall not be taxed on his income without proper investigation. It is open to the assessee to prove what his income is before he is assessed on the income. If it had been the intention of the legislature that the mere word of the taxing Officer should be final, one should find clear indication of that in the language of the statute."

Where an assessment is made under section 23 (*3*) read with section 34, the Income-tax Officer has absolutely no jurisdiction to dispense with a notice under section 23 (*2*). The Income-tax Officer cannot plead that as it is an assessment on flat rate, formality of a notice under section 23 (2) is not necessary, simply

because it is an assessment actually made on the basis of accounts produced, but, for some defect, assessment is made on a flat rate—*Rampratap Sukdayal* v. *Commr. of I. Tax, Delhi*, A. I. R. 1930 L. 277.

Procedure in assessment under section 23 (3) :

In an assessment under section 23(3) of the Act, though there is nothing in the Act, which requires the Income-tax Officer to disclose to the assessee the material on which he proposes to act or to refer to it in his order, natural justice requires that he should draw the assessee's attention to any such material and give him a reasonable opportunity to meet the case arising therefrom before making his order. Further, as an order under section 23 (3) is appeallable, that order should contain with sufficient precision the material on which the assessment is based so that the appellate authority can form a just opinion of the fairness of the assessment. An assessee, however, is not entitled to demand copies of confidential statements in the possession of the Income-tax Officer, or to demand that his informants should be called by the Income-tax Officer, so that they can be cross-examined by the assessee.

The Income-tax Officer is not a Court in the usual meaning of that word when he is holding an enquiry under section 23 (3). Under section 37 of the Act he has merely certain powers of a Civil Court for the purposes of Chapter IV.

Section 23(3) is not exhaustive, and there is implicit in the section, in its context, the power to collect and act on other evidence, using 'evidence' in a wide sense of that term, and it is not necessary to invoke the proviso to section 13 of the Act for that purpose ; for that section, and, in consequence, the proviso, relate to the method of accounting and that alone, though the word method must be given a broad and reasonable interpretation.

Section 13 cannot be divorced entirely from section 23 (3) because it is only in an enquiry under section 23 (3) that section 13 can operate. There is no conflict or divorce between section 23 (3) and section 13 of the Act : *C. I. T., Bombay* v. *Khemchand Ramdas*, 8 I. T. R. 159 : 190 I. C. 875 : A. I. R. 1940 S. 92 : 13 Ind. R. S. 102. (*Gopinath Naik* v. *C. I. T.*, 1936 I. T R. 1, *dissented from*).

In *Shamrao B. Desmukh* v. *C. I. T.*, 7 I. T. R. 515, it has been held that section 23 of the Act, is concerned with assessment, section 13 with computation. It is quite correct to say that an assessment should be made under the proviso to section 13 when the assessee's books are found to be unreliable and rejected, though it must, in such circumstances, be in accordance with a computation made under the proviso to section 13.

In *Gunda Subbayya*, 7 I.T.R. 21 : 181 I.C. 514, it has already been stated that section 13 cannot be read in conjunction with section 23 (*3*) ; all that section 13 really says is that, if the method of accounting employed by the assessee is a method which does not properly disclose the income, profits or gains of the assessee, the Income-tax Officer can adopt his own method. But in doing so he must have reference to the accounts. Section 13 adds nothing to and takes nothing away from section 23 (*3*).

In the case of *C. I. T., Bombay* v. *Gangaram Kanayalal & Co.*, 8 I. T. R. 421, the Income-tax Officer made an assessment under section 23 (*3*) read with section 13, as no return was made but only a statement of the amount of business in bills was submitted. The High Court held that the assessment should have been made under section 23 (*4*).

The Calcutta High Court in the case of *Navadipchandra Nagendra Das*, 7 I. T. R. 488, held that an assessment under section 23 (*3*) read with section 13, is permissible, where accounts are made on the basis of previous returns which were found to be wrong.

Assessment under section 23 (*3*) in the absence of Capital account :

With the passing of the Amendment Act of 1939, so far as accounts kept in the mercantile basis are concerned, taxing authorities have focussed their attention on the maintenance of 'capital account'. In actual practice assessments are generally made on estimate, but this of course, does not give them a blank cheque to make arbitrary and unwarranted assessments. In the unreported case of *Ganeshlal Ramchand* v. *C. I. T.*, decided on 11th November, 1940 (Civil Mis. No. 444 of 1939) it was held that it was impossible to accept the assessee's contention as contained in the books because no capital account was maintained. To me it seems that apart from irregularities in the method of keeping accounts, where there is ample material for the Income-tax department to come to the conclusion that the books produced do not reflect a correct state of accounts, the department is entitled to make an assessment on estimate. Assessees are at liberty to say that they do not maintain capital account or Balance-sheet , they can further say that the system of accountancy is neither mercantile nor cash.

Assessment of Moneylender :

There is no bar to make assessment under section 23 (*3*) read with section 13, where accounts are incomplete or fabricated or where income, profits or gains cannot be easily deduced from the books of accounts. But in view of the economic blizzard through

which the country is passing, the passing of the Debtors Act and Money-lenders Act, it is equitable to make assessment on estimate on a fairly reasonable basis. In the case of *Commissioner of Income-tax* v. *Badridas Ramraj Shop, Akola*, 7 I. T. R. 613, the High Court refused to interfere and observed as follows :— "In our opinion however, it would not be proper for us to arrogate to ourselves the powers that have been conferred by the Act upon the Income-tax Officer. It is for him to determine what the computation is, not for us. We might take this and that into consideration. He might think that it would be fair to take note of the operation of the Reduction of Interest Act. He might think that it is not desirable to take note of that Act for many reasons..... ..... . "

But the views expressed above prove beyond doubt that where objections are taken by the assessees, Income-tax Officers, must give their reasons one way or other, they cannot brush aside the objection.

Audit of accounts :

Section 144 of the Indian Companies Act, 1913, lays down that following persons are ineligible and cannot be appointed as auditors of a Company whether public or private :

1. A Director or Officer of the Company ;
2. A partner of such Director or Officer ;
3. Any person in the employment of such Director ;
4. Any person indebted to the Company.

So it is for the assessee to see that accounts are audited by such person who are eligible as auditors under section 144 of the Indian Companies Act ; otherwise, taxing authorities may disallow certificates of auditors on the ground of non-compliance of the section.

Assessment when Accounts are not kept :

Whenever a return is filed, the assessee is usually asked to produce his books of accounts but there may be cases where the assessee does not keep any account at all. Thus where such an assessee who does not maintain any book, is called upon to produce books of accounts, no default attaches to the assessee by reason of his failure, and the assessee must not be dealt in a summary way. Certainly he cannot be made liable for not producing that which he does not keep or does not require at all.

Whether an assessee has got accounts or not, is purely a question of fact and the Income-tax Officer is the sole arbiter to come to a decision. This view has been expressed in the case of *Khusiram Karamchand*, 100 I. C. 774.

Assessment under Wrong Heads :

An assessee cannot be assessed under section 23 (*4*) where he does not keep any account and the assessee is within his rights to prefer an appeal before the Assistant Commissioner. An assessee does not lose his right of appeal if the Income-tax Officer assesses him under a wrong sub-section. A right of appeal is a matter of substance and not a matter of procedure—*Colonial Sugar Refining Co.* v. *Irving*, (1905) A. C. 369. Income-tax authorities are not infalliable and there may be cases where assessments are made under section 23 (*4*) which practically fall under section 23(*3*). Neither an Income-tax Officer is justified to make an assessment under section 23 (*3*) when it really falls under section 23(*4*). The mere fact that an assessment purports to have been made under section 23 (*4*) does not shut out an appeal if it can be shown before the appellate authority that there was no default : *In the matter of Dunı Chand*, A. I. R. 1923 L. 593 : 117 I. C. 69. When an appeal is presented before the appellate authority, he must examine whether the assessment has been made under the proper sub-section. The appellate authority without examining the accounts produced, cannot reject the appeal when it is made directly against an order under section 23 (*4*). Whenever the authority of the Income-tax Officer is challenged on the ground of an assessment under a wrong section under section 23 (*4*) and a direct appeal is preferred, the Assistant Commissioner has no power to turn it down. He is bound to hear the assessee and then decide the points raised—*In re* : *Bhagabati Prasad*, 138 I. C. 682. In my humble opinion the mere fact that the Income-tax Officer has quoted section 23 (*4*) in his assessment order is not enough to preclude an appeal. To shut out on appeal, there must be a genuine case under section 23 (*4*). He cannot ask the assessee to file a petition under section 27 and then to prefer an appeal when it is refused. Where the Income-tax Officer fails to arrive at a proper adjudication and makes an assessment under a wrong sub-section, the assessee is not bound to file an objection under section 27, but he can prefer an appeal direct. The Assistant Commissioner must not reject the appeal without hearing the appellant for it is the inherent right of an assessee to prefer an appeal where there is no default. The Income-tax Officer is not competent to make an assessment under section 23 (*4*) when it is clearly a case coming within the purview of section 23 (*3*). The authorities are not infallible and their decision may or may not be correct. A mistake on the part of the authority cannot deprive an assessee of his right of appeal. Similarly where an assessment has been made under section 23 (*3*) when it is a clear case under section 23 (*4*) and if the assessee prefers an appeal, the Assistant Commissioner can reject it on the ground that it has been decided under a wrong head. Should such

circumstances arise, the assessee can file an objection under section 27 within 30 days from the date of the order passed by the Assistant Commissioner. Such a petition under section 27 should not be thrown out simply because it has been filed more than 30 days after the service of notice of demand. Assessment made on the basis of accounts but under section 23 (4) for non-compliance are not justified, provided non-production of such books does not affect the Income-tax Officer. Failure to produce accounts, not required for any relevant purposes, does not amount to a non-compliance and an assessment under section 23 (4) is untenable. The term "require" in section 22 (4) means require for any relevant purpose : *In re* : *Rai Bahadur Ganga Sagar of Khurja*, 53 All. 451 : A. I. R. 1931 All. 417 : 5 I. T. C. 455.

In determining the particular section upon which an order of assessment falls, the facts and substance of the order and not the mere number of the section under which the assessment order may wrongly have been made, should be looked into *C. I. T., Bombay* v. *R. S. Gangaram Kanayalal & Co.*, A. I. R. 1940 S. 214. (*Dulichand* v. *C. I. T.*, 4 I. T. C. 33, *Sarojuprashad* v. *Gaurisankar*, 5 I. T. C. 263 *followed*).

Sections 13, 23 (3) and 23 (4) :

The import of the section 13 seems to be that if the method of accounting employed by the assessee is a method which does not properly disclose the income, profits and gains of the assessee the Income-tax Officer can adopt his own method. But in doing so he must have reference to the accounts before him, as section 13 does not contemplate the rejection of the accounts. Section 13 adds nothing to and takes nothing away from section 23 (3)—*Gunda Subbayya* v. *C. I. T.*, 7 I. T. R. 21. Where the petitioner produces his account books, and the sales and the closing stock are not described according to quality, he is unable to deduce the income. The Income-tax Officer can treat the accounts as unclosed and can assess the petitioner under the proviso to section 13 (*Krepal Singha* v. *C. I. T.*, A. I. R. 1937 L. 305 ; *Jambudas* v. *C. I. T.*, A.I.R. 1927 Nag. 36 ; *Gangaram Balmukunda* v. *C. I. T.*, A.I.R. 1937 L. 307 ; *in re Radhelal Balmukunda*, 52 I. L. R. All. 991 ; and *C.I.T.* v. *Joynarayan*, A. I. R. 1929 Nag. 243)—*Ramchandra Tolbe Teli* v. *C. I. T.*, 6 I. T. R. 733. In *C. I. T., Bombay* v. *Jadovji Zhaverchand Gandhi*, 10 I. T. C. 383, it was held that where there was evidence before the taxing authorities they were entitled to arrive at a finding of facts. When there is material, enhancement is permissible—*Sk. Mobarek Ali* v. *C. I. T.*, 6 I. T. R. 625.

The fact that during the previous year the income was assessed on a certain figure is certainly some evidence on which

he can proceed even independently of any presumption of continuity : *Gopinath Naik* v. *C. I. T.*, 1935 A. L. J. 1342 : A. I. R. 1936 All. 286. (For detailed discussion, see under section 13 of the Act, where it has been dealt elaborately).

Scope of Amended Section 23 (*4*) :

Sub-section (*4*) as amended will not apply to a person who makes a return under section 22 (*3*). But where there is a non-compliance of the notice under section 22 (*2*) or 22 (*3*), section 23 (*4*) comes into play. In the case of assessment under this sub-section, there has hitherto been no provision in terms for refusal of registration to a firm and this has been remedied. In section 23 (*4*) the words "determine the sum payable by the assessee on the basis of such assessment" have been added to remove the defect in drafting which existed in the previous Act. *In re Chotaylal*, 5 I. T. C. 466 : A. I. R. 1932 All. 83, it was held that the words "assess" and "assessment" in section 23 are used in the sense of finding out the total income of the assessee for the purpose of taxation. This view is supported by the language used in sub-sections (*1*) & (*3*) of section 23. In a subsequent case the contention was raised on the above meaning of the word "assessment" that section 23 (*4*) provides only for the determination of the total income and not for determining the tax payable. The learned Judges, however, gave the decision in favour of the Commissioner from the definition of the word "Assessee" as a person by whom income tax is payable.

Section 23 (*4*) as amended has the effect of securing that a specific notice under sub-section (*2*) of section 22 must be served on the assessee before an assessment under sub-section (*4*) of section 23 can be made.

Summary Assessment under Section 23 (*4*)

An assessment under section 23 (*4*) can only be resorted to where an assessee (*i*) fails to comply with the requisition under sections 22 (*1*) or 22 (*2*) ; (*ii*) fails to comply with all the terms of a notice under section 22 (*4*) and fails to comply with the requisition under section 23 (*2*). Where Income-tax Officer can presume existence of accounts etc., although stoutly denied by the assessee, an assessment under section 23 (*4*) is justified—*In re* : *Jangi Bhagat Ramavatar*, A. I. R. 1930 Pat. 127 : 3 I. T. C. 416 ; *Lachman Prasad Baburam*, 4 I. T. C. 61. Non-compliance of a requisition under section 22 (*4*) may result in an assessment under section 23 (*4*), when existence of accounts were admitted in a previous year—*In re* : *Mohanlal Hardeodas*, 4 I. T. C. 90 and *In re* : *Kedarnath Kesriwal*, 34 C. W. N. 1093.

Where accounts or documents or evidence produced by an assessee furnish sufficient materials for an assessment, it should not be made under section 23(*4*), but when they do not furnish sufficient materials for an assessment and in particular, if they instead of revealing intentionally falsify the income, it is open to the Income-tax Officer to make a summary assessment under sec. 23 (*4*)—*Muzafar Ali Khan* v. *Commr. of I. Tax*, 137 I. C. 752 : 4 I. T. C. 4. Failure to file return under section 22 (*2*) makes one liable under sec. 23 (*4*)—*In re* : *Lalit K. Mitra*, 4 I. T. C. 476 : A. I. R. 1932 Pat. 166.

Failure to comply with all or any of the terms of notice issued under sections 22 and 23 makes an assessee liable under section 23 (*4*). When an assessee deliberately withholds reliable accounts but makes a partial compliance, he can be assessed under section 23 (*4*)—*In re Deokaranda*s, 4 I. T. C. 398, 126 I. C. 786 ; *In re* : *Maharaja of Darbhanga*, 4 I. T. C. 283. Similarly failure to comply with notice under section 22 (*2*) or any of the terms of notice, results in summary assessments under section 23 (*4*)—*In re* : *Nawal Kishore Khairatilal*, A. I. R. 1930 Lahore 1014. (*Vide Sarjoo Pershad Gauri Sankar*, 132 I. C. 564) and 5 I. T. C. 263.

But assessment under section 23 (*4*) is not permissive, where identity of persons is not proved. It must be noted that the mere fact that identity of persons to deposits and withdrawals, is not proved, is not sufficient to reject accounts in toto. Similarly, when interest is paid to persons whose identity is not proved, interest paid may be disallowed, but the assessment should be under section 23 (*3*)—*In re* : *S. P. K. A. A.M. Chettiar Firm*, A. I. R. 1932 R. 52 : 6 I. T. C. 49.

Where accounts are called for and produced, but the Income-tax Officer suspects the accounts as to deposit entries and the explanation of the assessee is not convincing, the Income-tax Officer can presume existence of other transactions recorded in separate undisclosed accounts, and can make an assessment under section 23 (*4*)—*S. P. K. A. A. M. Chettiar Firm* v. *Commr. of I. Tax, Burma*, (supra).

It is to be noted that substantial compliance of the terms of the notice is essential. When books of accounts are not forthcoming, the Income-tax Officer "shall make an assessment to the best of his judgment" and in the case of registered firms, the Income-tax Officer is competent to cancel its registration after giving the assessee clear 14 days' notice.

Consequences of an Assessment under Section 23 (*4*) :

The provision of sec. 23(*4*) is attracted when there is a default by the assessee to comply with the requisition under section 22

(*2*) or 22 (*3*) or 22 (*4*). It is a penal section providing summary assessment in case of default of any of the sections. Income-tax Officer is vested with wide powers when there is an actual default. Thus where an assessment under section 23 (*4*) is made, Income-tax Officer, in the case of a firm, may refuse to register it or may cancel its registration, if it is already registered Section 28 now provides that where a summary assessment is made, the Income-tax Officer may impose a penalty, a sum not exceeding one and half times that amount. Section 30 as amended now provides appeal against an assessment under section 23 (*4*) and section 27 also stands.

In *Sheoduttrai Pannalal* v. *C. I. T., U. P.*, A. I. R. 1940 All. 530, an assessment under section 23 (*4*) was made not ostensibly but actually in good faith before the passing of the Amendment Act of 1939 and hence there was no appeal but the Act now provides appeals against assessment under section 23 (*4*). *In C. I. T.* v. *Gangaram Kanayalal*, A. I. R. 1940 S. 214 and in *Maharani of Jaypur* v. *C. I. T.*, 189 I. C. 458 : 1940 O. W. N. 514, it was held under the old Act that no appeal or reference under section 66 lay against a summary assessment under section 23 (*4*) ; but this is no longer good in law. Similar views were expressed in *Hazi Ali Mahomed* v. *C. I. T.*, 8 I. T. R. 213 under the old Act.

Assessment under section 23 (*4*) for Technical Defect :

By technical defect is meant any defect in the return, *e.g*, omission to state the accounting year or to sign the verification, etc. Where there is such technical defect in the return but where there has been full compliance under section 22 (*4*), the assessment shall be apparently under section 23 (*4*). But as all available data and figures are forthcoming, the mere fact that an assessee is a defaulter does not take away the Income-tax Officer's responsibility to make a proper enquiry for a proper assessment. Although the Income-tax Officer is not a Court and the proceedings before him are rather quasi-judicial proceedings, still he must adopt a judicial procedure. As a matter of equity, justice and good conscience the Income-tax Officer must not make an assessment under section 23 (*4*) on flimsy pretexts but must proceed in his procedure by judicial consideration. An Income-tax Officer can assess under section 23 (*4*) for technical defect but he must not proceed arbitrarily when all available details for the purpose of assessment are forthcoming : *In the matter of Mohan Lal Hardeo Das*, 122 I. C. 810 : 4 I. T. C. 90 : A. I. R. 1930 Pat. 14. An assessment under section 24 (*4*) for technical defect does not mean an enhanced assessment.

Assessment under section 23 (4) can be a Negative Figure :

The idea that where an assessment is made under section 23 (4) the demand figure must be greater than its previous year's demand or that the assessment under section 23 (4) cannot be lowered or be made a negative figure, is highly erroneous. The Act nowhere says directly or indirectly that a summary assessment means high assessment. All that the Act says is that the assessment must be made "to the best of his judgment." Of course in case of default, technical or vital, the Income-tax Officer shall make the assessment under section 23 (4) and even can presume under section 114 of the Indian Evidence Act. This habitual default may be due to the fact of his being highly assessed and there is no bar to make the assessment to the best of his judgment on the basis of his enquiry. Where he is satisfied that the default is not deliberate and the assessee has got no assessable income, the Income-tax Officer should proceed to assess him at *nil* even under section 23 (4). Where the Income-tax Officer is convinced on enquiry that a particular assessee has got an income of Rs. 5000, he must assess him on the income of Rs. 5000 and not more under section 23 (4), no matter if he was assessed on Rs. 10,000 in the previous year.

Examiner of Accounts :

The Income-tax Act does not recognise the Examiner or Inspector of accounts. An assessee can certainly refuse to produce his accounts before such Officer and such refusal is not equivalent to non-compliance. Unless the Act is amended, the Examiner of accounts cannot be regarded as an authority, and failure to comply with his requisition does not bring an assessee under the ambit of section 23 (4). The assessee can very well say that he is not bound to produce his accounts before the Examiner. They are retained for administrative convenience and expediency, and considering that bulk of the works are generally done by them, they must be invested with some power.

Assessment to the Best of Judgment :

When section 23 (4) of the Act says that the "Income-tax Officer shall make the assessment to the best of his judgment" it means that he must proceed while making an assessment in a judicial spirit and must be guided by judicial consideration. He must exercise the power vested in him with strict judicial principles. Heavy assessment under section 23 (4) does not mean that the Income-tax Officer has exceeded the discretion vested in him. The assessment must not be purely arbitrary,

it must be legal and regular. It was held in the case of *P. K. N. P. R. Chettyar Firm*, 124 I. C. 267 : A. I. R. 1930 Rang. 33, and also in the case of *S. P. K. A. M. Chettyar Firm*, A. I. R. 1932 R. 52, that where an assessment under section 23 (*4*) is entirely arbitrary and does not purport to be founded on any material or reasons beyond the Income-tax Officer's private opinion, the assessment is clearly unwarranted by law. It has been held by the Rangoon High Court : "He must make it according to rules of reasons and justice, not according to private opinion : according to law and not humour and that the assessment is not to be arbitrary, vague and fanciful, but legal and regular" : In re : *S. P. K. A. M. Chettyar Firm*, A. I. R. 1932 R. 52. It must be remembered that the Income-tax department should not as a rule take a stand on technical ground under section 23(*4*) when there is substantial compliance with the requisition of notice under section 22(*4*) : *In the matter of Mohan Lal Hardeo Das*, 122 I. C. 810. In such cases if the Income-tax Officer make an arbitrary assessment, brushing aside all available data, it does not constitute assessment to the best of his judgment. In the case of *Sibaprotap Bhatadu*, A. I. R. 1924 Mad. 880 it was held : ".....But I must say that having regard to the facts of the case it would be just and equitable that this matter should, if possible, be reconsidered by the proper authorities and that the assessee, who was assessed only on an income of Rs. 2800 in the previous year, which would make him liable only for Rs. 72, ought not, owing to his failure to produce his account within time which he has explained, be assessed to income-tax of Rs. 15000 and odd next year, specially when he is prepared to offer his account books for inspection and pay all the expenses of inspection. It cannot be said that trade revived so much in the year under question as to raise any fair presumption. So far as Madras is concerned, the complaint has been that the trade has been very dull and I had numerous applications for extending time for payment. Very probably the state of things in the mufassil has not been better. This is a matter, I think, where there has been injustice to the petitioner which I am sorry I cannot remedy by proceeding under section 45 of the Specific Relief Act." This view of the Madras High Court, however generous and pious it may be, failed to give any relief to the assessee. But in view of the rulings of the Rangoon High Court, such an assessment as this, clearly unwarranted by law, for the reason that an assessment to the best of judgment "is not to be arbitrary, vague and fanciful, but legal and regular."

In the case of *Mahamad Hayat Haji Mahamad Sardar*, 131 I. C. 181 the following reference was made under section 66 by the Commissioner of Income-tax, Lahore :—"*In making an assessment to the best of judgment under section 23 (4), does the*

Income-tax Officer possess absolutely arbitary authority to assess at any figures he likes or is he to be guided by any judicial principle or rules of equity, justice and good conscience ?" It was held : "with respect to this question the statute lays down that, when the assessee has made a default mentioned in sub-section (*4*) of section 22, the Income-tax Officer shall make the assessment 'to the best of his judgmont.' In majority of cases contemplated by that sub-section there would be little or no evidence before the Income-tax Officer to guide him in determining the income. He has, therefore, no alternative but to make an assessment upon the information received by him. The proceedings taken by him are not regulated by strict judicial principles and he has sometimes to depend upon materials which would be wholly inadmissible in a court of law. At the same time he cannot act in a purely arbitrary manner. Suppose a person whose income had not in the past exceeded Rs. 5000 in any year, makes a default as contemplated by the sub-section, the Income-tax Officer would perpetuate an injustice if he would take advantage of the default and assess the income for the accounting period at a million rupees without any justification. It cannot be seriously claimed that he has made that assessment 'to the best of this judgment.' ..... It has, however, been held in the case of *P. K. N. P. R. Chettyar Firm*, 4 I. T. C. 86 and 340 that when the statute says that the Income-tax Officer shall make the assessment 'to the best of his judgment' it means that he must make it according to 'rules of reasons and justice, not according to private opinion, according to law and not humour' and that the assessment is to be not arbitrary, vague and fanciful but legal and regular." The legislature, in allowing the Income-tax Officer to make the assessment to the best of his judgment has no doubt conferred on him a discretion in the matter of assessing income and if the assessee withholds the account books or documents, upon which a reliable estimate of income can be founded, the assessment must *ex-necessitate rei*, to some extent be arbitrary. But in *S. P. K. A. M. Firm*, 121 I. C. 390 : A. I. R. 1930 Rang. 35 tha court held : "it must nevertheless be reasonable and should not proceed purely on the Income-tax Officer's private opinion to the exclusion of all materials before him. Such an assessment cannot be said to have been made to the best of his judgment. There may be cases, such as the one with which we are dealing, in which evidence has been adduced, but default has been subsequently committed and there is no reason why the Income-tax Officer should ignore such evidence and make an assessment according to his own whim and fancy..... ....The High Court is, however, entitled to make a pronouncement upon the meaning of section 23 (*4*) and to lay down that the Income-tax Officer cannot be said to make an

assessment to the best of his judgment, if he is not guided by the dictates of justice and fair play. An assessment resting upon the whim and caprice of the Income-tax Officer cannot be elevated to the dignity of an assessment made to the best of his judgment." The Income-Tax Officer in making an assessment under section 23 (*4*) has no judical discretion at all. This overrules *protanto* the following cases, *P. K. N. P. R. Chettyar Firm*, 124 I. C. 267 ; *S. P. K. A. A. M. Chettyar Firm*, 121 I. C. 790 ; *A. R. A.N. Chettyar Firm*, 110 I. C. 29 ; *P. K. N. P. R. Chettyar Firm*, 125 I. C. 344 : *In the matter of Abdul Bari Choudhury*, 133 I. C. 81. But in *M. Abdul Quyum & Co* .v. *Commissioner of I. T.*, (*U. P.*), A. I. R. 1933 Oudh 396, the principle underlying the case of *Mahamad Hayat Hazi Mahamad Sardar*, A. I. R. 1933, Lahore 87, is enunciated.

Their Lordships of the Privy Council in the case of the *C. I. T.* v. *Badridas Ram Roy*, 64 I. A. 102 : A. I. R. 1937 P. C. 133, in interpreting the phrase "to the best of his judgment" occurring in section 23 (*4*), have stated that the estimate of the income that will be made by the Income-tax Officer in such cases would necessarily be a guess work and to some extent arbitrary. Their Lordships think that the section places the Officer in the position of a person whose decision as to amount is final and subject to no appeal : but whose decision if it can be shown to have been arrived at without an honest exercise of judgment, may be revised or reviewed by the Commissioner under the power conferred on that official by sec. 33.

There is nothing in the sub-section which makes it obligatory on the Income-tax Officer to give any details or basis of assessment ; this has been emphasised in *Krishna Kumar* v. *C. I. T.*, 58 Cal. 906.

In *Chunilal Nathumal* v. *C. I. T.*, 5 I. T. C. 261, it has been laid down that where an assessee cannot account for receipt and income on account of interest, provision of section 23 (*4*) is attracted. The Income-tax Officer has no discretion to treat a case of default as a case of no default, because the expression is "shall make the assessment." In the case of *Laxmi Narayan Badridas*, referred to above (1937 P. C. 133 : 1937 I. T. R. 170) their Lordships observed, "the officer can make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, vindictively or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose, he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by assessees and all other matters which he thinks will assist him in arriving at a fair

and proper estimate, and, though there must necessarily be guess work in the matter, it must be honest guess work".

It has been held that a best judgment assessment should proceed on some data, it must not be a penal one—*Bhiwani Sahai Bishwamber Dayal* v. *C. I. T.*, 1936 I. T. R. 555. But in *Benarsi Das* v. *C. I. T.*, 1936 L. 489 : 1936 I. T. R. 346, it has been laid down that partial compliance entails the same consequences as total non-compliance.

Section 34, if applies in an Assessment under section 23(*4*) :

The idea that a best judgment assessment under section 23 (*4*) is to some extent arbitrary does not estop the Income-tax Officer to start proceedings under section 34. Even in cases of best judgment assessments, income might escape assessment and action under section 34 is justified. It has been stated in sec. 23 (*4*) in the case of *Mohonlal Deo Karan Das* v. *C. I. T.*, 3 I. T. C. 317 : 1929 L. 173, that a summary assessment under section 23 (*4*) can be raked up under section 34 within the time limit by a succeeding Income-tax Officer (*in re* : *Kedar Nath Kesriwal*, 34 C. W. N. 1093 ; *in re Choteylal*, A. I. R. 1932, All. 83 ; *in re Kashi Nath Bagla*, A. I. R. 1932, All. 1 ; *Md. Hazi Abdul Rahaman* v. *C. I. T.*, 6 I. T. C. 240).

Summary assessment and procedure :

A return which does not contain the signature and verification of the assessee, is not a proper return—This alone is sufficient to justify an assessment under section 23 (*4*).

Further, where the Income-tax Officer serves a notice under section 22 (*4*) for production of accounts and the assessee fails to comply with the requisition, summary assessment under section 23 (*4*) is justified.

Non-compliance of either of the notice is sufficient to justify an assessment under section 23 (*4*).—*In the matter of Messrs. Mathura Das Chunilal*, 7 I. T. C. 84 : A. I. R. 1933 Lah. 815 : 1933 I. T. R. 212.

In every case, before an *exparte* assessment is made under section 23 (*4*) of the Act, the Income-tax Officer must invariably conduct such "local inquiry" to ascertain the income of the proposed assessee for the previous year as the circumstances of the case may warrant and the Taxing Officer must place on record "a note of the details and results of his inquiry" in order that the Commissioner of Income-tax, under section 33 may be in a position to see that the assessment "was according to the rules of reason and justice and not arbitrary."

A point of law would be involved when an *exparte* assessment is made not "to the best of judgment" and consequently a reference under section 66 (*2*) or (*3*) is competent—*C. I. T., C. P. & U. P.* v. *Laxminaram Badridas Agarwal*, 1934 I. T. R. 246. A. I. R. 1934 Nag. 183 : 153 I. C. 7.

Scope of Section 23 (*5*) :

Sub-section (*5*), a new sub-section, provides that in the case of a registered firm the partners and not the firm are to be assessed and that the partners of an unregistered firm may be assessed in the same way if they are avoiding tax by non-registration. A partner's share is to be his share of the previous year's profits and he may carry forward his share of loss. The firm is to be assessed on a non-resident partner's share. The profits of each partner in a registered firm should be assessed upon him personally, but in the name of the firm in the case of a non-resident partner. Section 44 of the Act is being expanded to provide for the recovery of the tax in such case.

In sub-section 5 (*b*), the Income-tax Officer is given the option to assess either the firm or the partners. If one partner has a large separate income, all the partners have to be assessed individually, though the tax payable by the other partners individually be less than what they would have paid, it they had been assessed on the firm.

Every firm should still be required to make a return of the partnership profits and should in addition be required to state exactly how such profits were in fact divisible between the partners. It would be necessary to provide for the passing of an order by the Income-tax Officer determining the profit or loss of the firm and its allocation between the partners which should be subject to appeal as an actual assessment order at present is. Any partner should have the right of appeal against this order but each partner should be notified as to the hearing of the appeal and have the right to attend. Thereafter no partner should have any right of appeal against his individual assessment so far as it includes profit and loss from the partnership business.

But it will give benefit to some partner at the expense of the partners who have large income outside the firm.

Assessment of Registered Firms under section 23 (*5*) (*a*) :

Sub-section (*5*) has been added by the Income-tax (Amenment) Act, 1939, and deals with the assessment of firms and their partners. In the case of a registered firm its total income has to be assessed, but the sum payable by the firm itself has not to be determined. The total income of each partner including

his partnership profit from the registered firm has to be assessed and the sum payable by him has accordingly to be determined. In other words, an assessment is made on the firm direct, but is not carried to the demand stage. Instead, the 'total income' computed is allocated amongst the partners in proportion to their shares and is included in their total income. The only exception is in the case of a partner who is not resident in British India, and in such a case the partnership profit of the non-resident partner has to be assessed on the firm and the sum payable has to be determined at the rate which would be applicable if the same income had been assessed on him personally. Losses incurred by the firm are similarly allocated on the partners.

In preparing the assessment of the firm, losses under one head can be set off against any profits under another head. Should a margin of loss still remain, it will be apportioned amongst the partners in the ratio of their proprietorship against the income of the firm itself in the following year as laid down under the proviso to section 24 (*2*).

The word "share" in clause (*a*) of sub-section (*5*) of section 23, is an elastic term and it has got a wide import. It includes any sums shewn in the account books of the firm as payable to a partner by way of salary, interest, commission or other remuneration, as laid down in section 16 (*b*), which has the effect of their increasing or decreasing the amount based on the actual division of net profits or losses. If the resulting figure is a loss, it may be set off against the other income of such partner in that year, or it may be carried forward.

Assessment of Unregistered Firms :

Under clause (*b*) of sub-section (*5*), the Income-tax Officer may, in the case of an unregistered firm instead of determining the sum payable by the firm, proceed to treat the firm as if it were registered, if in his opinion the agregate amount of tax, including supper tax, payable will be greater if the firm is treated as unregistered.

The object in introducing this is to put an end to the practice of avoiding registration by the simple device of having several unregistered firms where the major part of the income goes to one individual who would be liable to pay a substantial amount of super-tax if the firms were registered.

Procedure :

The Taxing authorities should follow the following procedure while making an assessment under section 23 (*5*) (*a*) with regard to registered firms :—(1) The firm must be a registered one.

(2) Notice under section 22 (*2*) shall have to be served on the partners individually and on the firm collectively ; (3) Determination of the income of the firm under section 23 ; (4) To ascertain the shares of each partner ; (5) To include in the partner's assessment, his share of profits in the firm and any other income each partner may have individually or in partnership with others ; (6) To realise the demand from the firm of the non-resident partners.

Illustrations showing how assessments are made under section 23 (*5*) :

1. A registered firm consisting of 5 partners, *A*, *B*, *C*, *D* and *E* makes a gross profit of Rs. 10,000/- and claims the following allowances by way of deduction :—

Salary to *A*	...	Rs. 1500/-,	Interest to *A*	...	Rs. 800/- ;
Salary to *B*	...	Rs. 1200/-,	Interest to *B*	...	Rs. 1000/-,
Salary to *C*	...	Rs. 1000/-,	Interest to *C*	...	Rs. 600/- ;
Salary to *D*	...	Rs. 1200/-,	Interest to *D*	...	Nil ;
Salary to *E*	...	nil,	Interest to *E*	...	Rs. 1000/-

Salaries Rs. 4900/- ; Interest Rs. 3400/-, total Rs. 8300/-

The partners have equal shares in the firm, and further the following partners have separate individual incomes, as shewn below :—

A has other income to the extent of Rs. 1600/-
B has other income to the extent of Rs. 1800/-
C has other income to the extent of Rs. 2200/-
D has similarly an income of Rs. 2600/-
E has also an income of Rs. 800/-

Now it is found that salaries and interest paid to partners are inadmissible and hence cannot be allowed and consequently the gross profit of Rs. 10000/- becomes the net profit of the firm. Now, how to compute the profits of the partners :—

A from other income	...	Rs. 1600/-	
Add Salary	...	Rs. 1500/-	
Share of net profit	...	Rs. 2000/-	
Add Interest	...	Rs. 800/-	
			Rs. 5900/-
B has from other income	...	Rs. 1800/-	
From salary	...	Rs. 1200/-	
Interest	...	Rs. 1000/-	
Share of net profit	...	Rs. 2000/-	
			Rs. 6000/-

C from other income	...	Rs. 2200/-	
Salary	...	Rs. 1000/-	
Interest	...	Rs. 600/-	
Share of net profit	...	Rs. 2000/-	
			Rs. 5800/-
D from other income	...	Rs. 2600/-	
Salary	...	Rs. 1200/-	
Share of net profit	...	Rs. 2000/-	
			Rs. 5800/-
E has other income	...	Rs. 800/-	
Interest	...	Rs. 1000/-	
Share of net profit	..	Rs. 2000/-	
			Rs. 3800/-

Thus income-tax is payable by *A* on Rs. 5900/-
by *B* on Rs. 6000/-
by *C* on Rs. 5800/-
by *D* on Rs. 5800/-
by *E* on Rs. 3800/-

But so far as unregistered firms are concerned, the above procedure is to be followed, if in the opinion of the Income-tax Officer the aggregate amount of tax, including super-tax payable, will be greater if the firm is treated as registered than if it is treated as unregistered.

Where the Income-tax Officer makes assessment of an unregistered firm as an unregistered firm in 1940-41, he cannot subsequently revise that assessment with a view to make the assessment under section 23 (*5*) in that year. But there is no bar to apply the provisions of section 23 (*5*) next year.

Notice how served :

Notice under section 23 (*2*) must be served by registered post, personal service by the office peon may also serve the purpose. In the case of an unregistered firm a notice can be served on any member of the firm as provided in section 63 (*2*) of the Act. It is necessary that notice should be served only on the member of the firm who made the return. The word "persons" includes a firm (90 I. C. 549). Section 63 provides method for service of notice or requisition. This section is permissive and not exhaustive and it is open to the Income-tax Officer to adopt any method of service that is effective, so long as the assessee is not prejudiced thereby. Thus the signature on the margin of an order-sheet of the Income-tax Officer's file by the assessee or by his authorised lawyer would be equivalent to proper service—*In Ram Khelwan Ugamlal*, 3 I. T. C. 225.

Where an assessee does not produce his branch account before the Income-tax Officer of the area when called for and does not produce those branch accounts at the head-quarters, as not being specifically called, is the assessment to be made under section 23(4) ?

An assessee is called upon under section 22 (*4*), to produce his branch accounts before the Officer within whose jurisdiction the branch business is situate and if the assessee fails to comply with the requisition and the Income-tax Officer of the branch area sends his report to the Income-tax Officer of the principal place of the business to the effect that in the absence of book, the taxable income of the assessee's branch business may be taken to be Rs. 5000. The Income-tax Officer of the principal place of business on receipt of the report issues a notice under sections 23 (*2*) and 22 (*4*) calling for all the accounts within his territorial limits ; the branch accounts are not called for. The assessee complies with all the terms of the notice. Can the Income-tax Officer proceed to make the assessment under section 23 (*3*) or should he make an assessment under section 23 (*4*). In such a case the Income-tax Officer cannot but make an assessment under section 23 (*4*) in view of the fact that branch accounts wore not produced before the officer of the branch area. It is submitted that in such a case it is the duty of an Income-tax Officer of the principal place of business to issue a notice under section 22 (*4*) specifically calling the branch account and where there is a failure to comply with the requisition, the assessment must be made under section 23 (*4*). It is desirable that the Income-tax Officer should give an opportunity to the assessee to produce all his accounts before an assessment is made under section 23 (*4*). But "Return" filed by an assessee implies a return of total income including the branch income and a notice to adduce evidence in support of the return field and to produce books of accounts necessarily implies that all books of accounts including the branch accounts are required.

Accounts to be specifically called :

From the wording of section 22 (*4*) that "such accounts or documents as the Income-tax Officer may require", it is quite clear that Income-tax Officer should, as a rule, issue a notice under section 22 (*4*) specifically mentioning the accounts or documents, he requires. The use of the word "such" before accounts or documents goes a great way to lend countenance to the contention that specific mention of accounts and documents is essential. In the case of *Nirmal Kumar Singha*, 29 C. W. N. 591, the Calcutta High Court, by an *obiter*, incidentally observed that specific mention of accounts is desirable. The Lahore High Court in the case of *Baijnath*, 94 I. C. 156, decided that an

Income-tax Officer while making an assessment should proceed on his strict judicial principles and should not base his assessment on hearsay evidence. The observation of Mr. Justice Walsh of the Lahore High Court that an Income-tax Officer is a Court while proceeding to make an enquiry under section 23(*2*), cannot be accepted in view of the fact that in that case the Income-tax Officer will have to proceed on judicial evidence and not hearsay and inadmissible or irrelevant evidence (94 I. C. 156). The view of Justice Walsh that an Income-tax Officer is a Court while holding an enquiry under section 23(*2*) cannot be seriously maintained as a result of the observations made in the case of *Mahammad Hyat Hazı Mahammad Sardar*, 131 I. C. 181, that "proceedings taken by him are not regulated by strict judicial principles and he has sometimes to depend upon materials which would be wholly inadmissible in a court of law". In the case of *Sankaralinga and others*, A. I. R. 1930 Mad. 209, it was held by the Madras High Court that "we are of opinion that an Income-tax Officer proceeding to assess an assessee after making an enquiry as contemplated by the Income-tax Act is not a Court".

Power of Adjournment :

The Income-tax Officer has inherent power to adjourn any proceeding to any future date according to the circumstances of each case. Under the Civil Procedure Code, the judicial officers have inherent power under section 151 to adjourn any case and to exercise some other powers not specifically provided in the section itself. So far as Income-tax proceedings are concerned, an Officer has the inherent power to adjourn any proceeding. In the absence of any rule expressly or impliedly made, the right of an Officer to exercise his discretion of adjournment remains vested in him. In the case of *S. M. Perianna Pillai*, 122 I. C. 449 : A. I. R. 1930 Mad. 113, it was held that "the power of an Officer entrusted with an enquiry to adjourn the proceedings, as occasion requires, is so necessary, convenient and universally conceded that unless it is expressly withheld by statute or rule having the force of law, it must be taken to vest in him. An Income-tax Officer has, therefore, the power of an adjournment in an enquiry under section 23 (*3*)". Order 17, rule 1 of the Civil Procedure Code, provides that the Court has power to grant time at any stage of the suit.

The Act does not specifically provide for granting adjournments for compliance of a requisition under sections 22 (*4*) and 23 (*2*) ; but in practice adjournments are generally allowed for sufficient cause on the principle of justice, equity and good conscience.

If for any reason, a prayer for adjournment has to be refused,

a definite order, either, oral or written, must be passed by the Income-tax Officer and communicated to the assessee or his agent, as the case may be, before proceeding with the drastic summary assessment under section 23 (*4*). Non-observance of this elementary principle of Judicial procedure, does considerably detract from the technical legality of the summary assessment under section 23 (*4*)—*C. I. T., C. P., U. P.* v. *Laxminaram Badridas Agarwal*, 1934 I. T. R. 246 (*Vide* also the case of *Badridas Ram Rai of Akola*, 2 I. T. R. 183.)

Copy of Orders of Assessment :

When an assessment order has been passed under section 23, any assessee who applies to the Income-tax Officer for a copy of the orders will be supplied by the Income-tax Officer with a copy, free of charge, subject to the following conditions :—

(*a*) not more than one copy of an assessment order will be supplied free, and

(*b*) a copy of an assessment order applied for more than one year after the order was passed will not be supplied free of charge unless the applicant satisfies the Income-tax Officer that it is required for his use in some proceedings which are pending under the Indian Income-tax Act, 1922, with reference to the particular assessment covered by the order and which are not time-barred.

Proposed representiations to higher authority which are not covered by any provision of the Act will not be regarded as proceedings under the Act.

Whenever an appeal is preferred against the amount of income assessed or against the amount of tax charged or against any penalty imposed under any of the sections 25 (*2*), 28, 44-E (*6*), 44-F(*5*), and 46(*1*), the notice of demand received by the appellant must be attached to the form of appeal. The forms prescribed for appeal against (*a*) the Income-tax Officer's order refusing to reopen an assessment under section 27, (*b*) the amount of loss computed under section 24, (*c*) the order of rejection of application for refund, (*d*) the amount of refund granted, (*e*) the order refusing to pass an order under section 25-A (*1*), (*f*) the order refusing to register a firm under section 26-A, and (*g*) the order under section 23-A, require that the copies of the relative orders should be attached to the forms. *One copy of any such order will, therefore, be supplied to the assessee free of cost and without application as soon as the order has been passed. Additional copies would be charged for.*

One copy of any other order will also be supplied to the

assessee, on application, free of cost. Additional copies will be charged for.

A copy of the appellate order will be supplied to the assessee, on application, free of cost. Additional copies will be charged for.

Copy of Depreciation Order :

As assessees are to claim depreciation allowances in the Return, they are certainly entitled to get a copy of the order along with the assessment order. There is no logic in the argument that depreciation copy cannot be granted when there is an application for a copy of the assessment order. An assessment order does contain depreciation allowances, where there is a claim, and necessarily the allowances, made or not, must be in the assessment order. If however the allowances are maintained in a separate part of the record, assessees are still entitled to get copies free of costs.

Copy of Report of Branch Income :

When report of the Branch income is incidentally referred to in the assessment order, a copy of the original report shall be granted to the assessee free of charge on application ; but no separate copy of the report can be granted free, where substantial portion of the report is embodied in the assessment order.

Time Limit for Completion of Assessment :

It is not necessary to the validity of a notice calling for a return under section 22 (*2*), when it is served upon a person as agent of a non-resident under section 43, that it should have been preceded, not only by the notice of intention prescribed by section 43 and by the opportunity of being heard, prescribed by the proviso thereto, but also by an order "treating him as such agent".

It is open to the Income-tax Officer under the Act to postpone any final determination of the question of agency until the time comes to make the assessment under section 23.

Where the notice under section 22 (*2*) was served before the expiry of the period of limitation, the notice is a valid initiation of proceedings to assess as an agent under section 43. It must be understood that proceedings if begun in time are not by the Act required to be completed within any time limit.

The fact that the notice under section 43 does not mention any particular year for which the Income-tax Officer proposes to treat the assessee as an agent, does not make the assessment

illegal.—*C. I. T., Punjab* v. *Nawal Kishore Khairatilal*, 172 I. C. 332. (P. C.)

Reference under section 66 in Assessment under section 23 (4) :

Under the old Act, there was no appeal permissible against an assessment under section 23 (*4*), but it is otherwise under the present section 23 (*4*) ; assessments are all appealable and necessarily any question of law arising out of an assessment under section 23 (*4*) may now be dealt under section 66 (*2*) if the other requirements of the section be complied with. As a result of this change all previous decisions have become obsolete.

Power to assess individual members of certain companies.

23A. (*1*) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting are less than sixty per cent. of the assessable income of the company of that previous year as reduced by the amount of income-tax and super-tax payable by the company in respect thereof, he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes and reduced by the amount of income-tax and super-tax payable by the company in respect thereof shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income :

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid-up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company, whichever of these is greater, this section shall apply as if instead of the words "sixty per cent. the words "one hundred per cent". were substituted :

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent. of the assessable income of the company, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof :

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

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

a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less

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

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

(*3*)* (*ii*) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (*1*) the tax payable in respect thereof shall be recoverable from the company, if it cannot be recovered from such member.

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

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

* Sub-clause (*i*) omitted by Amendment Act.

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.

Scope of section 23-A :

Sec. 23-A of the previous Act has proved practically a dead-letter, mainly because it imposes upon an Income-tax Officer the duty of determining whether the profits and gains of a company are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business. The present amendment substitutes a simple arithmetical criterion for the determination of the applicability of the section to the circumstances of any company in any year. Subsidiary companies, and companies in which the public are substantially interested are therefore not excluded from the operation of the section, but the opportunity has been taken to amend the definition of subsidiary company so as to remove any doubt as to the meaning of the expression "a company not being a company to which the provisions of this sub-section apply." This amended section also alters the procedure. Instead of passing an order to the effect that the sum payable as income-tax by the company shall not be determined and that the proportionate share of each member in the profits and gains of the company shall be included in his total income, the Income-tax Officer has under the present section merely to deem the profits of the company to have distributed as dividends on a given date. The assessment of a company to both income-tax and super-tax will therefore be made whether or not an order is passed under the section.

By any Company :

The insertion of the words "by any company" has the effect of extending the scope of the section to all companies and not merely to companies which are under the control of not more than five persons.

Proviso and Explanation, Scope of :

The proviso covers cases where the accumulated undistributed profits exceed the value of the fixed assets or the paid up capital taken with loan capital belonging to shareholders, whichever is

greater. The additional proviso has been inserted in order to make allowance for possible cases of error in which, though the full sixty per cent. of the assessable income of the company has not been actually distributed, an amount exceeding fifty five per cent. has been distributed. In such cases the company should be given a reasonable opportunity of escaping the operation of the section by revising its distribution within 3 months.

The removal of the reference to subsidiary companies supplements the first change made in the section and secures the application of the section to all companies except companies in which the public are substantially interested in the sense defined in the explanation.

Income-tax, if includes Super-tax :

Section 23-*A* is not one of the sections mentioned in section 58. "Income-tax" in section 23-*A*(*1*) means "Income-tax and Super-tax."

Appeal :

Under the previous Act, an appeal against an order under section 23-*A* was provided for in section 33-*A*. In the Amendment Act of 1939, section 33-*A* has been omitted, but a right of appeal against an order under section 23-*A* has been provided in section 30 of the Income-tax Act. Section 30, clause (*1*), lays down that any assessee, being, a company, objecting to an order made by an Income-tax Officer, may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order.

Appeal, when to be presented :

Section 30 provides that an appeal shall ordinarily be presented within 30 days from the receipt of the notice of demand relating to assessment. But so far as section 23-*A* is concerned, limitation will run from the date of intimation of an order under sub-section (*1*) of the section.

Failure to distribute any part of the profits of the Company which were very large in any year after its inception, and failure of the assessees to explain the very large accumulations of profits withheld from distribution in the year seem to lead to only one conclusion, namely, an intention to prevent the imposition of tax.

The Board or Referees, of course, do not say that they find that the sum of Rs. 36,180, was accumulated for the purpose of escaping taxation. But it is clear that the appellants chose to

stand or fall by their contention that the whole of the accumulation represented a genuine and reasonable need of the company and when their claim failed to be substantiated in respect of the sum of Rs. 36,180, the finding of the taxing authorities that this part of the accumulation was for the purpose of evading taxation, remained unaffected—*A. T. C.* and *A. F. Harvey* v. *C. I. T., Madras*, 8 I. T. C. 311.

Approval of the Inspecting Assistant Commissioner :

Section 23-*A*(*2*) lays down that the Inspecting Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under the section until an opportunity has been given to the company of being heard.

Dividend :

Sub-section (*5*) of section 23-*A* enunciates that for the purpose of the application of this sub-section, when a company is a share-holder under sub-section (*1*) to have received a dividend, the amount of dividend thus paid shall be deemed to be part of its total income.

Effect of the Amendment :

The amendment is designed to check avoidance of super-tax. As the section stands, it comes into operation even if 60 per cent. of the company's assessable income after income-tax and super-tax have been paid is distributed. The amendment provides that the requirement shall be a distribution of 60 per cent. of the assessable income "as reduced by the amount of income-tax and super-tax payable". (*Vide* Statement of Objects and Reasons).

Set-off of loss in computing aggregate income.

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

Provided that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (*b*) of sub-section (*5*) of section 23 in the manner applicable to a registered firm,

any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm ; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section ;

(*2*) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head 'Profits and gains of business, profession or vocation' and the loss cannot be wholly set off under sub-section (*1*), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year ; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on ; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years respectively :

Provided that 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 :

Provided further that 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 :

Provided further that where a change has occurred in the constitution of a firm or where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.

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

Object and Reasons :

The proviso to sub-section (*1*) takes away the existing right which a partner in an unregistered firm has of setting off his share of loss in the firm against his other income. Thus it curtails the rights and privileges of a partner in an unregistered firm to set off any part of the firm's loss against their incomes. In the case of a registered firm the loss that cannot be set off in the firm's assessment shall be apportioned amongst the partners who alone will be entitled to set off the loss. Under the previous Act, partners' loss in an unregistered firm was allowable (*vide C. I. T.* v. *Arunachalam Chettiar*, A. I. R. 1924 Mad. 474, and *Balkishan Nathani* v. *C. I. T.*, A. I. R. 1924 Nag. 153, where it was held that losses incurred by an assessee as a member of a company or firm are to be taken into consideration in fixing the amount of his total income.)

Principle of Set off :

Sub-section (*2*) as amended allows losses in a business, profession or vocation to be carried forward and set off against the profits of the same business, profession or vocation. The period of carrying forward is to be six years, but to mitigate the effect on the revenue by this concession, losses of the first previous year after the commencement of the Amending Act are to be carried forward for one year, losses of the next year for 2 years, and so on until the full period of 6 years is reached. The provisions regarding registered and unregistered firms in sub-section (*1*) are, *mutatis mutandis*, repeated in sub-section (*2*) and in accordance with the principle given effect to elsewhere that the liability or benefit should attach to the person receiving the profits or incurring the loss, it is provided that in the case of a change in the firm's constitution or of a succession only the person incurring the loss would be able to set it off.

Procedure of Set off :

The new sub-section (*2*) allows with certain limitations the carrying forward of losses from business, profession or vocation. The loss will be allowed to be set off in a subsequent year up to six years against the profits and gains of the same business, profession or vocation. If after several years of loss, the particular business is discontinued and a new business is started, no advantage can be had of the loss of back years. The Taxation Enquiry Report of 1936 observes "we suggest that the gradual introduction of the relief may best be effected by providing that loss of the first previous year to which the Act, as amended, applies, be carried forward for one year, that of the second year for 2 years, those of third year for three years and so on until losses are carried forward for six years". Computation of loss should be notified to the assessee in an order which should be subject to appeal just as an assessment order is.' The quantum of the loss so determined would be binding for the purpose of set off in future years apart from cases in which action under section 34 of the Act would be competent.

Set off of Losses :

It is to be observed that, under the proviso to sub-section (*1*), *where the assessee is an unregistered firm that firm and that firm alone can set off the losses incurred by the firm. The old ruling that a partner in an unregistered firm could set off his share of the loss against his own income has now become obsolete* owing to the insertion of this proviso, and *in future no member of an unregistered firm (unless that unregistered firm has, under section 23 (5) (b), been dealt as a registered firm) can be allowed to*

set off his share of the loss in the unregistered firm against his own income.

But so far as registered firms are concerned, the loss of the registered firm is to be set off against the registered firm's own income in the first instance and then the balance of the loss allocated between the partners' own income.

Carry forward Losses :

Losses incurred in a business, profession or vocation may, under the amendments introduced by the Income-tax (Amendment) Act, 1939, if they cannot be wholly set off against other income of the same year, be carried forward and set off against the profits and gains, if any, of the assessee from the *same business, profession or vocation for the following year. It must be emphasised that losses cannot be carried forward and set off against income from any other business. profession or vocation or any other source of income.* They can only be carried forward and set off against income from the *same business, profession or vocation, and if that business, profession or vocation has been discontinued, the right to carry forward losses lapses.*

If owing to the inadequacy of profits, the loss cannot be wholly exhausted in the year following the year of assessment for which, had it been a profit, it would have been assessed, it can be carried forward and set off *against the profits of the next year and so on for six years* ; but the full carry forward for a period of six years is not given immediately. and the following table shows the extent to which losses can be carried forward :—

Losses incurred in the previous year for assessment for..... (1)	Assessments against which the loss in Column 1 can be set off, (2)
1939—40 .	1940—41.
1940—41 .	1941—42, 1942—43.
1941—42 .	1942—43, 1943—44, 1944—45.
1942—43 .	1943—44, 1944—45, 1945—46, 1946—47.
1943—44 .	1944—45, 1945—46, 1946—47, 1947—48, 1948—49.
1944—45 .	1945—46. 1946—47, 1947—48, 1948—49, 1949—50, 1950—51.

(Thereafter the full six years' period operates).

The same provisions with regard to losses by unregistered and registered firms operate for the carry forward and set off of losses under sub-section (*2*) as for the set off of losses under sub-section (*1*).

Succession and Changes :

The second proviso makes it clear that where a change has occurred in the constitution of a firm, or where there has been a succession to business, profession or vocation, only the person actually incurring the loss is entitled to set it off against his income, profits or gains. This proviso deals with the changes covered by section 26, and puts the treatment of losses on the same footing as that of profits where these changes occur. Thus if registered partnership consisting of *A*, *B* and *C* is reconstituted, *A* retiring and *D* coming into partnership, *A* by leaving the firm forfeits the right to carry forward his share of the loss* made by *A*, *B* and *C*, but *B*, *C* and *D* do not inherit this loss and cannot claim to set off against their shares of the future profits the share of loss incurred by *A*. *B* can carry forward his own share of the loss made by *A*, *B* and *C*, whilst *C* can carry forward his share. Similarly if *E* is succeeded in a business by *F*, and *E* has incurred losses, he forfeits the carry forward of losses by transferring the business to *F* who, however, cannot claim to set off against his profits the losses incurred by *E*. (*I. T. M.*)

Duty of the Income-tax Officers :

The determination of a loss is now important for the setting off against future profits, and therefore it is provided under sub-section (*3*) that the Income-tax Officer shall pass an order determining the loss and this order is appealable under section 30 in the same way as an order determining an assessment upon which tax is payable. (*I. T. M.*)

Set off of Losses :

In preparing the assessment of the firm, losses under one head can be set off against any profits under another head. Should a margin of loss still remain, it will be apportioned among the partners on a *pro rata* basis and can in no circumstances be carried forward to be set off against the income of the firm itself in the following year (section 24 (*2*) proviso).

But any loss made by an unregistered firm cannot be set off as a whole against the income of any or all its partners. The

*It should be understood, of course, that A's right of set off under sub-section *1* (as distinct from his right of carry forward and set off under sub-section *2*) remains unaffected.

firm may, however, carry forward such loss as provided in section 24 (*2*).

Assessment as unregistered Firm in 1939-40, but assessment under section 23(5) in 1940-41, whether loss of 1939-40 is an admissibie deduction in 1940-41 :

The loss incurred by the unregistered firm cannot be set off next year in as much the assessment of 1940-41 is not on the firm but on the partners. As a result of this firm may have no opportunity to set off its losses at all in future years where assessment is made as a registered firm.

Loss, when can be set off :

Loss can only be set off when it is incurred under any of the heads mentioned in section 6 of the Act. *In re Lala Indra Sen*, 8 I. T. R. 187, it has been held that as the transactions in question do not in law constitute the "business, profession or vocation" of the assessee, he is not entitled to claim set off of losses. (*Graham* v. *Green*, (1925) 2 K. B. 37 is not an authority to be follwed in India).

Succession and set off of loss :

In *re* : *David Sassoon & Co., Ltd.*, 8 I.T.R. 7, it was held that a successor was entitled to set off losses : but this is no longer the law, as section 26 now provides that nothing in section 26 shall be deemed to entitle any person other than the person incurring loss to have it set off against his income, profits or gains, *except in the case of inheritance to a deceased person.* The principle enunciated by the Calcutta High Court in the case of *B. K. Pal & Co., Ltd.*, 182 I. C. 270 : A. I. R. 1939 Cal. 196, held before the passing of the Amendment Act of 1939, that the predecessor was entitled to claim set off.

The important change in this matter may be briefly stated thus : In the event of a succession to a firm or of a change of constitution, *a previous loss can only be carried forward by those who were partners at the time the loss was incurred.* The law has been relaxed in the case of inheritance.

Depreciation :

Depreciation according to the provisions will be treated on the same footing as any other business expense, mentioned in section 10. For adjustment in the accounting year, depreciation in one business can be set off, if necessary, against profits of

another business. But if it has to be carried forward, depreciation can be set off in future years against the same business only.

In case of change of constitution of a firm or of succession to a business, profession or vocation under section 26, the amended Act provides to assess the person or persons who owned at the time in the accounting year, instead of the successor as is done under the previous Act. The set-off of loss will similarly be allowed to predecessors.

Computation of Loss :

Sub-section (*3*) provides for the computation of the loss in an order in writing and its communication to the assessee. It has already been stated that an assessment resulting in loss is appealable as provided in section 30 of the Act.

Set-off of Losses in Dead Business :

It is thus apparent that the proviso to section 24 (*1*) takes away the existing right which a partner in an unregistered firm had of setting off his share of loss in the firm against his other income. In the Privy Council case of *Arunachallam Chettiar* v. *C. I. T.*, 162 I. C, 1 (P.C.), 63 I. A. 233, it was held that a partner in an unregistered firm which made a loss in the year of account was entitled to set off his share of loss against the profits and gains made by him in his individual trade and otherwise (*C. I. T.* v. *Arunachallam Chettiar*, A. I. R. 1924 Mad. 474, 47 M. 160 *approved.*)

The ex-partner's share of the loss in the trade which the assessee had to bear by a reason of the ex-partner being unable to meet his share of loss in the partnership business, cannot be set off against the assessee's other income, profits or gains. In *B. C. G. A.* v. *C. I. T.*, 10 I. T. C., 249 : A. I. R. 1937 L. 338 : 1937 I. T. R. 279, it was held that where a person carries on two different trades, he is entitled to set off for purposes of income-tax the loss incurred by him in respect of one against the profits made by him in the other. But for this principle to apply, the condition precedent is that both business should be alive during the current year. A dead business's loss cannot be set off against a living business's gains.

In *South Industrials Ltd.* v *C. I. T.*, 8 I. T. C. 128 : 157 I. C. 143 : A. I. R. 1935 Mad. 330, where the assessee had carried on several separate business before but in the account years some of those businesses had closed, a Special Bench of the Madras High Court upheld that the assessee could not set off the losses of discontinued business against the profits of the current business, inasmuch as section 10 dealt with businesses

that were being carried on not with business which had ceased to exist.

But in the *General Corporation Ltd.* v. *C. I. T.*, 9 I. T. C. 29 : 1936 Mad. 267 : 1935 I. T. R. 350, set-off of loss was allowed against the loss of mining business which was not resumed. But the law as it stands under section 10 read with section 24, this cannot be allowed under any circumstances.

Section 24 (*1*) has no applicability where the transaction is no part of assessee's business and set-off cannot be allowed—*Badrisaha Sohanlal* v. *C. I. T.*, A. I. R. 1936 L. 856 : 10 I. T. C. 1. A partnership firm cannot legally be a partner in another firm, and as such no set-off is permissible—*Shiv Narain & Sons* v. *C. I. T.*, 8 I. T. C. 117 : 1935 L. 896 : 1935 I. T. R. 402.

Capital Loss :

The only provision in the Act under which loss can be set off against taxable profits is section 24. This section in terms refers to loss of "profits or gain" and it clearly does not permit the set-off of a loss of capital. (*C. I. T* v. *Sir Kameswar Singha*, 6 I. T. R. 686.) Similar views were expressed in *Sir Chunibhai Madhablal, Bart.* v. *C. I. T.*, 9 I. T. C. 345. But where the loss is a revenue loss as opposed to capital loss, set-off is allowable. The following observations of Cave, L. C., in *Atherton* v. *British Insulated and Helsby Cables Ltd.*, 10 T. C. 155, may usefully be cited : "A sum of money expended not of necessity and with a view to direct an immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade."

In *Hirananda Jai Ram* v. *C. I. T.*, A. I. R. 1936 L. 452, it was held that loss in securities not being in course of the business is not deductable. In the matter of *Chouthmal Golap Chand*, 6 I. T. R. 733 : A. I. R. 1939 Cal. 559, the Calcutta High Court held that loss resulting in the price of stock due to change in the valuation of stock is a capital loss and no set-off can be claimed.

Bonafide Annual Value—Set-off of Loss :

In *Karam Elahi Md. Safi*, 116 I. C. 547, it was held that factory loss can be set off against the profits of house property and in *Muniswami Chetty*, A. I. R. 1924 Mad. 205, it was held that the business loss can be set off against income of other businesses.

The proviso to sub-section (*2*) of section 9 which existed in the previous Act, stands omitted with the results that *bonafide* annual value can now be a minus figure. The loss under the head of property under section 9 of the Act can now be set off against any other head.

Set-off of Loss where there is a question of Succession under section 26 :

Where an assessee who owns certain immoveable property and carries on a business in partnership with *K*, suffers loss in the business but receives certain income from the immoveable property, he is entitled to set off the loss in the business against the income from property, and merely because the business concern was taken over by *K* subsequent to the accounting period but before the date on which the order of assessment was made, section 26 (*2*) does not prevent the assessee from claiming the set-off. Nor is there any obligation upon the assessee under section 24 of the Act to show that the firm in which he was a partner had suffered the loss, was in existence or that it had not changed hands and was assessed—*Gokul Das Laxmi Chand* v. *C. I. T.*, A. I. R. 1937 S. 201. Similarly in the matter of *Besendayal. Doyaram*, A. I. R. 1938 Cal. 636, it was held that *X* and *Y* who carried on a joint business, separated and divided between themselves the assets and liabilities of the joint business. Thereafter each carried on his separate business, which had nothing to do with the former joint business. *Y* during the year of assessment claimed that an outstanding debt assigned to him in partition with *X* was irrecoverable and claimed a set-off. It was held to be a capital loss. But in the case of *C.I.T.* v. *Bhogilal Hargovandas Patel*, 9 I. T. C. 110, the principle was enunciated that having regard to section 26 (*2*) where a person carrying on any business has been succeeded in that business by another person, he is not entitled to claim the benefit of sub-section (*1*) of section 24 at all.

An authoritative pronouncement was made by the Special Bench of the Calcutta High Court in the matter of *B. K. Paul & Co.*, 6 I. T. R. 395. In this case the assessees were *B. K. Pal & Co.* which are an Hindu undivided family. For the account year 1932-33 which is equivalent to assessment year 1933-34, they were not assessed but there was assessment subsequently on Sept. 28, 1934. On April 14, 1934, four private limited companies were formed and 16 out of 17 losing businesses were transferred to the four new companies. The Income-tax Officer allowed a set-off of loss of the 17th business and refused to allow set-off of the 16 other businesses on the ground that there had been a succession under section 26 of the Act. The Calcutta High Court reversed the order and held that section 24 of

the Act in clear words gives a right of set-off to an assessee who suffers loss under any other heads mentioned in section 6. It seems that the word assessee has not been used here in the strict sense of a person by whom income-tax is payable, but means and signifies the person against whom assessment proceedings have been started and who has been asked to give a return of his total income being the previous year under section 22. If such a person sustains a loss of profits or gains under any of the heads of income, he shall be entitled to have the amount of loss set-off against the income, profits or gains under any other head. It cannot be imagined that the legislature by section 26(*2*) intended to deprive the person who suffered loss in his business of his right to get a set-off under section 24. Under section 26, the Income-tax Officer is appraised of a succession to a business, at the time of making the assessment, the assessment shall be made on the person succeeding. This means that so far as the business is concerned, the assessment which was started against that transferer predecessor, would end in an order of assessment upon the successor or transferee. But this can be done only when there is income, profits or gains from the particular business, for which assessment is possible under section 3 of the Act ; if there was no profit for the business in the year of accounting, section 26 of the Act would not come into operation at all. No question of assessing the successor would then arise and the language of the section itself shows that the assessment is based on the assumption that the successor received the entire profits of the previous year. It is idle to suggest that the successor may have other sources of income for which assessment might be possible, for the primary object of section 26 is not to allow set-off to the successor, who in the ordinary course, might and ought to have been taxed on his other income. The object undoubtedly is to assess the successor on the profits of the previous year, it being considered just or convenient by the legislature, that tax should be recovered from him and not from his predecessor.

Section 26 has, therefore, no application, when there is loss in the year of accounting in the business in respect to which succession has taken place, and there are no profits for which the successor could be taxed. To put any other construction would lead to clear injustice.

For various reasons, good or bad, the assessment proceedings might be delayed, and the assessee though he actually suffered loss in his business in the year of accounting, would lose the privilege of a set-off, for no fault of his.

In the Madras case (*C. I. T.* v. *Best & Co.*, I. L. R. 55 Mad. 832) no question of set-off was raised and the decision does not militate against the view enunciated above. In *Bhogilal Har*

Govandas Patel v. *C. I. T.*, 9 I. T. C. 110, the facts are undoubtedly distinguishable as the succession there took place within the accounting year but even then the observations of Beaumont, C. J., are rather in agreement with the opinion expressed above. "It is argued on behalf of the assessee, the section 26 (*2*) does not apply unless there are profits. There is no evidence that there were no profits and that therefore no assessment on the purchasing company was necessary, and in the absence of any evidence to that effect it seems to me that the Income-tax Officer is quite right in saying that the section applied."

Blackwell, J., undoubtedly took a different view, but the reasoning does not appear to be sound.

Thus to refuse to allow the set-off was *prima facie* a negation of the right which section 24 (*1*) expressly gives to an assessee.

The amended Act of 1939 has now set at rest the controversy by the third proviso to section 24 (*2*) which lays down that where a change has occurred in the constitution of a firm or 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 the section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profit or gains.

Construction of Section 24 :

Section 24 of the Income-tax Act must be construed in the widest and most liberal manner—*In re* : *Khan Saheb Mahamad Naqui*, 31 P. L. R. 418 : 5 I. T. C. 279 : A. I. R. 1931 L. 656.

Bad Debts and Set-off :

The Act nowhere, in terms, authorises the deduction of bad debts of a business, such a deduction is necessarily allowable. What are chargeable to income-tax in respect of a business are profits and gains of the year, and in determining profit or gains of a year account must be taken of losses incurred, and such losses must have been incurred in the year of account.

"Whether a debt is a bad debt and if so, at what part of time it became a bad debt, are questions which in their Lordships' view, are questions of fact, to be decided by the appropriate tribunal and not by the *ipse dixit* of any one else"—*In re* : *Sir S. M. Chitnavis*, 127 I. C. 772 (P.C.) : 6 I.T.C. 453 : 59 I. A. 290.

The mere absence in the Act of a provision for loss in respect of a time-barred debt is no ground for disallowing it, but whether

such loss can be claimed in any particular year or not is a question of fact to be determined upon the circumstances of each case. It is apparent, therefore, that it is permissible under section 24 —*Commissioner of I.-tax, Bombay* v. *Khemchand Ramdas*, A. I. R. 1934 S. 148 : 6 I. T. C. 360.

Set-off of Depreciation :

Where an assessee carries more than one business and the profits therefrom are not at all sufficient to cover depreciation, excess depreciation can be set-off against the profits of his other business—*In the matter of A. M. S. Chetyar*, 123 I. C. 801. But in the case of *Ballarpur Collieries*, 122 I. C. 689, the Income-tax authorities, while computing the taxable income of the assessee did not allow the claim for depreciation but made an observation that the claim should be carried forward to be considered only in the year of profit. But the High Court held that the provision of section 24 is clearly applicable.

What is Loss :

An assessee may sustain losses for various reasons and a claim for set-off can certainly be made on all losses provided these are losses incurred solely for the purpose of earning profits. It has been held in the case of *Gangasagar*, 120 I. C. 435 : A. I. R. 1929 All. 969, that where an assessee purchases shares and the price exceeds the face value, the excess is no loss. In the case of *Forbes*, A. I. R. 1929 Pat. 1419, it was held that a commission paid to a banker for realising interest on Government securities is not a loss of profits or gains. It has been held that where there is *bonafide* loss, a man can always set it off against his income, profits or gains under the same head and in exceptional case where the loss is so heavy that it more than counterbalances the whole of the profits under that head, it may be carried over to another head for full relief—*In re* : *Mahammad Naqui*, 132 I. C. 1. Where properties of two businesses are distributed on their dissolution, interest sought to be deducted represents capital loss and not trading loss and consequently the assessee has no claim to a set-off under section 24 : *In re* : *K. Sidha Gouder & Sons*, 137 I. C. 680. (the cases of *Commissioner, Inland Revenue* v. *Burrel* 9 T. C. 27 ; *In re* : *Armitage*, (1893) 3 C. H. 357 and *In re* : *Crichton's Oil Co.* (1902) 2 C.H. 86, *approved*).

Burden of proof of Losses :

An assessee is entitled to have his losses set-off against his income in any year, but he is not competent to claim that right, unless he proves the losses and the losses cannot be held to be

satisfactorily proved by merely showing the figures of purchases and sales during the year without showing the opening balance. "When once income has been admitted, the burden of proving losses is on the assessee, who alleges them and the losses cannot be said to be satisfactorily proved unless all the particulars with regard to such losses must be the opening balance at the beginning of financial year the losses are said to have occurred" : (*In the matter of Radhakrishna Ramnarayan*, 117 I. C. 217 : A. I. R. 1929 Nag. 153 : 3 I. T. C. 366.

Loss, how to Set off :

Where more businesses than one are carried on, it has to be ascertained whether they have resulted in a profit or whether one or some of them have resulted in a profit and others in a loss. If it is discovered that there has been a loss in one or more of them, that loss can be set off under section 24, against profits or gains of other business of whatever description.

The words "loss of profits or gains" in section 24 mean trading loss ; but capital loss as opposed to trading loss cannot be allowed.

Assessment in case of departure from British India.

24A. (*1*) When it appears to the Income-tax Officer that any person may leave British India during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed to the probable date of his departure from British India. For each completed previous year included in this period an assessment shall be made on the total income of such person at the rate at which it would have been charged had such income been fully assessed, and of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from British India, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from British India. The assessment shall be made on the total income of each completed previous year included in such period at the

rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made ;

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

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

Assessment in case of Departure from British India :

The introduction of this section has been made primarily for providing assessment in case of departure from British India. Under sub-section (*1*) when it appears to the Income-tax Officer that any person may leave British India during the current financial year or shortly after its expiry and that he has no

present intention of returning, the Income-tax Officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed, to the probable date of his departure from British India.

Procedure :

The new section 24-A is aimed primarily at enabling assessments to be made at once, on the income of persons from whom it may be difficult to recover "income-tax and super-tax" after they have left British India, *e.g.* members of a touring theatrical company.

When such an emergency arises, 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.

The person on whom the notice is served, shall have to set forth his total income for each of the completed previous years comprised in the period first referred to in sub-section (*1*) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure.

A return furnished according to a notice, under this section shall be considered a return under section 22 (*2*) and all the rights and liabilities of that section will follow as a matter of course.

Effect of Amendment of Section 24-A :

Section 24-A refers to assessment in case of departure from British India. Income-tax Officer alone has jurisdiction to make an assessment under this section.

Where it appears to the Income-tax Officer that a person may leave British India during the current year or shortly after its expiry and may not return to India he may serve a notice upon him requiring him to furnish a return under section 22(*2*), of his total income for each of the completed previous years from the period from the expiry of the last previous year for which he has been assessed, or where he has not been previously assessed, of his estimated total income of the period up to the probable date of his departure from British India. The minimum period within which such a return should be required to be made is seven days. The Income-tax Officer may in the exercise of his discretion extend the period according to the circumstances of each case. The assessment has to be made for each completed

previous year included in the period of assessment at the rate at which such total income would have been charged had it been fully assessed. As regards the period from the expiry of the last of such previous years to the probable date of departure the Income-tax Officer will estimate the total income and assess it at the rate in force for the year during which the assessment is made.

This section cannot be used to assess an income which has escaped assessment or has been assessed at too low a rate or has been under-assessed in respect of which the Income-tax Officer cannot issue a notice under section 34.

Procedure :

When notice under section 22(*2*) is served, the person served with such notice shall comply with the requisition by furnishing the total income of each of the completed previous years and on estimated total income for the period from the expiry of the last such completed year to the probable date of his departure. Thereafter the provisions of section 22 shall apply *mutatis mutandis* in relation to the assessment.

Applicability :

Section 24-A as amended, makes it clear that the section applies to a person not previously assessed.

But it must be understood that section 24-A should not be used to assess an income which has escaped assessment or has been assessed at too low a rate or has been the subject of excessive relief, in respect of which the Income-tax Officer cannot take any action by issuing a notice under section 34.

Tax of deceased person payable by representative.

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

(*2*) Where a person dies before the publication of the notice referred to in sub-section (*1*) of section 22 or before he is served with a notice under sub-section (*2*) of section 22 or section 34, as the case may be,

his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (*2*) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

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

Significance of section 24-B (1) :

Sub-section (*1*) of this section provides the extent of liability of the executor, administrator and other legal representative of a deceased assessee. This clause evidently covers such cases where assessment has been made on a person, who dies before realisation of the demand. But this does not authorise the Income-tax Officer to make an assessment on a person who is long dead ; the procedure in case of death of a person dying before the assessment is made has been laid down, according to circumstances in sub-sections (*2*) and (*3*).

The only equitable construction possible under sub-sec. (*1*) is that where an assessment is completed on a person according to the provisions of the Act and subsequently it transpires that the person so assessed is dead, before or after the service of the notice of demand under section 29 of the Act, tax charged on such a deceased person, has been made payable by his executor, administrator or other legal representative.

Sub-section (*1*) is not a charging section, but rather a machinery one. It provides the method for the recovery of the tax due by the deceased assessee. If any importance can be attached to the "marginal note" of the clause, it will be found that this clause implies that tax of deceased person is payable by representative. The incorporation of this clause supplies the lacuna by giving legal sanction enabling the Income-tax Officer to realise tax of the deceased assessee as a matter of right.

Death before Notice :

As a general practice, the taxing department maintains a Register of persons, who are served with notice under section 22(*2*).

Section 24-B (*2*) lays down the procedure to be followed when a person dies before he is served with a notice under section 22(*2*) or under section 34. When such a contingency arises, the Income-tax Officer may serve notice under section 22(*2*) or under section 34, on the executor, administrator of other legal representative of the deceased person and may proceed to assess the total income of the deceased person, as if such executor, administrator or other legal representative were the assessee.

This is rather a provision for the assessment of the deceased assessee in the hands of his executor, administrator or other legal representative, as distinguished from a case of succession under section 36 of the Act :

Obviously the intention of the Legislature is to assess the "total income of the deceased person through his executors etc. It follows therefore as a necessary corollary that executors, administrators or other legal representatives cannot be treated as successors."

The underlying motive for inserting sub-section (*2*) of section 24-B is to nullify the provision of section 26 of the Act which provides that a successor is liable to tax for "business, profession or vocation" and nothing else.

This clause enables the Income-tax Officer to assess the deceased person through executors etc., a distinct departure from the previous Act. Before the amendment, the Income-tax Officer could fall back on the successor under section 26 of the Act which still makes the successor liable when he succeeds his predecessor in "business, profession or vocation". Thus on the death of a lawyer or a medical practitioner, the successor could not be made liable for the professional income. The present amendment removes the loophole of the previous Act.

Death after Notice but before Assessment :

Under the previous Act, there was no provision, express or implied, in case of any such contingency. Of course the Income-tax Officer was entitled to accept the return, where it was duly furnished, and make an assessment under section 22(*1*) and in case of non-compliance within the due date, a best judgment assessment before the death of the assessee was permissive in practice.

But the Indian Income-tax Act does not run *pari passu* with the English Act, still where reference to the English Act is possible, it should be utilised properly.

Rule 18 of the General Rules of England runs thus—

"Where any person dies without having delivered a statement of all his profits or gains chargeable to tax with a view to an assessment thereon in due course, an assessment in respect of the profits or gains which arose or accrued to him before his death may be made at any time within the year of assessment or within three years after the expiration thereof, upon his Executors or Administrators and the amount of the tax thereon shall be debt due from and payable out of the Estate."

This is akin to the present clause. Before this amendment there was a regular legal difficulty and consequently recovery of tax by the normal procedure was out of question, except in case of voluntary deposit.

To strengthen the hands of the Executive, this clause specifically provides for such an emergency.

Section 24-B (*3*) now enables the Income-tax Officer to make an assessment on the total income of a deceased person, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might require under the provisions of sections 22 and 23 from the deceased person.

Effect of Amendment of Section 24-B (2) :

The omission made in sub-section (*2*) of section 24-B of the Act ensures that the executor, administrator or other legal representative can only be assessed after he has been served with a specific notice under section 22 (*2*). Prior to this amendment sub-section (*2*) provided that where a person died before service of notice under section 22 (*2*), Income-tax Officer could serve a notice under section 22 (*2*) or 34 and this was a matter of discretion ; but the amendment ensures that the executor,

administrator or other legal representative can only be assessed after he has been served with a specific notice under section 22 (*2*). Thus it is mandatory on the Income-tax Officer to issue a specific notice before the heirs can be made liable to tax of the deceased assessee. This is a consequential amendment as a result of the amendment of section 22 (*1*).

Effect of the Amendment of Sub-section (3) :

Sub-section (*3*) of section 24-B relates to the procedure to be followed when a person dies without furnishing a return as required by section 22 or when he dies after furnishing the return but before the assessment is made.

The Income-tax Officer may make an assessment and determine the tax payable, but if he has reason to believe that the return furnished is inaccurate or incomplete, he may serve an appropriate notice on the executor etc., which would have been served on the deceased person had he survived, and for this purpose all the privileges of sections 22 and 23 vest on the Income-tax Officer. He can call for accounts, documents or other evidences which he might under the provisions of sections 22 and 23 of the Act.

Retrospective or Prospective :

Section 24-B is not be retrospective in operation ; it came into operation from 11th of September, 1933, when it received the assent of the Governor-General in Council.

The provisions of the section introduced by the Amendment Act apply to only case, in which death took place later than midnight of 10th September, 1933. If the Legislature had intended that the new section should have a retrospective operation it would have taken care to indicate such intention in express terms.

Section 24-*B* has no retrospective effect.—*Durabsha Nasarwangi Mehta* v. *C. I. T., Bombay* ; (decided on 22nd. August 1934 ; Bombay High Court.)

Assessee—Meaning of Legal Rights and Liabilities :

The term "assessee" as defined under section 2(*2*) "means a person by whom income-tax is payable" and in terms is applicable to a living person.

In the Miscellaneous chapter, under head "Anomalies in the Act", an attempt has been made to show how loosely and vaguely tho word "assessee" has been used. Thc incorporation of section

24-B has widened to some extent the scope of the term "assessee", thereby creating more complications.

So far as the term "assessee" is considered, it has been used so loosely all throughout the Act that one is constrained to give one meaning in one place and another meaning in another place.

Section 22 does not speak of "assessee". It refers to person liable to pay income-tax, and having regard to the definition of the term "assessee" in section 2 (*2*), service of notice under section 22 does not make the person an "assessee" then and there.

Where an assessment is made under section 23 (*1*), the person so assessed is an "assessee". But when an assessment is made at *nil* under section 23 (*1*), the person so assessed cannot be called an "assessee" if the term as defined in section 2 (*2*) is strictly interpreted. Sections 23 (*2*) and 23 (*3*) speak of "person" and not of "assessee".

Section 24 of the Act speaks of "assessee" when he shares profits in one head and loss under another head, no matter whether he is ultimately liable to tax or not.

Section 24-A speaks of "any person", while section 24-B (*1*) speaks of a "person". But section 24-B (*2*) speaks of a "person" and of an "assessee" and section 24-B (*3*) mentions a person.

Section 24-B (*2*) has by implication made the executor, administrator or other legal representative "assessee" although the assessment is made on the total income of the deceased, through the executor, etc., and such executor, etc., are to be deemed as assessees, for the purpose of this section only and consequently all the rights and liabilities of an "assessee" as defined in section 2 (*2*) will automatically follow.

Section 25 (*3*) speaks of "assessee" but other sub-sections to section 25 refer only to "person".

Sections 27, 28 and 29 of the Act speak of "assessee". Section 27 especially says that a person served with a notice under section 29 is an "assessee". In the absence of any express provision, the heirs are not assessee, except where assessment has been made under section 24-B (*2*).

From the wording of section 24-B (*2*), it appears that the Legislature intends that the term "assessee" should be applicable to cases coming under it and consequently executors, administrators, and other legal representatives are to be treated as "assessee" when an assessment is made under section 23 read with section 24-B (*2*).

Thus where an assessment under section 23 (*4*) is made on a person who dies, subsequently the heirs, etc., are not entitled to a petition under section 27 or an appeal under section 30.

The Act goes so far as to authorise representative of a deceased person or person disabled to receive such refund or to make such claim for the benefit of such person or his estate. Thus the new section 49-B provides right to claim or recieve refund by the executor, administrator or other legal representative of an assessee who is dead.

But there is no such provision in section 27 and it is an axiomatic truth that the *express mention of one thing implies the exclusion of another.*

Applicability of Section 34 :

If the estate of the deceased is assessed either under sub-section (*2*) or (*3*) of section 24-B, no occasion arises to introduce the provision of section 34, because the estate has not escaped assessment, but has been assessed under the Amendment Act—*Durabsha Nasarwangi Mehta* v. *C. I. T., Bombay,* (decided on 22nd. August, 1934 ; Bombay High Court).

Effect of Section 24-B :

This section provides that an executor, administrator or other legal representative of a deceased person shall be treated as an assessee for the purposes of an assessment on the income of a deceased person. For the purpose of making such assessments, the Income-tax Officer may require the executor, administrator or legal representative of the deceased to produce documents or other evidence under sections 22 and 23. All the provisions of the Act relating to the assessment under section 23 will therefore follow ; *e.g.*, a notice of demand can be issued to the legal representative under section 29, and an appeal can be filed by him under section 30 or other relief sought by him in the circumstances and to the extent that similar relief could have been sought by the assessee had he been alive.

The liability of an executor, administrator or other legal representative in respect of tax due by the deceased is, however, confined to the payment of tax to the extent to which the estate of the deceased is capable of meeting the charge.

As regards the provisions for refund in such cases, see section 49-F (*I. T. Manual*).

Assessment in case of discontinued business.

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

(*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 bnsiness, profession or vocation up to the date of its discontinuance.

(*3*) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, then, unless there has been a succession by virtue of which the provisions of sub-section (*4*) have been rendered applicable no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(*4*) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939, 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 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.

(*5*) No claim to the relief afforded under sub-section (*3*) or sub-section (*4*) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be.

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

Business closed down :

Sub-section (*1*) of this section provides an exception to the general rule that assessments are made on the profits of the previous year. In order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses, professions or vocations that close down during the course of a financial or commercial year, it is provided that in such cases in addition to the assessment on the income of the preceding year a further assessment may be made in the year in which a business, profession or vocation is closed down, on the income of that year. Sub-section (*2*) imposes a statutory obligation on persons discontinuing a business, profession or vocation to give notice of such discontinuance within 15 days of the discontinuance.

It is to be noted that these provisions apply only to businesses, professions, and vocations, that is to say, to profits or gains taxable under section 10 and further, that they apply only to any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918. They do not apply to any business, profession, or vocation on which income-tax had been charged under the provisions of that Act, as these are subject to the special provisions of sections 25 (*3*) and 25 (*4*) which are described below.

The power to make this additional assessment under section 25 (*1*) is a discretionary power which may be exercised whether the business, etc., is a purely temporary business commencing and closing down in the same year, or whether it is a business that has been in existence and has been previously taxed under the present Act. It will be used in cases where there may be reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business, etc., closes down. Where no difficulty in making the assessment and collecting the tax in the usual manner is anticipated, the special powers conferred by this sub-section will not be used.

The profits to be taxed under the provision of section 25 (*1*) are the profits accruing between the end of the last "previous year" of which the profits have been taxed and the date of the discontinuance of the business. Further, the rate to be applied in taxing the discontinued business under sub-section (*1*) is the rate in force in the year in which the assessment is made.

Under sub-section (*3*), where tax has been charged on a business, profession or vocation under the provisions of the Income-tax Act of 1918, no liability to tax exists in respect of profits or gains for the period between the end of the last "previous year"

and the date of discontinuance unless sub-section (*4*) applies. The assessee in such a case is also entitled to substitute the profits of that period for the profits of the last "previous year". For example, in the case of a business whose "previous year" ends on 31st March, if it closed down on March 31st 1940, its assessment for 1939-40 will be on the profits for the year ending 31st March, 1939, or at its option, on the profits of its year ending 31st March, 1940 and no assessment will be made for 1940-41. If such a concern closed down on 30th April, 1939, it would still be assessed in the year in which it closed down (1939-40), but the assessment would be on the year's profits to 31st March, 1939, or at its option on the profits of the month of April, 1939, and no assessment would be made for the year 1940-41. If, however, the concern's "business year" ends on 30th April and it closes down on 30th September, 1939, its assessment in the year 1940-41 would be on the profits of its year to 30th April 1939 or at its option on its profits from 1st May 1939 to 30th September 1939 and no assessment would be made for the year 1941-42. This special provision applies only to a business, profession or vocation on which tax was charged under the Act of 1918, and when a claim for this concession is made, it must be supported by proof that tax had been charged under the Act of 1918 in respect of that very business, profession or vocation.

The amendment by the Income-tax (Amendment) Act, 1939, sub-section (*3*) and the addition of sub-section (*4*) are made necessary by the amendments of section 26 which now provide for the taxation of the predecessor in respect of his share of the profits where there has been a succession. In such a case as the predecessor will have to pay tax in respect of the profits made right up to the date on which he transferred the business, it is he and not the successor who should get the relief provided by sub-section (*3*), and the amendment effects this as from the first day of April, 1939. The date on which the business was started by this predecessor is immaterial to the successor, since he (the successor) will only pay tax in respect of the actual profits made by him from the date upon which he took over the business to the date upon which he finally discontinues it or transfers it to somebody else.

An assessee will be allowed the benefit of section 25(*3*) if (*a*) he has (for example) both a business and a profession and discontinues only one of them or (*b*) has more businesses than one and discontinues one or more, but not all of them, provided that they are genuinely distinct businesses for which separate accounts are maintained ; and not mere branches of a single business. The section will, of course, only be applied to the income of the profession or business that is actually discontinued.

Sub-section (*5*) imposes a statutory limitation of time within which a claim to be assessed under sub-section (*3*) or sub-section (*4*) can be made.

Where a business, profession or vocation belonging to a firm or to an association of persons is completely discontinued and is not merely transferred from one proprietor or set of proprietors to another, or when an association of persons is dissolved, section 44 specifically provides that the persons who were members of the firm or of the association on the date of such discontinuance, or on the date of dissolution of the association, as the case may be, are jointly and severally liable to any tax due from the firm or from the association. (*I. T. M.*)

New Business :

Assessments under the Act are made on the profits of the "previous year". When a new business is started, therefore, no assessment will, as a rule, be made in the first year, and the assessment in the second year will be made on the profits of the preceding year. The only exception is that referred to in the next paragraph.

Business closing down :

(*i*) The only exception to the general rule that assessments are made on the profits of the previous year is contained in section 25 (*1*) where, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses, professions or vocations that close down during the course of a financial or commercial year, it it provided that in such cases in addition to the assessment on the income of the preceding year a further assessment may be made in the year in which a business, profession or vocation is closed down, on the income of that year. Sub-section (*2*) of that section imposes a statutory obligation on persons discontinuing a business, profession or vocation to give notice of such discontinuance within 15 days of the discontinuance.

(*ii*) It is to be noted that these provisions apply only to businesses, professions, or vocations, that is to say, to profits or gains taxable under section 10, and further, that they only apply to any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918. They do not apply to any business, profession, or vocation on which income-tax had been charged under the provisions of the Act, as these are subject to the special provisions of section 25 (*3*) which are described below.

(*iii*) The power to make this additional assessment under section 25(*1*) is a *discretionary* power which may be exercised whether the business, etc., is a purely temporary business commencing and closing down in the same year, or whether it is a business that has been in existence and has been previously taxed under the present Act. It should only be used in cases where there is reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business, etc, closes down. Where there is reason to believe that there will be no difficulty in making the assessment and collecting the tax in the usual manner, that is, in the year after the business closes down and on the profits of the year in which it did close down there is no need to use the special powers conferred by this sub-section.

(*iv*) The profits to be taxed under the provisions of section 25 (*1*) are the profits accruing between the end of the last "previous year" of which the profits have been taxed and the date of the discontinuance of the business. Further, the rate to be applied in taxing the discontinued business under sub-section (*1*) is the rate in force in the year in which the assessment is made.

(*v*) Where a business, profession or vocation had tax charged on it under the provisions of the Income-tax Act of 1918, the provisions of sub-section (*1*) to section 25 cannot be brought into use for the assessment of any such business. On the contrary, it is under the provisions of sub-section (*3*) of section 25, not liable to tax in respect of profits or gains for the period between the end of the last "previous year" and the date of discontinuance, but is entitled to substitute the profits of that period for the "previous year". For example in the case of a business whose "previous year" ends on 31st March, if it closed down on March 31st, 1923, its assessment for 1922-23 will be on the profits for the year ending 31st March, 1922, or at its option, on the profits of its year ending 31st March, 1923. If such a concern closed down on 30th April, 1922, it would still be assessed in the year in which it closed down, but the assessment would be on the year's profits to 31st March 1922, or at its option on the profits of the month of April, 1922. If, however, the concern's "business year" ends on 30th April and it closes down on 30th September, 1922, its assessment in the year, 1923-24 would be on the profits of its year to 30th April 1922 or at its option on its profits from 31st May, 1922 to 30th September, 1922. This special provision applies only to a business profession or vocation on which tax was charged under the Act of 1918, and when a claim for this concession is made, it must be supported by proof that tax had been charged under the Act of 1918 in respect of that very business, profession or vocation.

(*vi*) An assessee should be allowed the benefit of section 25 (*3*) if (1) he has (for example) both a business and a profession and discontinues only one of them or (2) has more business than one and discontinues one or more, but not all of them, provided that they are genuine distinct business for which separate accounts are maintained and not mere branches of a single business. The section should, of course, only be applied to the income of any profession or business that is actually discontinued.

(*vii*) A claim to be assessed under this sub-section may be admitted if it is made not later than the end of the year following that in which the business, profession or vocation is discontinued.

N. B.—The provisions of section 25 apply to the complete stoppage or discontinuance of a business, profession or vocation and do not apply to any change in the proprietorship. When there is any change in the proprietorship merely, the provisions of section 26 apply. (See paragraph 98.)

(*viii*) Where a business, profession or vocation is completely discontinued and is not merely transferred from one proprietor or set of proprietors to another, the person who carried on the discontinued business is responsible for the payment of the tax, and where the proprietorship was vested in the firm, section 44 specifically provides that the persons who were members of the firm on the date of such discontinuance, are jointly and severally liable to any tax due from the firm.

Effect of the Amendment :

Section 25 has been amended to provide for the assessment of profits of the "previous year" on the persons who actually received those profits, with power, if necessary, to recover the tax from the existing owners of business, it becomes necessary to amend also section 25 (*3*) to ensure that relief under the section enures to the person who would otherwise be assessed for one year more than the period of his trading. Thus in the case of the first succession (other than a change in the constitution of a partnership) after the coming into operation of the Amending Act, to a business which has at any time been assessed under the previous Act, the predecessor shall be entitled to claim the relief that would have been claimed had there been complete cessation on the date of succession. Whether or not relief has been claimed on the occasion of the first succession, no relief should be granted on the occasion of either a subsequent succession to, or a complete cessation of the same business, since any assessee after the first succession would have been charged the tax of his actual profits for all years. In the Statement of Objects and Reasons it is stated that the sub-section (*3*) of section 25 is amended and a new sub-section 25 (*4*) has been added so as to give to the first

successor to a business, profession or vocation after the commencement of the Amending Act, the benefit given by the old Act by section 3 to the owner of a discontinued business assessed under the Act of 1918. That benefit, *viz.*, being allowed to substitute the profits from the end of the previous year up to the date of discontinuance for the profits of the previous year. is given because otherwise those assessed under the Act of 1918 would be assessed for one year more than the number of years the business was in existence. Since section 26 provides that wherever there is a succession the predecessor shall be assessed on the previous year's profits, it is necessary to give this relief to the predecessor in the case of succession to a business assessed under the Act of 1918.

Sub-section (*5*) prescribes a period of limitation for a claim under sub-sections (*3*) and (*4*). Thus claims under sub-section (*3*) or (*4*) shall not 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.

Discontinuance :

Where a company carrying on a business went into voluntary liquidation and the liquidator transferred the business to a new company which continued the business it was held that this was not a case of discontinuance within the meaning of section 25 but is really a case under section 26 : *In re, M. H. Shanjana and Company, Ltd.* 50 Bom. 87 : 95 I. C. 517. Discontinuance means a complete stoppage of the whole business and cannot include cases of partial stoppage—*Highland Railway* v. *Special Commissioner*, 2 T. C. 151. But whether two or more distinct trades or businesses are carried on or whether there are truly two departments of one business, is a question of fact—*Howden Boiler and Armaments Co., Ltd.* v. *Stewart*, 9 T. C. 205 and *Scales* v. *George Thompson & Co , Ltd.*, 13 T. C. 83.

In *Kalumal Shorimal* v. *Commissioner of I. T., Punjab*, A. I. R 1929 L. 461 : 3 I. T. C. 341, when a son relinquishes his right, title, and interest in favour of his father with power to realise arrears, there is no discontinuance within the meaning of section 25 (*3*).

In the unreported case of *Hanutram Bhawumal* v. *C. I. T.*, 1938 I. T. R. 290, it was held that the phrase "discontinuance of a business is apt to be used in an ambiguous sense." A business may change hands, a partner may cease to be a partner, the business being carried on by his copartners, but such events do not constitute a discontinuance of the business in the sense meant

in section 25. Such events are merely a change in the ownership of the business.

In *Nehal Chand Kishanlal* v. *C. I T.*, 2 I. T. C. 338 : A. I. R. 1927 All. 347, it laid down that "discontinuance" may mean total abandonment or extinction, it may mean self-extinction for the purpose of re-construction. In *C. I. T.* v *N. N. Chettyar Firm*, 1934 I. T. R. 83, it was laid down that where there was no continuity the fact that another business was started on the same premises with the same assets did not bring it within the purview of "succession". Where business is transferred by sale, to another, there is no discontinuance—*Bartlett* v. *C. I. R.*, 7 T. C. 229. In *Fletcher* v. *C. I. T.*, 8 I. T. C. 320, it is stated that the sub-section is only intended to prevent double taxation and does not apply to a case when the income-tax is assessed on salaries in the year in which they are earned. In *Haranand Rai Har Bhagat Rai* v. *C. I. T.*, 9 I. T. C. 215, it was held that discharged Government Treasurers were not entitled to the benefit of section 25 (*3*). Under section 66 in a reference, a claim under section 25 (*3*) can be made, if not made before the taxing authority,—*C. I. T.* v. *Sind Light Railway*, 6 I. T. C. 271., In *Nachiappa Chettyar* v. *C. I. T.*, 6 I. T. C. 369 : 1933 Mad. 701, it is laid down that a partner of a discontinued firm is liable to super-tax and income-tax is exempted under notification no. 21 of 1929.

Notification No. 21 :

In exercise of the powers conferred by section 60, the Governor-General in Council is pleased to direct that no income-tax shall be payable by an assessee in respect of such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to his share in the firm at the time of such discontinuance, if tax has at any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918, or if assessment has been made on the firm in respect of such profits or gains under sub-section (*1*) of section 25 ; provided that such part of the profits or gains shall be included in computing the total income of the assessee.

Assessee :

Although strictly speaking the word assessee means a person by whom income-tax is payable, under this section the expression has been so loosely and vaguely used that it can be safely taken to include heirs and personal representatives of the assessee. It was held in the case of *Govinda Saran*, 105 I. C. 556, that heirs of a deceased assessee may be allowed to claim refund and to participate. The Patna High Court in A. I. R. 1930 Pat. 81, held that proceedings do not abate on the death of the assessee

and heirs must be allowed to be heard. By an analogy it can be construed that heirs have the same rights and privileges as enjoined on the assessee. Attention is also drawn to the case of *Mitchel and others* v. *Macneil & Co*, C. W. N. 630.

Burden of Proof :

An assessee who claims discontinuance shall have to prove the discontinuance as the onus lies heavily on the person who claims it. (A. I. R. 1932, Lahore 344.)

Appeal :

As in the previous Act, so also in the Amendment Act of 1939, an assessee has been given a right to prefer an appeal under section 30 of the Act objecting to any order under sub-section (*2*) of section 25.

Bad debts after dissolution of business :

The Calcutta High Court in the case of *Chimanlal Rameswarlal* v. *C. I. T., Bengal*, 8 I. T. R. 408, held that where a firm was dissolved and its assets and liabilities were divided up and allotted to the assessee and other partner, and the assessee thereafter carried on the business himself, writing off the debts of the old business could not be properly allowed. It was held that the losses were capital in nature.

Assessment after partition of a Hindu undivided family.

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

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

(*2*) Where such an order has been passed, or where any person has succeeded to a business,

profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (*1*) or section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it ; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23 :

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

(*3*) Where such an order has not 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.

Amendment of section 25-A (*1*)—effect of :

The deletion of the expression "that a separation of the members of the family has taken place and" occurring in the previous Act, is a great boon to a Hindu undivided family applying under section 25-*A* for separation. Under the previous Act it was mandatory on the Income-tax Officer to make enquiries and he was to satisfy himself on two conditions, *viz* :—

(1) that a separation of the members of the family has taken place ;

(2) and that the joint family property has been partitioned.

Under the Amendment Act of 1939, condition No. (1) has been deleted and only No. (2) remains intact. The result is that section 25-*A* will now come into operation and Income-tax Officer shall have to give effect to the section when only the joint family property stands partitioned. Joint messing and joint ownership of the house etc. cannot now stand against the application under section 25-A.

Amendment of section 25 A (*2*) :

The amendment of section 25-A (*2*) is consequential—to give effect to the principle enunciated in section 26, that the assessment on the profits of the previous year should be made on the person who received the profits—in this case the disrupted Hindu undivided family.

Scope of the Section :

Section 25-A will only apply if a member of a Hindu undivided family claims that it has become divided. If, however, the family prefers to go on being assessed as undivided though really divided, the Income-tax Officer has no authority to act under this section. (I. T. M., para 54).

Decided Cases :

It has been held in a case where the assessees who are four-brothers, constituting a joint family, filed separate sworn statements before the officer that they had become divided in *status inter se*, ten years ago but the officer treated the declarations as false, and refused to accept the petition and actually assessed them as joint family, that at any rate on the date when the statements were made, the brothers had become divided in status by reason of their declarations. (Vol. 2, Part 7, Page 381, *Srinibasam*).

Joint Family or Not :

The Calcutta High Court in the case of *Gangasagar Ananda Mohun Saha*, 33 C. W. N. 1190 : A. I. R. 1930 Cal. 178, held : "there can be hardly any doubt that specific portions of the properties or specific properties have been assigned to specific co-parceners. This amounts to cessation of joint estate." It was held that the assessment should be as an unregistered firm.

But in the case of *Harisingh Santok Chand*, 2 I. T. C. 80, it was held that where there was separation and where partners appropriate the profits in definite shares and where there were individual dealings and capital accounts in the name of each member, it would constitute a joint family.

Distribution of Joint Family :

Vide the case of *Kalu Mal Shori Mal*, 103 I. C. 522 : A. I. R. 1929 Lahore 461 : 3 I. T. C. 341.

Whether Retrospective :

Effect of section 25-A is not retrospective as has been observed in the case of *Arunachallam Chettyar*, A. I. R. 1929 Mad. 769. "It may often happen that a joint family can claim separation on the ground of separate messing and definite allocation of shares and enjoyment thereof. The trend of present ruling is to treat such family as unregistered firm. To me it seems that whenever any claim for separation is made, it is the duty of the Income-tax Officer to enquire into the allegation and to come to a definite conclusion whether there has been any change in the status. In case of separation of the joint estate, the assessee can be treated as unregistered firm."

Section 25-A (*3*) :

Apart from this decision, the Act of 1930 has very definitely made it clear that where no order of separation has been passed, such family shall be deemed to continue as Hindu undivided family.

Section 25-A, when Applicable :

Section 25-A is operative and applicable when the assessee claims at the time of assessment under section 23, that a separation has taken place. This claim of separation shall have to be made by a member or by all members. The Income-tax Officer has no jurisdiction, when no claim is made, to make an adjudication on this point.

There is nothing in the Act that such a claim is to be made in writing, it can be claimed orally as well.

Section 25-A says : "where at the time of making an assessment." Evidently it means that a claim for separation can be made when the final assessment is taken up. This does never mean that such a claim is not maintainable when notice under section 21 (*2*) has been issued or not. All that it requires is that before any assessment is made, any claim to be treated as divided, is to be adjudicated before the actual assessment is made. Where such claim is forthcoming, it is mandatory on the Income-tax Officer to make such enquiry as he deems proper. Before any final order is recorded, it is incumbent on the Income-tax Officer to issue notices of inquiry on all the members of the Hindu undivided family.

When an order under section 25-A is allowed, assessment is to be made on the total income of each member and all such members are jointly and severally liable for the tax.

The procedure to be followed by the Income-tax Officer is to treat the divided family, as undivided for the time being and then to complete the assessment as if no separation has taken place. At the time of issuing demand notice, the Income-tax Officer has to apportion the tax in accordance with the shares allocated to each member. It is desirable when each member is jointly and severally liable, different demand notices should be issued for better realisation and smooth working of the section.

Where an order under section 25-A is allowed, tax is levied on the total income received by the members jointly, but the privilege conferred on the Hindu undivided family under section 14 (*1*) that the tax shall not be payable by an assessee in respect of income which he receives as a member of Hindu undivided family, is taken away.

The Income-tax Officer has no authority to refuse an application on the ground that all co-parceners have not joined in their claims, but the language of section 25-A (*1*) is quite clear, it states : "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," etc. So any member can claim jointly or separately.

Application at the time of making an Assessment under Section 23 :

It has been said that where claim under section 25-A is allowed, notwithstanding the finding that family stands divided, all members and groups of members are jointly liable for the tax on their total income. The section refers to a claim being made at the time of assessment and possibly it refers to cases of this nature, *e. g.* when *A* , *B.*, *C.*, three brothers, in 1934-35 claim separation within the meaning of section 25-A, the income of the three brothers for the previous year is assessed jointly, no matter if the separation takes place after the accounting year.

But suppose the above 3 brothers who applied under section 25-A, had no joint family business in 1932-33, but had individual business income, it does not stand to reason why each of them should not be assessed individually. It may be contended that the Hindu undivided family during the assessment year 1932-33 should have been brought this to the notice of the Income-tax Officer that the family stood divided and failure to put forward the claim in 1932-33 deprives the assessee of separate assessment in 1933-34. There is much force in this

contention, and reading the section itself, there is hardly any scope for the members to claim separate assessment in the year, when a claim under section 25-A is made and allowed.

But what would be the position where a claim under section 25-A is made at the initial stage, say when only notice under section 22(2) has been served ; cannot the members come forward and say that as the separation has been claimed not at the time of making an assessment under section 23, but at the earliest stage, why the immunity of separate assessment should not be enjoyed by the members.

The contention may be plausible, but it is neither logical nor sound. It seems reasonable that "where at the time of making an assessment under section 23" only gives a long rope to the assessee to put forward his claim at any time before assessment is made and nothing else. In *Maharaja of Darbhanga*, A. I. R. 1933 at 123, the expression "where at the time of making an assessment under section 23" means "when time comes to make assessment."

Joint-family Partial division of :

Section 25-A refers to a partition among the members of the Hindu undivided family when the Income-tax Officer has been satisfied that separation has taken place and that the joint-family property has been partitioned among the various members or groups of members in definite proportions, it is not applicable to a case where there is an allegation of partial division of a particular portion of the joint property.

The section contemplates a case where a distribution of the family occurs ; so that a joint family as such, ceases to exist and function, and no property belonging to the Hindu undivided family retains the character of a joint-family property.

It is immaterial whether it is divided by metes and bounds or is held in defined shares This is perfectly clear from the language employed by section 25-A, sub-section (*1*) which provides that "where at the time of making an assessment under section 23 . .....in definite portions he shall record an order to that effect."

What the section contemplates is "a separation of the members of the family" which implies that the status of certain members undergoes a change. In other words, they cease to be members of the jointly family. It is an elementary rule of Hindu law that a mere declaration of an intention to separate, brings about a disruption of the family, at any rate, so far as the members making the declaration are concerned.

Partition of the joint family property by metes and bounds is not a necessary requirement of the disruption of the family. If the properties remain intact but the separating members' share in them is well defined or definite, they are nevertheless considered as "partitioned."

But where members agree to divide among themselves a particular joint property, keeping their status and the rest of the joint family intact, they cannot be regarded as "separate members," *Biradhmal Lodh* v. *Income-tax Commissioner*, A. I. R. 1934, All. 217.

In the case of *Sher Sing Nathairam* v. *Income-tax Commissioner of Punjab, Delhi*, 137 I. C. 273 : A. I. R. 1935 L. 83, where a decision is being waited as to the meaning of the term "partition."

Powers of Income-tax Officers :

The Income-tax Officer has inherent jurisdiction to ask the assessee to prove the alleged partition. An assessee must be given opportunity to prove his allegation and refusal to hear him makes the assessment a nullity, *In Radheylal Bal Mukunda*, 4 I. T. C. 454 : 52 All. 991 : A. I. R. 1931 All. 88.

The Income-tax Officer is not bound to allow separation where he is confronted with a registered deed, which does not discharge the onus on the part of the assessee and he may on sufficient evidence hold that notwithstanding execution of the deed, there has been no disruption : *Ghanasyam Das Ram Kumar* v. *Commissioner, B. & O.*, 6 I.T.C. 198. In the case of *Mathura Das & Sons*, A. I. R. 1933 L. 815, it has been held that a mere division of the property in a will even though it be a registered one is no evidence of such....division and cannot confer title. Such a document cannot be deemed to be evidence of disruption of a Hindu undivided family within the meaning of section 25-A of the Income-tax Act.

Under section 25-A it is open to the Income-tax Officer to arrive at a finding against the declaration made. Where an alleged partition deed talks of the separate character of the business, carried on by some of the members of the family, that alone does not imply a disruption of joint family—*In Chokeylal Murlidhar*, A. I. R. 1932, All. 471 : 4 I. T. C. 7. Similar observations were made in the case of *Jan Saha Nathu Saha* v. *Commissioner, Punjab*, 6 I. T. C. 165 : 138 I. C. 187, relying on the Calcutta High Court cases of *Brijlal* v. *Commissioner of Income-tax, Bengal*, 4 I. T. C. 369. It has been held that the Income-tax Officer can decide a question as to dissolution or existence of a joint family and that finding of fact cannot be interfered with by the High Court.

Justice Rankin in this case observed "it was tolerably clear in the absence of some evidence to the contrary, that the piece of paper (referring to the partnership deed) which the parties had signed was expected to be magical talisman which would protect them from the imposition of super-tax and had no other reality at all."

In *Kirpal Singh* v. *C. I. T*, A. I. R. 1937 L. 897, it has been held that where a Hindu joint family constitutes itself into company with specific shares belonging to the individual members of the undivided joint family, the normal supposition would be that the transaction showed that the joint family had disrupted This normal supposition can be rebutted by evidence showing that the whole of the transaction is a mere camouflage But in case where taxing authorities had themselves adopted the supposition as being genuine for some years, there must be strong evidence to show that the transaction is really not *bonafide*.

Merely because the Income-tax Officer accepts the allegation of the assessee that there has been a partition in a certain year, he is not debarred from considering the truth about the fact of partition in the next year The fact that assessee's allegation has been accepted in the previous year, may possibly alter the burden of proof—*In the matter of Mathura Das & Sons* v. *Commissioner of Income-tax, Lahore*, A. I. R. 1933 L. 815 : 147 I. C. 273.

The Income-tax Officer has power to hold in the face of a registered deed that there has not been any separation. He has authority to ask for all possible details of evidence of separation —*In Pyari Lal* v. *Commissioner of Income-tax*, 147 I. C. 862 · 7 I. T. C. 31 : A. I. R. 1933 L. 827.

It is open to the Income-tax Officer to go into this question which is an issue of fact (*see* 5 I. T. C. 150 · 7 I. T. C. 31). It has long been held that a wrong decision in the previous year by an Income-tax Officer can be corrected in a subsequent year—*Tarachand Pohumol* v. *C I. T.*, 9 I. T. C. 256 : A. I. R. 1936 L. 836.

When the Income-tax Officer finds that there has been a genuine partition of the firm of the family, although there were other assets, particularly land and houses undivided, assessment should be made as a firm, the rest of the property remaining joint family property—*Janki Das Gopinath Karnal* v. *C. I. T., Punjab*, (1935) 8 I. T. C. 457.

Section 25-A contemplates an actual partition by metes and bounds of the joint family property. If actual partition were not contemplated, the clause "and that the joint family property has

been partitioned amongst the various members or groups of members in definite shares" would not have been added to the section. The words are clear and it is impossible to hold that the legislature added the second clause without intending that it should have a meaning—*Salıgram Ram Lal* v. *C. I. T., Lahore,* (1934) 7 I. T. C. 354. This decision of the Lahore High Court does not support the view expressed by the Allahabad High Court.

At the same time Justices Jailal, Dalip Singh and Skemp of the Lahore High Court, are in full agreement with the Allahabad case and they are of opinion that section 25-A does not require a partition by metes and bounds. The section contemplates a finding that there has been a disruption and secondly that the joint family property has been divided amongst the various members. A mere declaration of disruption is not sufficient—there must be a definite ascertainment of shares.

The expression "partitioned in definite portions" connotes a partition in definite shares—*Sher Sing Nather Ram* v. *C. I. T., Punjab,* (1935) 8 I. T. C. 38.

In *Bangsılal Abirchand* v. *C. I. T.,* 9 I. T. C. 206 : A. I. R. 1939 N. 121 : 162 I. C. 554, it was held that a division by metes and bounds of the property was not necessary (see 7 I. T. C. 34 : 8 I. T. C. 38). In *Salıgram Ramlal* v. *C. I. T.,* 7 I. T. C. 364 : 1934 I. T. R. 448 : 1934 L. 942, it was also held that actual division by metes and bounds was not necessary. Similar views were expressed in *Shersing Nathuram* v. *C. I. T.,* 8 I. T. C. 38 : 1935 L. 154 : 154 I. C. 191, that partition by metes and bounds were not necessary. In *Jankidas Gopinath* v. *C. I. T.,* 8 I. T. C. 457. it was held that a Hindu undivided family can be partially partitioned, although in *Rajaram Joggi* v. *C. I. T.,* 9 I. T. C. 214, it was held that in case of partial partition of the joint family property there is no presumption that the rest of the property remains joint or that the joint family is put an end to.

The real point at issue is whether when, at the time of assessment, a genuine firm has emerged from the disruption of a Hindu undivided family, the income of the account year is to be assessed in the manner laid down in section 25-A or whether in view of the succession to the business of the erstwhile Hindu family undivided by a partnership firm, it is to be made, in the matter as laid down in section 26 of the Act. It is held that in such circumstances the provision of section 25-A (*2*) have been eclipsed by those of section 26, the emergent firm whose existence has not been disputed should have been registered under section 26-A.

On a perusal of the two sections, it is apparent that section 25-A applies only where there has been a partition among the members of the undivided family and nothing more. Section 26 would apply where a firm has been newly constituted, and it does not matter whether this firm owes its origin to certain individuals, strangers to each other, entering into a contractual relationship and agreeing to constitute a firm, or whether it owes its origin to joint family whose members have divided amongst themselves and who have now entered into an agreement to constitute themselves into a firm. In either case when at the time of making an assessment a firm has come into existence, the assessment must proceed on the basis of section 26.

In *Beliram* v. *C. I. T.*, 8 I. T.C. 380 : A. I. R. 1935 L. 275, it was held "where on the breaking of a joint family the separated members immediately form themselves into a firm, section 26 will come into operation and the assessment on the firm should be made under that section and not under section 25-A of the Act." In this Lahore case only some members of the quondom Hindu undivided family formed the partnership and this brought about a change of identity so far that it was possible to say that there had been a succession by another person within the meaning of section 26 ; but in cases where the members of the new family were the members of the Hindu undivided family it did not alter the position.

Section 3 of the Act speaks of—'Individual, Hindu undivided family, company, firm and other association of persons' and it is clear that all these expressions are mutually exclusive. Under section 2(*9*) "Person" includes a Hindu undivided family but it does not include a firm and therefore it can safely be said that a person carrying on a business, profession or vocation (namely the Hindu undivided family) has been succeeded in such capacity by another entity (namely the firm.)

A Full Bench of the Lahore High Court in the case of *Mittar chand Lakshidas* v. *C. I. T.*, A. I. R. 1937 L. 172 : 10 I. T. C. 102, has almost on similar facts, held that the assessment ought to be made on the basis of section 26, and they pointed out that the mere fact that in the previous Lahore case (*Beliram's case*) only some of the members of the joint family had continued the business on contractual basis makes no difference whatsoever because the business which was carried on by a joint family is now continued by a firm which has been newly constituted. Section 25-A would cover the cases of a Joint Hindu family in which there has been a disruption and consequent partition but no continuance of the business either by the members of the joint Hindu family on contractual basis or by some of them alone or jointly with others or even by strangers. When the

business has been discontinued, section 25-A will apply; but when it is continued, section 26 will apply. This view is supported by the judgment in 8 I. T. C. 380 in the case of *Beliram & Brothers.*

This matter came up for decision again before the Lahore High Court in *Ramrekha Mal and Sons Ltd.* v. *C. I. T.*, A. I. R. 1937 L. 830 : 177 I. C. 821 : 39 P. L. R. 934, and the Bench of that Court reiterated the view held in the former two cases and observed that section 25-A applies only to those cases where the question involved is one of pure and simple disruption of a Hindu undivided family unattended by conversion or transformation of it into a new entity and that sub-sections (*2*) and (*3*) of section 25-A "are merely complementary of the first sub-section and deal with only those matters which arise therefrom" and similarly section 26 "is intended to meet completely these cases which are specified in sub-sections (*1*) and (*2*) thereof respectively, in whatever way the situation envisaged there may arise".

Similar views were propounded in the case of *Jugal Kishore Mukhatlal* by the Allahabad High Court, (1938) 6 I. T. R. 494.

Be it understood, that without disruption the conversion of a Hindu undivided family into a firm or a company in its entirety is inconceivable and that so long as it remains undivided, the question of succession to it as a whole by another entity does not arise. In *Tara chand Pohumal* v. *C. I. T.*, 9 I. T. C. 256 : A. I. R. 1936 L. 836, it appears that the Hindu undivided family was allowed registration as firm on disruption although subsequently it was refused.

Apparently therefore the view expressed in *Jupudy Kesavrao* v. *C. I. T.*, 70 M. L. J. 23 : 9 I. T. C. 64, cannot be considered sound. The judgment ran thus :—

"The terms 'the person carrying on any business, profession or vocation has been succeeded in such capacity by another person' may well suggest that what is contemplated is merely succession in the management of business by another person, but obviously that cannot have been the intention of the Legislature. It appears to us that the word 'succession' as used in the section connotes a transfer of ownership and the person who succeeds another must have been by such succession become the owner of the business which his predecessor was carrying on and which he after the succession carries on in such capacity, that is, the capacity as owner. If this view is correct, as we think it is, then it seems fairly clear that the undivided Hindu family which was carrying on business has not been succeeded to such capacity by the petitioner as the petitioner was himself in part the owner of the property already and as such there has been no transfer of ownership in the business as he has become entitled to it by survivorship".

Similar views were expressed in the case of *Thotepu Chinna Pollayya & Ors.* v. *C. I. T.*, 9 I. T. C. 377 : 1937 I. T. R. 182, as the case was in all fours with that of the case of *Jupudy Kesava Rao*, 9 I. T. C. 64. In *C. I. T.* v. *Jessingbhai Ugarchand*, 175 I. C. 816 : A. I. R. 1938 B. 350, this very question arose and CJ. Beaumont observed : "now this case is absolutely on all fours with a case which came before a Full Bench of the Madras High Court (presided by CJ. Bessely), *Chunna Pollayya & Ors.* v. *C. I. T.*, 9 I. T. C. 377 and the court there held that as the firm consisted of exactly the same individuals as the previous joint Hindu family, there had been no succession within the meaning of section 26 (*2*) and that the assessment must be made under section 25-A (*2*).

"It is clearly not desirable that conflicting decision under that Act which applies to the whole of British India should be given by different High Courts on exactly similar facts, and we propose therefore to follow the Madras case without expressing any opinion of our own. "In our view a partial succession to a Hindu undivided family is not repugnant to any notion of law. Under Hindu Law, a Hindu undivided family can through its *Karta* alienate a part of its property to a stranger without affecting its own status in any manner. The alienee can even claim partition on the basis of his own acquisition. If an alienation can be made to a stranger, a replacement by a stranger can also take place. A Hindu undivided family is a different person altogether from a company or a firm, its rights, its obligations, its privileges and its constitution are altogether different from the rights, obligations, privileges and constitution of a company or a firm ; and as it is possible under the Income-tax Law that a person conducting several businesses may be succeeded in a particular business of his, a Hindu undivided family as a person can in the matter of such business be succeeded by a company or a firm to that extent. This view does not come into clash with the conclusion arrived."

But owing to the amendment of section 26 by the Amending Act of 1939, the above decisions are practically useless.

The amended section 25-A gives effect to the principle as enunciated in section 26 of the Indian Income-tax Act, 1939, that the assessment on the profits of the previous year should be made on the person who received the profits, e.g. on the disrupted Hindu undivided family.

Thus the curtain has been rung down over the vexed question as to who should be assessed when an application under section 25-A is allowed. Of course, in the second year the assessment shall have to be made not on the disrupted Hindu undivided family but on person who carries on the business.

Joint-Family, if can be Registered :

Section 26-A is not independent of section 25-A and necessarily the contention that the Income-tax Officer has no option but to register a joint-family where he is faced with a registered deed, is erroneous. The very definition of a "Firm" involves a contractual relationship between several persons and where the finding of fact of the Income-tax Officer is that there is no contractual relationship between these persons, but the relationship between them is that of a Hindu undivided family, that is a relationship based on a status and not on a contract and there is no firm in existence which the Income-tax Officer can possibly register under section 26-A according to the provisions of law—*In Peyari Lal* v. *Commissioner of Income-tax*, 147 I. C. 862 : A. I. R. 1933 L. 827.

Appeal :

As in the previous Act, so also in the Amending Act of 1939, provision has been made for an appeal under section 30, against any order under section 25-A.

If the Income-tax Officer rejects the claim of an assessee long before the assessment order, it is open to the assessee to file an appeal under section 30, objecting to any order passed by him under section 25-A. It is not necessary that an assessee should wait till the assessment is over. The order of assessment may or may not contain any reference to the application under section 25-A. Moreover section 30 presumably refers to an order under section 25-A and it does not refer to the main assessment.

There is no bar to make a simultaneous appeal both against an order under section 25-A and against the general assessment.

Section 25-A, if Appealable :

Section 30 clearly provides an appeal against a refusal of order under section 25-A. Where the Income-tax Officer makes an assessment after rejecting the assessee's claim under section 25-A, the assessee is entitled to prefer an appeal against the assessment order as a whole challenging there on any illegal order passed under section 25-A. Thus by an appeal an assessee can get relief against the general assessment and also against the Income-tax Officer's order of refusal.

But there is nothing in the Act to warrant the suggestion that wrong order of an Income-tax Officer as a preliminary to his passing an order under section 25-A of the Act may not be made an order of appeal. As a matter of fact the finding of the Legislature has always been to prevent appeals against interim order (*In re Bul Chand Keshob Das*, A. I. R. 1930 Sindh 301).

But it seems reasonable that when an Income-tax Officer passes an order refusing a claim under section 25-A, that order is final so far as he is concerned and section 30 provides an appeal for such refusal. There is a time limit for appeal—assessment order may be passed long after this order and it is idle to think that an interim appeal is not maintainable in this case. In my humble opinion an order refusing the claim under section 25-A, by Income-tax Officer is not a preliminary order—rather it presupposes a final adjudication on the point raised and subsequent assessment of income cannot alter the position at all. In view of this it is always safe and proper to file an appeal as soon as order refusing claim under section 25-A, is passed. This opinion does not militate against the view expressed in A. I. R. 1930 Sindh 301. (*In re Bul Chand Keshab Das.*)

Appeal how Presented :

An appeal under section 30, shall, in the case of an appeal against the order of an Income-tax Officer under section 25-A be presented in Form C (1). A copy of the order, refusing to pass the order as contemplated in section 25-A (*1*) and to make assessments accordingly as laid down in section 25-A (*2*), must be attached along with the appeal.

It is said that one copy of any order, against which an appeal cannot be submitted in the presbribed form, unless accompanied by such a copy (*i.e.* any order under one of the following sections, 26-A, 27, 48-A, and 49) should be supplied to the assessee, free of costs and without application, as soon as the order has been passed. One copy of any other order should be supplied to the assessee on application, free of cost.

If additional copies are required in either case, a charge should be made.

If the criteria for furnishing copy of order is that an appeal cannot be presented in the prescribed form, without the order complained against, it does not stand to reason why a differential treatment should be made in the case of supplying order under section 25-A, without application. The specific mention of sections 26-A, 27, 48 and 49 obviously exclude section 25-A.

Dayabhag Law & Mitakshara Law :

The essence of a coparcenary under the Mitakshara Law is unity of ownership whereas under the Dayabhag law the essence of a coparcenary is unity of possession. So long as there is unity of ownership no coparcener can say that a particular share of the property belongs to him. That he can say only after

a partition. Partition according to the Dayabhag consists in splitting of joint possession and assigning specific portions of property to the several coparcenary (*Gangasagar Anandamohon Saha*, 33 Cal. 1190).

Change in constitution of a firm.

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

Provided that the income, profits and gains of the previous year shall for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same.

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

Change of ownership of business.

(*2*) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (*4*) of section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year :

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from

him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

Scope of sub-section (*1*) of section 26 :

Sub-section (*1*), as amended, now provides that where a change has occurred in the constitution of a firm or where a firm has been newly constituted, the assessment is to be made upon the firm as constituted at the time the assessment is made, but the profits are to be apportioned among the persons who were partners in the previous year and not among the partners entitled to the profits at the time of assessment. This sub-section thus provides for taxation of each partner in respect of the profits to which he was actually entitled in the previous year.

Thus, if a registered firm consisted of partners *A*, *B* and *C*, with equal shares and carried on business throughout the year ended 31st January, 1939 (the previous year for 1939-40 assessment) its total profits amounting to Rs. 30,000, and if on 1st May 1939, *A* retired and *D* came in as a partner taking over *A*'s share, the assessment for 1939-40, would be made on this firm *BCD* because that is the firm constituted at the time of assessment ; but the profits the 'previous year', having been determined, those profits would be divided for assessment purposes between *A*, *B* and *C* (and not between *B*, *C* and *D*). *A*, *B* and *C* would each be assessed on Rs. 10,000 whilst *D* will pay no tax in respect of the profits for the year ended 31st January, 1939, assessed in 1939-40.

In the assessment for 1940-41, if there were no further change in partnership up to 31st January, 1940, the profits would be divisible as follows :—

A—one third proportion of the profits from 1st February to 30th April, 1939.

B—one third of the profits of the whole year ending 31st January, 1940.

C—one third of the profits of the whole year ending 31st January, 1940.

D—one third proportion of the profits from 1st May, 1939, to 31st January, 1940. (*vide* I. T. M.)

Scope of Sub-section (2) :

Sub-section (*2*) as amended applies to cases in which a business, profession or vocation, has changed hands. It provides

that each person is to be assessed in respect of the share of profits to which he was entitled in the previous year. Thus if *B* succeeded *A* halfway through the previous year, and the total profits made were Rs. 10,000 then assuming that the profits were made evenly throughout the previous year, each would be assessed on Rs. 5000.

An important proviso lays down that where the predecessor cannot be found the assessment of the profits of the year in which the succession took place up to the date of succession and of the year preceding that year shall be made on the successor in the like manner and to the same extent as it would have been made on the predecessor. It is also provided that the tax can be recovered from the successor if it cannot be recovered from the predecessor.

The question whether a succession has taken place is a question of fact which must be decided with reference to the facts of the particular case, *but there cannot be succession to a part only of a single business.* It frequently happens that one person is conducting two or more separate and distinct businesses to each of which there can be a succession.

Section 26 (*2*) as amended enunciates a new principle of taxation. Under the amendment the partners of the original firm, who were entitled to receive the profits in the accounting period and not the new partners, subject however to the exception that when the tax thus directly assessed cannot be recovered from the partners of the original firm, it can be assessed and recovered from the new firm or new partners. This is a more equitable arrangement, as it taxes the person who is in actual receipt of the income, and not another person on a fictitious income only for administrative convenience.

Under the previous Act, the scope of section 26 (*2*), was to make the assessment on the successor on a fictitious income. For clarity, the guiding principle of the previous Act is given below :

Section 26 (*2*) is primarily intended to secure to the Crown, tax, based on the earnings of a business for a full year, notwithstanding the transfer of business from one person to another before the expiry of the year, provided of course the business was carried by the transferee. If the transferer and the transferee are separately taxed for profits earned by them during the period each of them carried on the business, the incidence of taxation would be seriously affected ; and if the profits or gains of the whole year, though enjoyed by two different persons, are liable to be taxed at the end of the year, should be made responsible for it, leaving it to him to settle the equities between

him and the transferer with regard to the appointment of such taxation.—*In the matter of Commissioner of Income-tax* v. *Sindh Light Railway*, A. I. R. 1932 S. 192 : 6 I. T. C. 271.

Similar observations are made in the case of *Commissioner of Income-tax* v. *Best and Company Limited, Madras*, A. I. R. 1932 M. 434, where it is said that section 26 (*2*) is evidently designed for the purpose of making somebody assessable to income-tax, but the intention underlying it is not to assess two people at the same time, but is to find out somebody who is either properly assessable or more conveniently assessable. Section 26(*2*) read as a whole, definitely brings within its ambit a person who though not the former owner of the company, was found to be owning that company in the assessment year, that person is to be assessed. This procedure is not only convenient, but rather reasonable and just. But upon whom the burden is ultimately to fall is a matter of arrangement between the vendor company and the purchaser company.

Section 34, to Whom applicable :

Now that the predecessor is to be taxed, it automatically follows that section 34 is applicable to the predecessor alone—liability of successor comes in only when the predecessor is not available or when tax assessed could not be levied from the predecessor.

Succeeded in such Capacity by Another—Meaning of :

The plain meaning of the words "succeeded in such capacity by another person" can best be put thus : where a business, profession or vocation formerly carried by a person, have been directly taken over by another person who continued the business, that transference of ownership whether it be by operation of law or by transfer *inter vivos*, amounts to a succession, pure and simple.

Thus, where a change of ownership occurs, the test to be applied is to determine whether there has been a succession. Section 26 (*2*) is therefore applicable to cases where there is a change in the ownership of business, although there has been no change in the character of the business or of its management—*Maharajadhiraj of Darbhanga* v. *Commissioner of Income-tax*, A. I. R. 1923 P. 123, relying on *Bell* v. *National Provident Bank of England*, 5 T. C. 1.

In order to constitute a succession to a business, the entire business must be transferred as a going concern with all its accessories, *e.g.* accounts, books, list of customers, and goodwill,

otherwise it will be a mere sale of a portion of a business—*Watson Brothers* v. *Lothian*, 4 T. C. 441. Page, C. J. in *Commissioner of Income-tax, Burma* v. *N. N. Firm*, A. I. R. 1924 R. 13 observes : "In order that a person should be held to have 'succeeded' another person in carrying on a business, profession or vocation, it is necessary that the person succeeding should have succeeded his predecessor in carrying on the business as a whole. When a business is split up and thereafter another person carries a part of the business, I am of opinion that he does not 'succeed' his predecessor in carrying on the business within the meaning of section 26 (*2*). Further, where there is no continuity in carrying on the business and when one business has come to an end and after a time another business is started, it may be with the same assets and under the same conditions and in the same premises as the old business, the person carrying on the business, 'does not succeed' those who had carried the old business within section 26 (*2*) of the Act."

We find therefore where an excise vendor looses his excise shop which is being settled with another man, the person succeeding is not a "successor" within the meaning of the Act. Similarly where on the termination of an agency, some other person secures that agency, that person is not successor within the meaning of the Act.

There cannot, generally speaking, be a succession to a part of a business, but that does not imply that if what is succeeded to is not the same extent of trade, or even does not include a particular line or set of customers, it necessarily follows that there cannot be a succession to the trade or business. The word "succession" does cover any case of transfer by one trader to another of the right to that benefit which arises from connection and reputation. If the business is one business throughout, even though in one year it operates at more places than one, whereas in the succeeding year it operates only in one of those places, the matter certainly falls within the purview of section 26 (*1*), even if it cannot be said that there is a successsion. A mere change in the composition or constitution of the firm is within the contemplation of section 26 (*1*)—*In the matter of G. I. M. Gregory & Co.*, 41 C. W. N. 132 : I. L. R. (1937) 2 Cal. 7.

The real test to determine whether there is "succession" to business within the meaning of section 26, is the identity of the two businesses and the time intervening between the closing down of the old business and the opening of the new one in its place.

The delay is a question of degree and in some cases the delay may mean a lesser profit and never any real cessation of the business at all. But where the time intervening between the two businesses is so great that 'succession to old business' cannot be

inferred, there is no succession to business within the meaning of section 26 of the Act—*C. I. T., Burma* v. *Mansookhlal Zaveri*, 168 I. C. 209 : A. I. R. 1937 R. 102 : 1937 R. L. R. 26.

Mr. Justice Rowlatt said in *Wild* v. *M. Tussand*, 17 T. C. 127 : "I should like again to avert to the consideration which I draw attention to the *Shiptone* v. *Moris*, 14 T. C. 413, namely that provision as regards successor is designed merely with a view to preserve in a proper case when there is a succession a measure upon which the successor may be assessed in the first year of his proprietorship of the business and that, as I pointed out, is at the root of the necessity for there being a real continuity of the business. You want to measure the income of the successor by the past history of the business, it is therefore essential that there should be a very close identity between the former proprietorship and the business in the present proprietarship."

In *James Shiptone & Sons* v. *Morris*, 14 T. C. 413, Mr. Justice Rowlatt observed : "The question is whether this appeallants are successors to the Boston Co.. Mr. Latter very properly drew my attention to what of course we always have to bear in mind, that the condition in the Income-tax Acts about succession is to support an accurate application of the principle of measuring the profits, in a given tax year, of business by relation to the history. The object of this and all other measuring provisions of the Income-tax Act is not, as is sometimes inaccurately pretended, to get a tax in the year upon the profits of the previous year, but it is solely to insure a proper system of measuring the tax of the year, in respect of which the tax is made. Therefore, when you are going to measure the tax of a business which has recently changed hands, you may look, by this rule, at the history of the business and the profits in the time before the change ; and that lies at the root of the consideration to which the Lord President drew attention in the case of *Watson Bros.* v. *Lothian*, 4 T. C. 441, that there must be a continuity of the business".

In *Thomson and Balfour* v. *Lee Page*, 8 T. C. 541, Lord President said, "I do not propose to attempt a definition of "succession" in the sense of rule 11, but I think safe to say two things about it. In the first place, it does not include the accidental acquisition by a trader, who continues in business. of the custom left by another who goes out of business. A trader might give up or get out of the trade for some reason without attempting to realise or transfer goodwill, and the result of that might be the captive of some custom therefore attached to hereby one or more of his competitors who continued to trade. That would not, I think be a case of succession within the meaning of rule 11. On the other hand, and in the second place, I think the word

'succession' does cover any case of transfer by one trader to another of the right to that benefit which arises from connection and reputation. The question whether there is in particular case a 'succession' or not is a question of view."

In *Jupady Kesava Rao* v. *C. I. T., Madras*, 43 M. L. W. 155 : 1935 M. W. N. 1237—70 M. L. J. 13 A. I. R. 1936 Madras 67, it is held that the word "succeeded", as used in section 26 connotes a transfer of ownership and the person who succeeds another, must have by such succession become the owner of the business which his predecessor was carrying on and which he after the succession carries on in such capacity *i.e.* in the capacity of an owner.

In *Tolaram Ramdas* v. *C. I. T., Bombay*, 173 I. C. 786 : A. I. R. 1938 S. 33, it is enunciated that the question whether there is any particular case of succession or not is a question of fact. The fact whether the outstandings of a business are transferred or not is immaterial in determining whether there has been a "succession" or not. A transfer by way of sale of a corporal movable by itself does not make the transferee a successor of the business of the transferor. In determining whether or not, the transferee is a successor the Court will have regard to the previous history of the particular trade, manufacture, adventure or concern in issue and find out whether "what was bought was a continuing thing, a continuing adventure with all its prospects, with all its trade connections and with all these things which result in the making of a profit. The case of a successor to a business is analogous to a change in partnership.

The requisites of succession are (1) there must be a business in existence prior to the date of an assessment being made ; and (2) on the date of making the assessment it must be carried on by a different person to the person who carried it on prior to the date of the assessment, that is to say, the business must be the same but the person carrying it on must be different ; what the section requires is that it should be the same business and not business of the same nature. Where certain persons have for several years possessed the monopoly of supplying labour to the Port Trust, not jointly, but under different contracts, and finding that their monopoly is about to come to an end owing to the adoption by the Port Trust of the policy of inviting tender, and in order to secure continuity for their business they enter into a partnership and put in their tender for the contract, and being successful find themselves in a position to continue the business without a break, it is not correct to say that continue to supply labour to Port Trust as before, or that what they do after that date is the same business. The prior businesses of the partners must be deemed to come to an end and thereafter a new and separate partnership is started to carry on a business of the same

nature, There is no "succession"—*Kanappa Naicker* v. *C. I. T.*, A. I. R. 1937 Mad. 316 : 10 I. T. C. 154 : 168 I. C. 13.

The plain reading of the sub-section is that the predecessor's capital becomes the successor's capital and that for all purposes the succeeding partner is to be regarded as the former firm—*C. I. T., Madras* v. *P. R. A. L. L. Muthukaruppan Chettiier*, 7 I. T. R. 29 (*vide* the cases of *Arunachalam Chettiar* v. *C. I. T.*, 3 I. T. C. 441 ; *Ram Rakha Mal and Sons* v. *C. I. T.*, 1937 I. T. R. 137 ; *B. H. Patel* v. *C. I. T.*, 9 I. T. C. 110 ; *C. I. T., Bombay* v. *Mazagaon Dock Ltd.*, 7 I. T. C. 283 : 1934 I. T. R. 284 ; and *Karuppaswam Moopanar* v. *C. I. T., Madras*, 7 I. T. C. 283 : 1934 I. T. R. 284.)

But in *Laycock* v. *Freeman, Hardy and Willis Ltd.*, 22 T. C. 288, it was stated that on the winding up of the two subsidiary companies, the assessees took over the whole of their assets including goodwill, lands, factories and so forth and thereafter continued to manufacture the same class of goods in the same factories and with the same machines and it was held that the assessees did not succeed to the business of the two subsidiary companies but the business of the latter ceased and became merged in the business of the assessee. Similarly in the case of *Agency business*, where one firm gives up an agency and this is given to another there is no succession to a business, but where an agency business is sold as a going concern there is continuity and identity and the purchaser can be assessed as a successor—*C. I. T., Bombay* v. *Narain Das & Co.*, 7 I. T. R. 305 : 187 I. C. 893 : A. I. R. 1939 S. 318.

In order that there may be a succession it is necessary that the person succeeding should have succeeded his predecessor in carrying on the business as a whole—*C. I. T., Burma* v. *A. L. V. R. P. Firm*, 8 I. T. R. 531 : A. I. R. 1940 R. 281 ; (*Vide C. I. T., Burma* v. *N. N. Firm*. 2 I. T. R. 85 ; *C. I. T., Burma* v. *Monsooklal Zaveri*, 5 I. T. R. 664 *followed*).

In *S. M. S. Karuppiah Pillai* v. *C. I. T., Madras*, 9 I. T. R. 1, it has been held that a partner who continues the partnership business after the dissolution of the partnership 'succeeds' to the business within the meaning of section 26 (*Vide Karuppaswami Moopanar* v. *C. I. T.*, 2 I. T. R. 284 ; *C. I. T.* v. *Muthukaruppan Chettiar*, 7 I. T. R. 29 ; *C. I. T.*, v. *N. N. Firm*, 2 I. T. R. 85 ; and *Michael Farady, Rodgers and Eller* v. *Carter*, 11 T. C. 565 *followed*).

Succeed and Succession—Meaning of :

It is no doubt true that the words "succeed" and "succession" primarily refer to succession by one person to the property

of another person on his death. But these words have been used for very many years both in English and the Indian statutes relating to taxation in a much wider sense and as meaning a transfer *inter vious* by one person to another of any business, profession or vocation—*Commissioner of Income-tax* v. *Sindh Light Railway*, A. I. R. 1932 S. 192.

At the time of making Assessment :

The meaning of the expression is plain, the words merely mean "when time comes to make an assessment". *In re* : *Maharaja of Dharbhanga*, A. I. R. 1933 Patna 123. It cannot mean when the assessment year begins.

"In Such Capacity"—Meaning of :

By capacity is meant a position enabling one to do some thing—*Commissioner of Income-tax* v. *Sind Light Railway*, A. I. R. 1932 S. 196.

Section 26 primarily refers to some change either in the constitution or in the ownership and makes the successor liable to tax.

It is therefore to be seen if such a succession makes any difference on the rate of tax to be imposed on the successor. There may be regular change in the status *e.g.* an unregistered firm may succeed a registered firm or *vice-versa*, and an individual may succeed a Hindu undivided family, an individual may further succeed a company, and so on and so forth. In each case the rate of tax will depend on the status of the successor, no matter what was the status in the accounting year. This has now been the established law after the decision of the *Western India Truf Club*, 32 C. W. N. 457. Their Lordships of the Privy Council held : "where an unregistered association is converted into a limited company, the rate of super-tax applicable to it, in respect of the profit of the association, for the year previous to that of conversion, is the flat rate of one anna in the rupee appropriate to a company."

In order to give effect to the decision in the *Western India Truf Club*, 32 C. W. N. 457 (P. C.) and also in the Bombay case of the *Commissioner of Income-tax* v. *Mellor*, I. L. R. 48 B. 504, in preference to the view enunciated in *Begg Sutherland & Co.*, 2 I. T. C. 36, this section has been recast. The Privy Council held that though the income that is taxed is that of previous year, the rate of tax applicable to the income is that laid down in the Finance Act of the year of assessment and the rate that is leviable is that applicable to the class of assesses mentioned under

section 3, to which the successor belongs—*In Mahammad Hassen Lobbi Co.*, 3 I. T. C. 431, following the decision of *Nahalchand Kisori Lal*, 2 I. T. C 338, where it has been laid down that where a registered firm succeeds to business of a Hindu undivided family, the assessment must be on the firm as continued at the time of assessment, namely, as a registered firm and the rate of tax will be that applicable to a registered firm under the Annual Finance Act.

Accounting Year :

Question may arise whether a successor is bound to follow the previous year of his predecesser. Under section 2, (*11*) an assessee has option to adopt any previous year he likes but once it is adopted, it must be adhered to ; of course an assessee can have that accounting period changed with the previous permission of the Income-tax Officer.

A successor is not a new assessee, there is continuity of business which can stand in his way of changing the accounting period at his sweet will. Where an assessee is treated as a new one, of course there he is entitled to claim any previous year as his accounting year. But the word "successor" evidently refers to continuity of action and a new assessee who does not succeed so a business cannot be called a successor to the original business.

But there is no bar for such an assessee to request the Income-tax Officer to allow him a different accounting period, which the Income-tax Officer has authority to allow. The procedure for the assessment of an assessee who has been permitted to change his accounting period under section 2, should be followed in all respects, and the nature of the change of accounting period permitted, and the conditions on which permission is granted should be clearly recorded by the Income-tax Officer in his assessment order.

Successor, if Liable under section 34 :

When a successor is assessed under section 23 read with section 26 (*2*) to be a business on the income enjoyed by his predecessor, and when it transpires that profits of the predecessor in the year before the year of succession have escaped assessment, an assessment may be made under section 34 on the successor and not on the predecessor, no matter when the succession took place—whether before or after the assessment of the predecessor. The expression "previous year" as defined in section 2 (*11*) of the Act is for the purpose of assessment to be made, and not the year previous to that in which the assessment is made, if that is

different. The fact that the succession resulted in a change of the status of the assessee does not alter the situation.

In *Commissioner of Income-tax, Madras* v. *Nachel Achi*, A. I. R. 1934 M. 63, it has been held that the Income-tax Officer can proceed to assess the successor as if he were the predecessor, if in the course of making the assessment, the Income-tax Officer discovers that another person is the successor to the predecessor. He can then and there assess that person under section 26 (*2*) ; and indeed that section makes it clear that proceedings do not have to be commenced *de novo* and that an assessment can then and there be made.

It has further been held that when income has escaped assessment, section 34 can be utilised making the successor liable and if such an assessment on the successor is otherwise valid, it does not become invalid by the fact that the succession took place after the close of the year in which the income escaped assessment.

English decisions, if of any help in determining Succession :

The Indian Income-tax Act does not run *pari passu* with the English Income-tax Act, but so far change of ownership and succession are concerned, there is virtually no difference between the two.

Under the English Act, where the owner of a business retires during the year of assessment, and is succeeded therein by another person, the Commissioners after giving the persons concerned an opportunity of appearing and making any representation before them, will adjust the assessment for that year by relieving the predecessor and charging the successor with a fair proportion thereof. Even where the predecessor kept no account and accurate statement of his profits cannot be procured, the successor has a statutory right to be assessed upon the basis of those profits or gains—*Ogilvie* v. *Barron*, 11 T. C. 504. In such case the quantum of the profits should be estimated by reference to the assessment raised upon the predecessor for the relative years.

Rapid Succession :

A situation which may arise with some frequency can be seen in the case of semi-succession, when the option under rule 11 is not adopted, followed by a complete succession or a second semi-succession when that option is adopted, within a short space of time. While the amended rule does not indicate precisely what the position of any original proprietor retiring at the first change, will be, in view of the consequential amendments arising out of

the second, the balance of probability appears to be to their becoming liable to possible additional assessment. If this should be the case, a savour of apparent hardship may result, while, if it should not, a door is left open for avoidance of tax in favourable circumstances. (*Newport*).

Closely connected with the question of the transfer of the business is that of their amalgamation. Where two or more businesses are amalgamated, the assessments on the combined business will be computed on the combined profits of the separate business until sufficient time has elapsed to allow the computation being entirely on the profits arising since the amalgamation.

Where a company goes into liquidation the liquidator is liable for tax on any profits or other untaxed income arising during the course of the winding up : *Irish Provident Association* v. *Kavanagh*, 4 A. T. C. 115.

Under the English Act, a succession to business is possible by purchase, or by formation of a company taking up the business of the firm, and such a conversion amounts to succession. *Ryhope Coal Company* v. *Foyer*, 1. T. C. 343. To constitute succession, there must be an identity of business—*Reynolds Sons & Company Limited* v. *Ogston*, 15 T. C. 501.

It has been laid down that succession does not cover a case where there has been an accidental acquisition by a trader, who continues a business, of the customs left by another who goes out of the field—*Thomson & Balfour* v. *Lepage*, 1924 A. C. 27. *In Watson Brothers* v. *Lothian*, 4 T. C. 441, where there was a transfer of business without accounts and goodwill, such transfer was not a case of succession. Where a bank purchases the business of another bank, there is a succession—*Bell* v. *The National Provincial Bank of England Limited*, 1904, 1 K. B. 149 ; similarly where a business is sold by an individual to a company, there is a succession—*Bartlett* v. *Commissioner of Inland Revenue*, 7 T. C. 229.

The trend of Indian decisions is on the English line, as has been pointed out.

Change—Meaning of :

There is no previous decision to guide us as to the meaning of "change in the constitution of a firm" ; the relevant explanation of the word "constitution" given in the new English dictionary by Sir James Murray—the way in which anything is constituted or made up, the arrangement or constitution of its part or elements, determining its nature and character, make, frame, composition.

From a consideration of that definition "change in the constitution of a firm" would suggest a change in its partners but not a change in the properties in which the partners derived the profits. Some help is obtained over the provisions of sections 17(*A*), 38 and 63 of the Partnership Act.

Sections 38 and 63, where they mention the phrase "change in the constitutions of a firm" are, referring to a change in the personnel of the firm, *i.e.*, a change in the persons who are partners in the firms—*In the matter Moolji Sicca*, A. I. R. 1938 Cal. 562.

Set-off—if can be claimed by Successor or by Predecessor :

Under the amended Act, a predecessor is liable for tax when there is a succession but under the old Act the successor was liable. Although in the case of *Messrs. B. K. Pal & Sons Ltd.*, [A. I. R. 1939 Cal. 196], who were the predecessors to a newly formed Limited company, were allowed to set off, and the case of *C. I. T., Madras* v. *Best & Co.*, [55 Mad. 832] and *Bhogilal Hargovindas Patel* v. *C. I. T.*, [9 I. T. C. 111], were distinguished, under section 26 (*2*) if the Income-tax Officer is appraised of a succession to a business at the time of making the assessment, the assessment should be made on the person succeeding. But this can only be done when there is income, profit or gain from the particular business for which assessment is possible under the Act. If there was no profit in the business in the year of accounting, section 26 (*2*) would not come into operation at all. Section 26 (*2*) has, therefore, no application when there is a loss in the year of accounting in the business in respect to which succession has taken place—but the amended section makes the predecessor liable, and as such, set-off, if any, can be claimed by the predecessor assessee.

Apparently the view enunciated by the Calcutta High Court in the case of *Messrs. B. K. Pal & Co.*, A. I. R. 1939 Cal. 196, has been adopted allowing the predecessor assessee to claim set-off.

Conversion, Transformation :

A Hindu undivided family can be converted into a limited Company (*In re Messrs. B. K. Pal & Sons Ltd.* 7 I. T. C. 204). *In Tarachand Pohumal* v. *C. I. T., Punjab*, 9 I. T. C. 256 : A. I. R. 1939 L. 836, it is apparent that where assessment was made as Hindu undivided family in 1928-29, there is no bar to have it registered as firm in 1929-30 on the ground that a firm has been constituted under an instrument of partnership.

When a Hindu undivided family constitutes itself into a company with specific shares belonging to the individual members, and further introduces in the company persons who are not members of the Hindu undivided family, the normal supposition would be that the transaction showed that the Hindu undivided family had disrupted (*vide Sardar Kripal Sing* v. *C. I. T.*, 176 I. C. 22). *In the case of Jugal Kishore Mukhatall*, 1938 I. T. R. 494. a Hindu undivided family was converted into a limited company, so also *Ram Rekha Mal and Sons Ltd.* v. *C. I. T.*, 172 I. C. 821 : A. I. R. 1937 L. 830 : 39 P. L. R. 934.

If a Part Owner can succeed :

The requisites of the section are that there may be a business in existence prior to the date of an assessment being made and to the date of the making of the assessment ; it must be carried on prior to the date of the assessment, the business must be the same but the person carrying it on must be different : *In National Provincial Bank of England Ltd.* v. *Bell*, 6 T. C. 1, the Master of Rolls says :—

"It seems to me the words of Rule 4 are plain, and that if the National Provincial Bank had not existed, but some new company had been formed to take over for the first time the business of the Stafford Bank, there would have been a case directly falling in terms within the words of the 4th rule, if any person shall have succeeded to any trade, manufacture, adventure or concern. "What difference does it make that person who succeeds to the concern should himself already have an existing business. Does he the less succeed to the new business because he had the old one. It seems to me certainly not. He had the old one before, he has the old one still, and the new one in addition ; and to that new one it seems to me he has succeeded."

Reducing the Incidence of Taxation :

An individual assessee may change his business to that of the Hindu undivided family. It is erroneous to hold that any attempt to evade the payment of super-tax is fraudulent. It is perfectly legitimate for a Hindu to transfer his profits to his undivided family. Fictitious transfer, when the transferor is on enjoyment, is not acceptable. But when he has in reality parted with his rights, the fact that his object was to evade payment of higher-tax or super-tax will not affect the validity of the transaction. There is nothing immoral or fraudulent in lawfully transfering one's property to the detriment of the income-tax department. *In re Lala Ram Narayan Lal*, 10 I. T. C. 292.

It is open to any person to reduce the incidence of his income-tax in any legitimate way and the mere fact that a

reconstitution of the firm has reduced the incidence of the tax is by itself no evidence that the reconstitution is not real.

At the time of the reconstitution of the firm, the new capital was not introduced, nor was there valuation of assets ; after registration had been refused the firm reverted to its old constitution ; it was held that these were not sufficient grounds for supposing that the reconstitution was a bogus one. *Md. Mohsin Mulla Badiruddin* v. *C. I. T.*, A. I. R. 1938 L. 194.

Rate :

Now that as the assessment is to be made on the predecessor at first, his rate will be the basis of computation. Question of assessing the successor comes in where only when the predecessor is not available ; in that case, what should be the rate—the rate as applicable to the successor or the rate of the predecessor ?

The amendment taxes the person who is in actual receipt and not the successor on a fictitious income. It is clear that when the Income-tax Officer assesses the successor in the absence of the predecessor, the rate of the tax shall be that which applies to the predecessor. This view gains considerable support from the words used in the proviso "for the previous year only". In such a case, it is not equitable at all to fasten the successor with the rate—the department does not lose in view of the fact the rate of successor may be more or may be less. The decisions of the *Western India Turf Club*, 32 C. W. N. 457 (P.C.), and of *Begg Sutherland Co.*, 21 T. C. 36, were good under the old Act, but are not enforceable under the Amendment Act.

Procedure in registration of firms.

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

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

Scope of Section :

Section 26A lays down the procedure to be followed for registration of firms. Where registration is sought for by the firm the application shall he signed by all the partners present and shall be made before the income is assessed for any year under section 23, or if no part of the income of the firm has been assessed for any year under section 23, before the income of the firm is assessed under section 34, or with the permission of the Appellate Assistant Commissioner hearing an appeal under section 30, before the assessment is confirmed, reduced, enhanced or annulled or, if the Appellate Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment before such fresh assessment is made. The rules have been embodied in the Rules of the Central Board of Revenue from rules 2 to 6B.

Significance :

Rules 2 to 6 *B* prescribe the method of registration and re-registration of a firm. A firm to be registered must be constituted under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm. Under section 2 (*6B*) the expression "Partner" includes any person who being a minor has been admitted to the benefits of partnership. A minor who has been admitted to the benefits of a partnership has a right to such share in the property and the profits of the firm as may be agreed upon—not between him and the partners, for he cannot be a party to a contract, but between the other partners. Provided that there are at least two persons competent to contract among the members of the firm, the fact that there is also a minor who has been admitted to the benefits of the partnership is no bar to the firm being registered.

A certificate of registration or re-registration has effect only for the assessment to be made for the year mentioned therein.

The words "No part of the income has been assessed" in Rule 2 (*b*) refer to cases in which the whole of the income of the person in question had escaped assessment altogether until proceedings were started under section 34. They do not apply to a case in which proceedings have been taken under section 23 in respect of the income of any person and owing to that person's concealing part of his income or owing to a part of his income having escaped assessment for any reason he has either been declared not liable to tax, or been under-assessed.

As regards the method of assessment of registered and unregistered firms, see sub-section (*5*) of section 23.

A firm cannot legally enter into partnership with another firm. It does not, however, follow that because a firm is not a partner in another firm what is described as its share in the profits of such firm is not its income. Although a firm cannot legally enter into partnership with another firm yet when two firms do enter into a larger partnership the larger partnership will be treated as one constituted by the members of the two firms. If registration is applied for by the larger partnership, it would be allowed provided the firms entering into partnership are also constituted under instruments of partnership specifying the individual shares of partners.

If the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under the Act governing such distribution and any partner has thereby returned his income below its real amount, the Income-tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, may impose penalty under section 28 (*2*) on the partner concerned and no refund or other adjustment shall be claimable by any other partner on this account.

A false statement made under sub-section (*2*) of this section is an offence punishable under section 52. (*I. T. M.*)

Power of Income-tax Officer :

Income-tax Officer has power to inquire under section 26-*A* whether a person or a body of persons is or are what he or they represent themselves to be for the purpose of taking advantage of a provision of this Act. When persons claim to constitute a partnership firm for the registration of which they make an application the Income-tax Officer may call upon them to prove by evidence that they are what they claim to be before he proceeds further with the application—*In the matter of Jattu Saha Nathu Saha* v. *Commissioner of Income-tax, Lahore*, A. I. R. 1932 L. 575, [the case of *Bisseswar Lal Brijlal*, A. I. R. 1930 Cal. 449 *approved.*]

It cannot be said that Income-tax Officer is bound to register a firm when he is confronted with a deed of partnership. It is said he has no discretion but he has got to register it. But so far as Hindu undivided family is concerned, the position is totally different. The very definition of the word "firm" involves the idea of contractual relationship between several persons and where the finding of fact by the Income-tax Officer is that there is no contractual relationship between the persons, but the relationship between them is a relationship based on a status and not on contract, there is therefore no existence of firm which can possibly be registered under section 26-*A*—*Piyarilal and*

others v. *Commissioner of Income-tax, Lahore*, A. I. R. 1933 L. 827 : 147 I. C. 862.

The mere application under section 26-A is not sufficient, neither the production of the deed of partnership improves the position. In *Bisseswar Lal Brijlal* v. *C. I. T.*, 4 I. T. C. 36, Sir George Rankin observed . "tolerably clear in the absence of some evidence to the contrary, that this piece of paper (*referring to the partnership deed*) which the parties had signed was expected to be magical talisman which would protect them from the imposition of super-tax and had no other reality at all". *In re Bisseswar Lal Brijlal*, 57 Cal. 1336 it was observed "It is said that the rules contain no provision for an investigation into the reality of such document, that is to say, relating to the partnership, neither they do. On the other hand, under the Act and under the rules the right to present such a document at all is only given to a firm constituted under an instrument of partnership specifying the individual shares of the partners and if a firm is not a firm constituted under an instrument of partnership, the Income-tax Officer is not obliged to receive the application at all or register the document which the parties were putting forward."

The principle underlying the rulings, reported in 6 I. T. C. 13 and 7 I. T. C. 38, is that it is open to the Income-tax Officer to go into evidence, both circumstantial and direct, to determine whether the instrument of partnership is a genuine document or whether it merely embodies a bogus transaction for the purpose of evading the tax. (*Sookmaboo Salebhoy* v. *C. I. T.*, 6 I. T. C. 13 ; *Abowth Bros.* v. *C. I. T.*, 7 I. T. C. 38 *referred to.*)

The onus will rest on the person who applies for the registration of the firm to prove that a genuine instrument of partnership has been executed and that all the persons named therein are actual persons and not dummies When the Income-tax Officer finds that the deed of partnership is never intended to be acted upon, he is entitled to refuse registration (In re *Lala Tribeni Ram of Gorakpur* (1938) 6 I. T. R. 450).

In an application for registration under section 26-A, the taxing authorities are entitled to go behind the deed of partnership and to find that the deed is bogus and to refuse to register the firm for the purposes of the Income-tax Act. *Hafiz Abdul Gaffoor and others* v. *C. I. T., C. P.*, 7 I. T. R. 625. Attention is invited to the following decisions which were referred, In re *Bisseswarlal Brijlal*, 34 C. W. N. 363 : 4 I. T. C. 355 : A. I. R. 1930 Cal. 449 ; *Haji Ghulum Rasul Khuda Baksh* v. *C. I. T.* 19 Lah., 113 : 1937 I. T. R. 506 ; *Haji Noor Mohammad Haji Aleemullah* v. *C. I. T., C. P.*, 10 I. T. C. 426 ; *Mulla Fida Ali Sultan Ali* v. *C. I. T., C. P.*, 1937 I. T. R. 615 and *C. I. T.* v. *Kikabhai*, 121 I. C. 38 : A. I. R. 1930 Nag. 6 : 4 I. T. C. 178.

In *C. I. T., Burma* v. *Seth Mangoomal Luniad Singh* 7, I.T.R. 208, it has been held that where the partnership is genuine and the shares are specified, registration cannot be refused on the ground that the ultimate receipts are made to depend on the time devoted by the partners to the business. But in *re The Central Talkies Circuit, Matunga*, 9 I. T. R. 44, it was held that where the partnership is not genuine, registration could justly be refused. Chief Justice Beaumont observed that anyone is entitled so to conduct his affairs within the law as to avoid incidence of taxation, and if a man finds that he will suffer less in taxation by carrying on business in partnership with his mother rather than his wife, he is entitled to select his mother. But the partnership must be a genuine partnership. *That a partnership deed produced is one prepared only to avoid 'proper taxation' is not a good ground for refusing to register it.*

In *Rai Bahadur Lokenath Prasad Dhandhania* v. *C. I. T., B & O.*, 8 I. T. R. 369, registration was refused as there was no partnership in law. It is open to the Income-tax Officers to go into evidence, both circumstantial and direct, to determine whether the instrument of partnership is a genuine document or whether it merely embodies a bogus transaction for the purpose of evading tax. The onus would thus rest on the person who applies for the registration of the firm to prove that a genuine partnership has been executed and that all the persons named therein are actual persons and not dummies—*Firm Haji Golum Rashul Kuda Baksh*, 181 I. C. 332 : A. I. R. 1938 Lah. 305.

When Registration can be Refused :

A partnership cannot be registered as a firm under section 26-A when the instrument of partnership does not specify on the face of the document the individual shares of the partners. Therefore, where a partnership consists of a firm and some individuals and the deed of partnership while mentioning the proportion in which the profit and loss are to be shared between the firm and other partners respectively does not specify the shares of the partners of the firm which is a member of the partnership, the partnership cannot be registered as a firm under section 26 A. The fact that the smaller partnership is a registered firm and in constituting the partnership the shares of the partners are specified is immaterial.

The object in requiring this information is that the taxing authorities may determine, the profit received by each of the parties from the partnership profits in order to prevent the profits being distributed to the partners, otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under the Act and to prevent any partner returning his income below its real amount.

Section 28 also points to the same construction : *Kanappa Nailker and Co.* v. *C. I. T., Madras*, 10 I. T. C. 154 : 168 I. C. 13 : 45 L. W. 33. In Miscellaneous Judicial case No. 54-*B* of 1936 from Nagpur (*Bhagawan Das Harakumar Das* v. *C. I. T., C. P & U. P.*) registration under the Income-tax Act was refused on the grounds that as constituted it was a fictitious firm comprising a number of persons included for no *bonafide* reason but meant for the purpose of increasing the number of shares into which the profits can be divided for Income-tax purposes. Further, that the addition of the eleven names had no purpose or meaning except to enable the assessee to increase the number of share-holders for income-tax purposes.

But it is open to any person to reduce the incidence of his income-tax in any legitimate way and the main fact that a reconstitution of the firm has reduced the incidence of the tax is by itself no evidence that the reconstitution is not real. In any case, the fact that the new capital was not introduced, would be no material for holding that the reconstitution was not genuine. There is no statutory obligation for the valuation of assets before a firm can be reconstituted. The fact that after refusal of registration the firm reverted to their old constitution clearly raised no presumption or affords any ground for supposing that the constitution must be a bogus arrangement. There was no valid ground for refusing registration—*Md. Mohsin Mulla Bux* v. *C. I. T.*, 178 I. C. 404 : 10 I. T. C. 72.

Under section 26-A read with the Income-tax Rules, the Income-tax Officer is empowered to register only the particular partnership specified in the instrument put forward, not other partnership. Accordingly in such partnership, for the reason that some of the alleged partners cannot be partners in strict legal sense, the Income-tax Officer cannot, nor can he be required to, register the partnership nevertheless treating such persons to be partners in a loose sense or a partnership between the remaining partners, assuming such partnership can be said to exist. For the purpose of exercising his jurisdiction under section 26-A, the Income-tax Officer is entitled to look into the character or validity of the instrument of partnership.

A Mahomeden wakf cannot be legally a partner and any partnership which purports to exist with a wakf or to include a wakf among the partners (represented by the Mutawali) cannot be a partnership in law. A person cannot be a partner at one and the same time, in his individual capacity as also in his representative capacity—*Hossen Kassem Dada* v. *C. I. T., Bengal*, 41 C. W. N. 629 : 10 I. T. C. 204. Partnership in section 4 of the Indian Partnership Act has been defined as the relation between persons who have agreed to share the profits of a

business carried on by all or any of them acting for all. Justice Costello observed : "A non-personal being, such as the Almighty, is obviously not in a position to enter into relationship with material persons for the sharing of profits of a business and therefore any partnership which purports to exist with wakf as partner can be no partnership in law." It is also to be understood that the minors cannot be properly speaking partners by reasons of section 30 of the Indian Partnership Act, although the provisions of section 30 entail that they can be admitted to the benefits of partnership.

It is well settled that a firm is a mere group of individuals and that a firm as such cannot legally be a partner in another firm. Where the factories union purports to consist of two firms and one Hindu undivided family, the question of registration does not arise—*Mian Channu Factories Union* v. *C. I. T., Punjab*, 166 I. C. 150 : 9 I. T. C. 246 : A. I. R. 1936 L. 548.

In *Hazi Golam Rashul Khoda Baksh* v. *C. I. T., Punjab*, A. I. R. 1938 L. 105, it has been enunciated that the instrument of partnership, specifying the individual shares of partners means obviously a genuine instrument of partnership. If there is evidence, direct or substantial, showing the bogus nature of the so-called instrument of partnership it is open to the taxation authorities to refuse registration of the firm in question (*Dickenson* v. *Gross*, 1 I. T. C. 14 *relied on*).

In the matter of *Hazi Noor Md. Hazi Alemullya*, 10 I. T. C. 426, it was held that the document was not "genuine" and was a mere camouflage and hence registration was refused.

That an instrument of partnership previously executed contradicts the subsequent deed of partnership is no reason to refuse registration, because the parties in the latter deed are at liberty to change their minds and enter on a fresh partnership deed with other persons—*C. I. T., Bombay* v. *Nathulal Bachar Das & Co.*, 10 I. T. C. 72.

An application for registration can be refused on the ground that the recital in the application is not in accordance with facts —*Chiranjilal* v. *C. I. T.*, A. I. R. 1937 L. 445 : 7 I. T. C. 42. Similarly taxing authorities are not entitled to impose a condition that the document should be registered under the Partnership Act : *C. I. T., Bombay* v. *Chamanlal Manguldas & Co.*, 10 I. T. C. 58.

An assessee who was a Mahomedan had his business at Burma. The capital consisted mainly of immovable property. The assessee alleged that he had made gifts of Rs. 1500 to each of the two sons and had given a bonus to each of the two em-

ployees out of the capital of his business, and that these sums had been re-invested by those four persons in the business which had thereby become a partnership of five persons. He produced a deed of partnership which was not registered under the provisions of the Registration Act and a certificate of registration of this partnership under section 59 of the Partnership Act, and pointed to entries in the books of account which purported to show that the capital of the new partnership was divided into five shares. The gifts were also not registered in accordance with section 123 of the Transfer of Property Act, an application for registration was refused by the Income-tax Officer. The High Court held that in Burma a gift of property by one Mahomedan to another must be made in accordance with the provisions of section 123 of the Transfer of Property Act. There were no valid gifts by the assessee to his sons and employees and hence there had been no contribution by them to the capital of the alleged partnership. As it was not registered, in was ineffectual—*Abba Dada & Co.* v. *C. I. T.*, 180 I. C. 675 : A. I. R. 1938 Rang. 535. *Vide* also the cases of *Jugal Kishore Mukhat Lall*, 1938 I. T. R. 494, and *C. I. T., Bombay* v. *Jessingbhai*, A. I. R. 1938 Bom. 350, referred to in section 25-A.

No partnership can be registered if any partner under the deed is liable to have a variation of his share. But 'share' does not mean net receipts. It is the basis of computation from which, after other necessary factors are considered, one is going to arrive at them. *The law looks to the shares in the partnership business and not to the receipt from it*, which may happen in certain contingencies, to find their way into the pockets of the individual partners. It is a fallacy to say that the individual shares of the partners are not 'adequately' specified by reason of the fact that their drawings or receipts may be conditioned by effect being given to other stipulation in the partnership deed. When therefore the partnership is genuine and the shares of each partner definite and determinable, and the deed definitely specifies these individual shares, and the profits of each current year are shewn and credited in accordance with the shares shown in the partnership deed, the deed is registrable under section 26-A, even though it provides that what partners actually get will depend upon the time which they have devoted to the business or their absence therefrom—*C. I. T., Burma* v. *Mangoomal Luniada Singh*, 182 I. C. 278.

Where the firm is not constituted under an instrument of partnership which is an essential under Rule 2 of the Indian Income-tax Rules, the Income-tax Officer has no option but to refuse registration. The point at issue is really covered by the decision in the case of *M. V. Krishna Iyer and Sons*, 3 I. T. C. 286. Further non-compliance with statutory Rule 6 is legally

sufficient to justify the Income-tax Officer's refusal to renew the registration of the firm. Further where the application is not made by the partners but is signed by the clerk, it renders the application invalid—*C. I. T., Madras* v. *Gelli Krishnamurty and others*, 8 I. T. R. 121.

Renewal :

In the case of *Bansilal Abirchand* v. *C. I. T.*, 1936 I. T. R. 66, it was held that Income-tax Officers had no power to refuse renewal of registration unless the firm alters its constitution, after it had been once rightly registered as a firm and treated as such in two subsequent years.

Firm :

Section 6-*B* (as amended) lays down that, "Firm", "Partner" and "Partnership" have the same meaning as in the Indian Partnership Act of 1932 which repeals Chapter XI of the Indian Contract Act (of Partnership). A firm as contemplated in section 4 of the Indian Partnership Act (and section 239 of the Contract Act) cannot be a partner in another firm.

Section 4 of the Indian Partnership Act runs thus :—

"Partnership" is the relation between persons who have agreed to share the profits of a business arrived on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partner" and collectively a "firm" and the name under which their business is carried is called the "Firm Name."

Section 30(*1*) of the Indian Partnership Act runs thus—

"A person who is a minor according to law to which he is subject not may be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnerships."

Though the section provides that a minor may be admitted to the benefits of a partnership, it does not revoke or cancel section II of the Contract Act. So a minor cannot be a partner by contract, though he may be admitted to the benefits of partnership with the consent of all the partners. By merely being admitted to the benefits of partnership a minor does not become a partner.

A firm is not a legal entity nor is it a person. It is merely a collective name for the individuals who are members of the

partnership, which is a relation subsisting between persons. Hence a firm as such cannot be a member of the partnership (*Seodolal* v. *Johurimal*, 50 Cal. 549).

Thus, it is apparent that a firm cannot be a partner of another firm and there are weighty decisions in support of this view—*Jaidayal Madan Gopal* v. *C. I. T., U. P.*, 6 I. T. C. 226 ; *S. Lal Chand* v. *C. I. T, Bengal*, 1935, 8 I. T. C. 463 ; *Probhulal Pearylal* v. *C. I. T., U. P.*, 8 I. T. C. 50.

Appeal Against Refusal :

Section 30 provides that an appeal lies against an order refusing registration under section 26-A. The Central Board of Revenue has prescribed a standard form, *e.g.*, Form D 1 for the purposes of appeal. (*Vide* Rules.)

Ad Interim Appeal :

There is nothing in the Act to warrant the suggestion that a wrong order of an Income-tax Officer as a preliminary to his passing an order under section 23, may not be made a ground of appeal when appealing against the final order of assessment, unless a separate appeal or application for review, where no appeal is allowed, has been successfully filed against such order. As a matter of fact, the tendency of the legislature has always been to prevent appeals against interim orders, leaving it open to the party aggrieved to challenge such order when appealing against the final order—*In re Bulchand Keshob Das*, A. I. R. 1930 S. 301.

But with due respect to the learned Judge, I beg to submit that the view propounded above, in view of the wording of section 30, as to why an *ad interim* appeal should not be allowed to file, at least under special circumstances. As a matter of practice, in almost all cases, long before the passing of final orders, claims under section 25-A and 26-A are to be determined by the Income-tax Officer. Appeal under section 30 shall ordinarily be presented within 30 days of receipt of the notice of demand. Suppose for instance, where an order under section 26-A refusing to register a firm, is made in the month of July, and the assessment under section 23 is completed in September : if the assessee wants to prefer an appeal against the order refusing to register the firm under section 26-A and also against the final assessment, is he entitled to present his appeal central cases within 30 days from the date of the final assessment. The section as it stands specially mentions that appeals shall be ordinarily presented within 30 days of the intimation of the order of refusal to register a firm under section 26-A. In this

case the order refusing registration of firm is made in July and the assessee is also furnished with the information of such refusal by that date, he cannot in my humble opinion file an appeal under section 30 after 30 days on receipt of the notice of demand *e. g.*, in October. The appeal will be treated as barred by limitation unless the Assistant Commissioner entertains it by virtue of his power under section 30 (*2*). Although the Assistant Commissioner may admit an appeal after the expiration of the period, and although the expression "ordinarily" gives wide power to the Assistant Commissioner in entertaining an appeal even after the period of limitation, it is, nonetheless risky to wait up to the final assessment.

Review and Reference :

Section 33 is an omnibus section which can be invoked in the case of orders refusing registration under section 26-A. The general principle of law is that where an assessee can take recourse to direct appeal, he shall not be permitted to apply under section 33 without exhausting the intermediate remedies *e.g.* where an assessee can prefer a direct appeal under section 30, he should not be allowed to file a petition of Review under section 33 of the Income-tax Act ; he can prefer an appeal under section 30 and in case the decision is against him, he can then move the Commissioner under section 33. But where an assessment is made under section 23 (*4*), in my humble opinion, the asseesse can go direct to the Commissioner in matters relating to refusal of registration under section 26-A. In the previous Act, there was no provision for an appeal against an order refusing registration under section 26-A, and that is why the Commissioner was approached to interfere under section 33. As there has been specific provision for appeal against refusal to register a firm, it is reasonable, that the intermediate remedies should be exhausted before other remedies are sought.

Reference under section 66 will follow as a matter of course against an order of the of the Assistant Commissioner under section 31 of the Act read with section 26-A, and a reference shall also lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33.

Objects and Reasons :

"We realise that it should not be possible for persons to obtain registration of an enterprise as a registered firm which is in fact nothing more than a one-man concern and we think the

object in view can be satisfactorily made by making provision for the verification of an application for registration and by imposing an amendment of section 52 of the Act as a penalty upon any one who makes a false verification."

Notes and Procedure :

An application for registration of a firm is governed by rule 2 and section 2 clause (*14*) ; it must be presented in the prescribed form within the prescribed period, and such application is to be renewed every year. An application for registration may be refused by the income-tax authorities but an appeal lies against such refusal.—*Ramlal Muralidhar*, A. I. R. 1931 Cal. 682 : 134 I. C. 1056.

The way in which an application for registration is to be made and how the deed of partnership is to be drawn up has been dealt under section 2, clause (*14*).

Cancellation of assessment when cause is shown.

27. Where an assessee within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (*4*) of section 22, or sub-section (*2*) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the 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.

Effect of Amendment :

Although a right of appeal has been provided in section 30 against an assessment under section 23 (*4*), the legislature has thought it advisable to retain section 27 with slight modifications. It will be thus found that owing to an amendment of section 22, there is a consequential amendment of section 27 and "assessee" in section 27 covers all assessees, including the principal officer of a company.

Consequences of Failure to furnish a Return or to comply with a Notice under Sections 22 (4) and 23 (2) :

Where an assessee fails to comply with a notice under section 22, assessment shall be made under section 23 (4). Similarly default in complying with requisition under sections 23 (2) and 22 (4) will bring the assessee within the purview of section 23 (4).

Under the previous Act, in case of a summary assessment under section 23 (4), there was no right of appeal. But under the new Act, owing to an amendment of section 30, a right of appeal has been provided and the privilege of filing an objection under section 27 still remains.

Further in the previous Act, the provision under section 28 was not attracted for default under section 22 at all. Owing to an amendment of section 28, liability will now attach where there is default of the requisitions under section 22 without any reasonable cause. The proviso in section 28 (1) further lays down that penalty shall not be imposed on an assessee whose total income is less than Rs. 3500 for failure to submit a return under section 22 (1), but this privilege is withdrawn from an assessee who has been served with a notice under section 22 (2).

Even in the case of a person who is not liable to tax at all, a failure to comply with a notice under sub-section (2) of section 22 or section 34 by an assessee will attach liability.

Where the assessee can prove that he is not liable to tax, a penalty not exceeding Rs. 25 has been provided.

Section 51 clause (c) provides criminal prosecution for non-compliance of requisition under section 22.

Remedies against Assessment under section 23 (4) :

Under the previous Act, in case of an assessment under section 23 (4) the only remedy available to an assessee was by way of an application under section 27 of the Act within one month from the receipt of the notice of demand.

But under the Amendment Act of 1939, the assessee shall have the right to file an objection under section 27 and an appeal under section 30 of the Indian Income-tax Act, 1939.

In the Civil Procedure Code, when an *ex parte* decree is passed, two remedies are open to a defendant against whom the decree is passed. He can either file a petition under Order 9 rule 13 or an appeal under section 96 (2) of the Code.

Order 9 rule 13 runs thus :

"In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside ; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit."

In the Income-tax Act, there is no provision of mulcting the petitioner with costs.

Section 96 of the Civil Procedure Code runs as below :

(*1*) "Save where otherwise expressly provided in the body of this Code, or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeal from the decisions of such Court."

(*2*) "An appeal may lie from an original decree passed *ex parte*."

He is entitled to apply for setting aside the decree under this rule and at the same time to appeal from the *ex parte* decree under section 96 (*2*) C. P. C.

Whether the Remedies are Concurrent :

The Amended Act of 1939 provides two remedies against a summary assessment under section 23 (*4*). An assessee is entitled to file an objection within a month from the receipt of the notice of demand under section 27 and an appeal under section 30 within 30 days.

The privileges seem to be alternative, that is, where an application under section 27 is filed, he is not entitled to prefer an appeal at the same time. He can take advantage of one of the two alternatives at a time. If he files an objection under section 27, and if it is refused, he can then go to the Appellate Assistant Commissioner under section 30 against the order refusing to reopen the case under section 27. On the other hand, he can go for an appeal directly under section 30 without making an objection under section 27 of the Act. But where an objection under section 27 is rejected, before the expiry of the period of limitation for filing an appeal against an order under section 23 (*4*), there cannot be any bar of his filing an appeal as well. But a case of this nature will be rather rare.

But where an assessee files an objection under section 27 and an appeal under section 30 at the same time, it is reasonable,

that the procedure which is followed in the Civil Court should be adopted. In the Civil Court, where simultaneous action is taken, the Appellate Court cannot enter into the question of non-appearance.

Summary assessment without intimation after application for extension of time :

In the Privy Council case of the *C. I. T.* v. *Badridas Ram Rai*, (I. L. R. 1937 Nag. 191), it was held by their Lordships that they were unaware of any rule under which the Income-tax Officer was bound or ought to announce beforehand how he proposed to deal with an application for an adjournment ; similar views were also expressed in *Seth Kishan lal* v. *C. I. T., Lucknow*, in Miscellaneous Judicial case no. 116 of 1934. It is the duty of the assessee to get the date and not to complain if the Income-tax Officer does not intimate the date.

In a case of this nature an assessment under section 23 (*4*) is permissible and the remedy for an assessee is to apply under section 27 or to file an appeal under section 30. If he chooses to file an objection under section 27, he shall have to satisfy the Income-tax Officer that he was prevented by a sufficient cause or had not reasonable opportunity to comply with the requisition and that application for time should have been allowed. If he fails to prove a "sufficient cause" within the meaning of section 27, he is not entitled to get any relief.

Procedure :

When a notice of demand is served on the assessee, it is for him to see if the assessment has been made under section 23 (*4*) or under any other section of the Act. The notice of demand clearly shows the remedies open to the assessee and the section under which the assessment has been completed. If the assessment is under section 23 (*4*), the assessee may file an objection within a month from reciept of the notice of demand, under section 27 before the Income-tax Officer for setting aside the assessment for a fresh assessment. Section 27 gives the assessee a month's time to file the objection and the Income-tax Officer cannot extend the period of limitation on any account. Section 5 of the Indian Limitation Act is inapplicable to cases falling under the purview of section 27. An objection petition under section 27 does not require any court-fees.

Whenever a petition under section 27 is filed, it is for the Income-tax Officer to fix a date of hearing, but there is no bar to his disposing of the petition under section 27 without calling on the assessee. The section as it stands, nowhere says even by

implication that the Income-tax Officer is bound to fix a date of hearing and it cannot be contended that the assessee is entitled to a hearing, although such a hearing is allowed to the assessee in almost all cases as a matter of practice. Sections 29, 31 and 32 definitely state that the assessee should be granted a hearing, but there is no such clause in section 27. In the absence of any specific direction to the contrary, the Income-tax Officer can refuse to give a hearing and can dispose of the petition under section 27 on merits.

It has already been stated that an appeal lies against an order refusing to re-open a case under section 27, but in presenting the appeal a certified copy of the assessment order is essential and the prescribed form of appeal should bear a court-fee stamp of -/8/- annas.

Sufficient Cause :

The expression "sufficient cause" has not been defined in the Act. But reading section 27 as a whole we find that non-receipt of notice under section 22, 22 (*4*) or 23 (*2*), under certain circumstances is a "sufficient cause" within the meaning of section 27 of the Act. But in the absence of any definition, we can fall back upon other Indian Acts for guidance. Sufficient cause is purely a question of fact, but a question of law arises where the Income-tax Officer has exercised his discretion arbitrarily and in a manner not warranted by law. Heavy assessments in themselves cannot be characterised as arbitrary. What is sufficient cause is mainly a question of fact to be adjudicated upon by the Income-tax Officer on the circumstances of each case.

Section 5 of the Indian Limitation Act though inapplicable to the Income-tax Act, except under sections 66 (*3*) and 66 (*3*) (*A*) by the insertion of section 66 (*7A*), can be conveniently taken recourse to in deciding what constitutes sufficient cause.

(*a*) Illness may be sufficient cause where proofs are forthcoming that he was physically incapable to attend to any duty ; illness of the pleader and client's ignorance of it has been held to constitute "sufficient cause"—*Anandamayee* v. *Purna*, 9 M. I. A. 26.

(*b*) Imprisonment in jail is a sufficient cause—*Maharaj Kumar* v. *Banoji*, 21 P. R. 1904.

(*c*) Mistake committed by the officer of the Court is a sufficient cause—*Dalget* v. *Ramratan*, 25 I. C. 26. Mistake of Counsel, if made *bona fide* is a sufficient cause—*Pitchard* v. *Pitchard*, 14 Q. B. D. 55 ; *Jonson* v. *Warwick*, 67 Q. B. 516 ; *Corporation* v. *Anderson*, 10 Cal. 445. The mistake referred to

must be *bona fide i.e.* made inspite of due care and attention—*J. N. Surty* v. *Chaitiar Firm*, 4 R. 265.

The tendency of recent English decisions is to disallow extension of time on the ground of mistakes of Counsels—*In re : Helsby*, 1894 I. Q. B. 742.

But mistake or ignorance of law is not a sufficient cause—*Ramjibon Mal* v. *Chand Mal*, 10 All. 587. A new statement or exposition of the law altering the view of the law by High Court or Privy Council is not a sufficient cause—*Mouri* v. *Surendra*, 10 W. R. 178. Poverty does not constitute sufficient cause, neither negligence of pleader, clerk, appellant or agent or servants do constitute "sufficient cause".

Judicial Pronouncements as to what constitutes "Sufficient Cause" :

The Income-tax Officer has a discretion under section 27 to decide whether under the circumstances there is a sufficient cause. He must arrive at an adjudication on the light of balance of probabilities. Income-tax Officer should be guided in his assessment by judicial consideration. He must not act arbitrarily, capriciously or whimsically. Of course heavy assessments do not necessarily constitute arbitrary assessments.

In *Arunachalam Ayyar* v. *Subbarmiyah*, 46 Mad. 61, the Madras High Court characterised the proceedings as extremely harsh and the assumption baseless, but refused to interfere with the assessment, although in the case of *P. K. N. Chettiar Firm*, 8 R. 213, it has been held that the Income-tax Officer must be guided in his procedure by a judicial spirit and come to a judicial conclusion.

At the same time the Income-tax Officer cannot act in a purely arbitrary manner. "Suppose a person whose income had not in the past exceeded Rs. 5000 in any year, makes a default as contemplated by the sub-section, the Income-tax Officer would perpetrate an injustice if he took advantage of the default and assessed the income for the accounting period at a million rupees without any justification .. . .An assessment resting upon the whims and caprice of the Income-tax Officer cannot be elevated to the dignity of an assessment made to the best of his judgment." *In the matter of Mahammad Hayat Hazi Mahammad Sardar*, 131 I. C. 81.

In *P. G. N. B. R. Chettiar Firm*, A. I. R. 1930 R. 78, it has been held that the Income-tax Officer exercised his discretion properly.

In *Ram Kumar Mohonlal*, 119 I. C. 569, an application under section 27 stated that compliance was not possible as books of accounts had been filed in a criminal case and were not returned, but on the failure of the assessee to furnish the Income-tax Officer with a copy of the order rejecting the prayer for return of books, which the Income-tax Officer specifically wanted, an assessment under section 23 (*4*) was made. The High Court refused to interfere as there was no sufficient cause.

In *Lochmandas Baburam*, 47 All. 631, the High Court refused to interfere, holding that there was no sufficient cause. "As the period which was given for the production of accounts was a long one, it cannot be said that the assessee has no reasonable opportunity. The word 'prevent' in section 27 involves some definite, active cause making compliance with the order impossible and not a passive cause."

Section 27 confers a discretion to the Income-tax Officer to exercise it properly. Chief Justice Schwabe in *Arunachalam Ayyar* v. *Subramyah*, 46 Mad. 62 observes: "when for some reason a man has not attended a case in Court and there is no sufficient explanation of his absence, the case, by reason of this, is allowed to go *ex parte*. If he comes to Court afterwards and asks that his case may be restored to file, the question to be considered by the Court is not whether by some human possibility being wise after the event, he could not have got there in time or whether a man who has studied his Railway guide a little better, would not have got in another train or taken another route, but whether a man honestly intended to be in the Court and did his best though in his stupid way, to get there in time but for the intervention of an inevitable accident for which he was in no way responsible, it is the duty of the Court, in my judgment, to set aside the judgment, mulcting in proper cases, delinquent man in costs. In all those cases, this universal panacea for healing wounds, as it has been called in England, will properly be applied. It is not right in cases of this kind that the man should have his case disposed of without being heard..... These Courts are here so that people who have cases can have those cases heard and determined, and it should never be the intention of the Court that a man should be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part or something which cannot be put right."

In *Kajarimal Kalyanmal* v. *Commissioner of Income-tax, U. P.*, 3 I. T. C. 451, it has been held that sufficient cause is a mixed question of law and fact. Where there has been an improper exercise of discretion, a question of law arises.

Under section 27, the Income-tax Officer has to determine whether the assessee was prevented by a sufficient cause from

complying with the requirements of the law as set out therein. That is essentially a question of fact and not of law. If the assessee satisfies the Income-tax Officer that in the circumstances of the case he was prevented from complying with the requirements of law, it is provided that the Income-tax Officer "shall" cancel the assessment. He has no option or discretion in the matter. For these reasons the law on this subject enunciated in 6 R. 21 : 7 R. 669 : 8 R. 203 and 209, must be held to be incorrectly laid down, and these cases *protanto* must be regarded as overruled.—*Abdulbari Choudhury* v. *Commissioner of Income-tax*, A. I. R. 1931 R. 194 : 9 R. 281.

Recent decisions lend support to the fact that where through forgetfulness, etc., return under section 22 is not submitted, it does not constitute "sufficient cause".—*Lalit Kumar Mitra* v. *Commissioner of Income-tax, Behar and Orissa*, 140 I. C. 712.

As in appeal against an order refusing to reopen the case under section 27, so in a petition under section 27, the Income-tax Officer cannot enter into the merits of the case.—*In Pratap Chandra Ganguly*, A. I. R. 1932 Cal. 411.

Where an assessment is made under section 23 (*4*) to the best of his judgment on an assessee who deals in business of motor service, the assessee cannot claim in a petition under section 27, that depreciation allowance should have been allowed. It is to be noted that when an assessment is made under section 23 (*4*), all expenses incidental to the business must be assumed to have been considered in arriving at the net income assessed.—*Government Mail Motor Service* v. *Commissioner of Income-tax, Lahore*, 136 I. C. 707.

Sufficient Cause

There are three alternatives provided by section 23 (*2*) :

(1) To attend at the Income-tax Officer's office,

(2) To produce any evidence on which the assessee may rely, and

(3) To cause to be there produced any evidence on which the assessee may rely.

But as the section reads, the alternatives seem to be for the benefit of the assessee who has got to choose as to which of the options he will exercise. There a notice under section 23(*2*) scores out the words "or to produce or to cause to be produced any evidence on which such person may rely in support of the return" and directs the assessee to attend in person, the notice is irregular.

If the Income-tax Officer had reached the frame of mind when he has reason to believe that the return made under section 22 was incorrect or incomplete, he is bound to issue a valid notice under section 23 (*2*). But notice under section 23 (*2*) is not a condition precedent to making a best judgment assessment under section 23 (*4*)

Where an Income-tax Officer bound to issue a valid notice under section 23 (*2*) issues a notice which is not valid, it must be deemed that no notice under section 23 (*2*) was issued to the assessee ; to that extent the Income-tax Officer was in default, and the assessee will also be in default if he fails to comply with the terms of a notice under section 22 (*4*), but he can very well say that as the imperative notice under section 23 (*2*) was not issued to him, he could ignore the notice under section 22 (*4*) and in that sense he was prevented by a sufficient cause from complying with the notice—*Rajmoni Debi* v. *C. I. T.*, 172 I C. 354 : A. I. R. 1937 All. 770.

Whether a valid notice under section 23 (*2*) is a condition precedent or whether it is only imperative, it is clear that the assessee has been denied a valuable right and is, therefore, prevented by a sufficient cause from complying with the notice issued under section 22 (*4*).

Where an assessment is made under section 23 (*4*) for default, the plea of the assessee that the accounts of foreign business were not within his control can be negatived by the Income-tax Officer holding that the assessee has not been prevented by a sufficient cause—*Bhiwani Sahi* v. *C. I. T.*, 1936 I. T. R. 222. Similarly in the case of *N.B. Munshi* v. *C.I.T.*, 8 I. T. C. 104, it has been held that where in an application under section 27, the assessee comes forward with statement that he had the documents with himself in his pocket but these were not produced as not called upon by the Income-tax Officer, it can very well be said by the Income-tax Officer that he has not been prevented by any sufficient cause within the meaning of section 27.

Where an *ad interim* receiver accepts the notice under section 22 (*2*) and 34 but makes default, an assessment is made under section 23 (*4*). An application under section 27 on the ground of insufficiency of service of notice cannot constitute "sufficient cause"—*A. L. A. R. N. Firm* v. *C. I. T.*, 8 I. T. C. 195 : 1936 I. T. R. 97.

Deliberate default of notices under section 22 (*2*) or 22 (*4*) brings an assessee within the purview of section 23 (*4*) and application under section 27 must fail—*Rochi Ram Khattar* v. *C. I. T.*, 350, 1934 I. T. R. 492.

The mere fact that non-compliance of the notice under section 22 was due to non-audit within the extended date is not a sufficient cause within the meaning of section 27 entitling the assessee to have summary assessment set aside. A plea by an *ad interim* receiver that non-compliance of the requisition is due to his being not confirmed as receiver is not a "sufficient cause" within the meaning of section 27 of the Act.—*A. L. A. R. Firm by Official Receiver* v. *C. I. T.*, 8 I. T. C. 195.

Reasonable Opportunity :

The phrase "reasonable opportunity" has not been defined in the Act. What is a reasonable opportunity is a question of fact to be determined by the Income-tax Officer on the circumstances of each case. What the law requires is that an assessee must be allowed reasonable opportunity to comply with any requisition. It may be necessary to grant him further extension of time for submitting his return when adjustment of accounts is not possible owing to some difficulty (where the business is extensive and accounts rather voluminous).

An assessee should be given sufficient time to produce his books of accounts, where he has got several branch business in and outside the territorial jurisdiction of the Income-tax Officer by whom he is assessed. The Patna High Court in the case of *Satchidananda Singha*, 3 Patna, 664 held that the assessee was not given any reasonable opportunity.

In my humble opinion it is a question of fact pure and simple and a question of law can only arise where the Income-tax Officer has improperly denied an opportunity to the assessee.

Question of Merits :

Whenever a petition under section 27 is filed or an appeal is preferred against the order of the Income-tax Officer refusing to re-open the case under section 27, the Income-tax Officer or Assistant Commissioner, as the case may be, is to adjudicate only on the point if there is a "sufficient cause" within the meaning of the section. He has absolutely no discretion to decide on merits. The assessee cannot contend that he has got no assessable income, or that the assessment is excessive and unduly harsh and in total disregard of book profits. Whatever may be the contention, the Income-tax Officer must stay his hands on points thus raised, simply because section 27 does not authorise the Income-tax Officer to decide a case on merits. The section says that where there is a "sufficient cause", the Income-tax Officer "shall cancel" the assessment, but where points raised and pressed are something otherwise, the Income-tax Officer is simply out of his

jurisdiction.—*In re* : *Pratap Chandra Ganguly*, A. I. R. 1932 Cal. 411.

In *Jhuri Misra* v. *C. I. T.*, 3 I. T. C. 248, it has been laid down that the Assistant Commissioner is not entitled to enter into the merits of an assessment made under section 23 (*4*). But this does not mean that where the Income-tax Officer makes an assessment wrongly under sub-section 23 (*4*), the Assistant Commissioner when hearing the appeal, if he holds that the assessment was not under the wrong sub-section is not entitled to go into the merits of the case. In such a case, the Appellate Assistant Commissioner can go into the merits of the case.

"Satisfies"—meaning of :

It has been rightly pointed out in *P. K. N. P. R. Chettyar Firm* v. *C. I. T.*, (I. L. R. 8 R. 203) that the word "satisfies" and "was prevented by sufficient cause" in section 27 of the Act are practically indentical with similar words occurring in Order 9 rule 9 and Order 41, rule 19, of the Civil Procedure Code, and in section 5 of the Indian Limitation Act ; they must receive similar interpretation as has been put upon these words in the latter enactments—*In re* : *Gopinath Naik*, 9 I. T. C. 136 : A. I. R. 1936 All. 266.

Power of Income-tax Officer :

In dealing with an application under section 27, the Income-tax Officer is entitled to enquire whether the assessee has failed to establish sufficient cause or not within the meaning of section 27 of the Act—*Benarsi Das* v. *C. I. T.*, A. I. R. 1936 Lahore 482.

Burden of Proof :

When any application under section 27 is filed, the onus is on the assessee to prove that he was prevented by "sufficient cause". If he adduces evidence, it is for the Income-tax Officer to determine the weight to be attached to such evidence.—*Abdul Bari Choudhury* v. *C. I. T.*, A. I. R. 1931 R. 194 : 9 R. 281.

Assessment under section 23 (*4*)—Application under section 27 rejected, Reference to High Court if lies :

Where an assessment is made under section 23 (*4*), and the petition under section 27 stands rejected, the assessee has no right to claim a reference to the High Court. When the assessment is not *malafide* or arbitrary in the sense that the Income-tax Officer acted recklessly or fraudulently, the Commissioner will be right in refusing to state a case. (*Nanahmal Janki Das* v.

C. I. T., Lahore, 156 I. C. 227). Where the questions involved are purely questions of fact, indeed one may say self-evident fact, such a decision is a finding of a fact and no reference under section 66 (*2*) is possible. In *C. I. T.* v. *Laksmi Narayan Badridas*, 31 N. L. R. 32, their Lordships of the Privy Council have in interpreting the phrase "to the best of his judgment" occurring in section 23 (*4*) stated that the estimate of the income that will be made by Income-tax Officer in such cases would necessarily be a guess work and to some extent arbitrary. Their Lordships think that the section places the officer in the position of a person whose decision as to the amount is final, but whose decision if it can be shown to have been arrived at without an honest exercise of judgment, may be revised or reviewed by the Commissioner under the powers conferred upon that official by section 33.

The fact that the assessee has been assessed under section 23 (*4*) and has no other remedy will not give him a right to maintain a suit in the Civil Court—*Secretary of State* v. *Myappa Chettiar*, 170 I. C. 49. Section 67 of the Income-tax Act is a bar to institution of any suit against taxing authorities. The Amendment Act has made these decisions obsolete.

Fresh Assessment when Application under section 27 is Allowed :

Where a fresh assessment has been made and the assessee has made an application against the same under section 27, the application cannot be kept undisposed of till the decision of the Privy Council in respect of the original assessment. Where the whole question is liability to assessment, it is not an appropriate form of order to direct the Income-tax Officer to make a fresh assessment after making a further enquiry or to specify the exercise of one of the several powers given to the Assistant Commissioner by sub-section (*3*) of section 31 of the Act.

The Commissioner of Income-tax cannot impose as a condition of refund that some third party should guarantee the repayment of the amount in case of a fresh assessment or in case of an order unfavourable to the assessee, made on appeal to the Privy Council—*C. I. T.* v. *Bombay Trust Corporation*, 41 C. W. N. 33.

Where the Income-tax Officer re-opens a case after allowing the petition under section 27, he is to proceed from the stage from which it has been allowed. Similarly where the Appellate Assistant Commissioner allows an appeal against an order refusing to re-open the case by the Income-tax Officer under section 27, it is incumbent on the Income-tax Officer to proceed from the stage the Assistant Commissioner directs him to do.

It must be understood that where the Income-tax Officer re-opens the case under section 27, or the Appellate Assistant Commissioner allows the appeal against an order refusing to reopen the case under section 27, it is mandatory on the Income-tax Officer to refund forthwith, any tax, deposited by the assessee on the basis of the original assessment. No application is necessary and the Income-tax Officer shall have to refund the amount without waiting for an application.

Who can file Objection under Section 27 :

Strictly speaking an assessee is a living person by whom income-tax is payable. The term "assessee" has been defined in section 2 (*2*) of the Income-tax Act. From the wording of section 27, we find that the word "assessee" has been used but no reference has been made to a "person". It, therefore, stands that an assessee alone is competent to show cause for cancellation of assessment and as such an "assessee" can only file an application under section 27.

But if we go through the whole Act we find that the term "assessee" has been very loosely used all throughout. The first thing to notice is the definition of "assessee" as given under section 2 (*2*) of the Act. Assessee means a person by whom income-tax is payable and it is quite clear that the definition in terms is only applicable to living persons, the words being "a person by whom income-tax is payable" and not "a person by whom or by whose estate income-tax is payable."

The question that confronts us is whether the heir or the legal representative, etc. of an assessee is entitled to apply under section 27. When the heirs, etc., are assessed on the death of the assessee, they step into his shoes and enjoy the same rights and liabilities. Where an assessee dies before filing the return, the Income-tax Officer has no jurisdiction to assess the deceased assessee, he is bound to issue a fresh notice on his successor, whoever he may be. (As to the effect of the insertion of section 24-B, attention is invited below.) When an assessee dies after filing a return within due date or extended date, the Income-tax Officer has got to accept it or he must fall back on his successor.

In the case of *Govinda Saran*, A. I. R. 1927 Oudh 465, it has been held by an *obiter* that the word "assessee" for such purposes includes persons who represent estate of a deceased and that if taxable by the estate, it also can claim refund. The Patna High Court in the case of *Maharaja of Darbhanga* v. *Commissioner of Income-tax, Behar and Orissa*, A. I. R. 1930 Patna 91, held that the heirs can be heard and substituted in a petition of

reference under section 66 of the Income-tax Act. On the other hand the Bombay High Court in the case of *Ellis C. Reid*, A. I. R. 1931 B. 333, was of opinion that there was no logical reason why the privilege conferred on a living person could not be equally enjoyed by his heirs or administrator. Justice Beaumont observes : "I think one must do a certain amount of violence to the language of section 27 or else hold that the privilege conferred on a living person assessed under section 23 (*4*) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person—a distinction in which I can see logical reason."

In the case of *Mitchell* v. *McNeil*, 31 C. W. N. 360, the administrator to the estate of D. F. Mackenzie, deceased, made a return for the purposes of income-tax, and assessment was made on the estate of the deceased c/o McNeil & Co., of which the deceased was a partner until his death. The firm paid the tax and claimed repayment out of the estate. *Held*, that the assessment was invalid, inasmuch as there is no provision in the Income-tax Act for the assessment to income-tax or super-tax of the estate of any deceased person and the estate having been under no liability, the payment by the firm was voluntary payment so far as the estate was concerned.

Section 24-B is a machinery section, which has been inserted owing to practical difficulties for realising tax and it is primarily meant for administrative convenience. That section nowhere definitely says that such heirs, etc. are assessees, but by implication it says "as if such executor, administrator or other legal representative were the assessee."—*Vide* 24-B (*2*). Section 49-F makes a special provision by giving power to representatives of deceased persons or person disabled to make claim on his behalf.

It has been judicially noticed that if the Legislature intends to assess the heir, executor, etc., to tax charged on the deceased, the Legislature must provide proper machinery and not leave it to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of the statute. As a result of this, section 24-B with all its sub-clauses has been inserted. Section 24-B is primarily intended more as a machinery section than as a charging section.

Section 24-B (*1*) clearly lays down that the tax of a deceased person is payable by his heir or executor, sub-clause (*2*) provides the procedure to be followed where a person dies before he is served with a notice under section 22 (*2*) or under section 34, while sub-clause (*3*) lays down the procedure to be followed when a person dies without having furnished a return which he has been required under section 22, or having furnished an incomplete return.

The Act nowhere defines that an assessee includes heirs or executors, but by virtue of section 24-B we find that when an assessee dies, his heirs, administrators, executors or other legal representatives are answerable to authorities ; tax can be realised as a matter of course 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".

On a reference to section 24-B we find in the marginal note the words "tax of deceased person payable by representative". If any weight is to be attached to the marginal note, heirs, etc., cannot be regarded as assessees. It must be remembered that sub-clauses (*2*) and (*3*) of section 24-B unmistakably point out that the total income of the deceased person may be assessed and they do not say clearly that heirs, etc , are the assessees for the purpose of assessment. But in view of the fact that heirs, etc., can be called upon to comply with any requisition relating to the accounts of the deceased, it may be fairly inferred that they are competent to file objections under section 27 at least in cases coming under sub-clauses (*2*) and (*3*) of section 24-B.

It is quite clear that notwithstanding any express provision to the contrary, the legislature has widened the meaning of the term assessee, intending that the privilege conferred on a living person assessed under section 23 (*4*) of getting the assessment cancelled is also to be enjoyed by his heirs. It seems that this is a case of *casus omisus*.

Objections and Appeals, Protracted disposal of :

In *In the matter of Nawal Kishore Khariatilal*, 132 I. C., 857, it was laid down that Income-tax authorities must not allow one application for two years. This is improper.

Appeal against an order under section 23 (*4*) :

Before the Amending Act of 1939, no appeal lay against an assessment under section 23 (*4*) and an order rejecting the appeal is not an order "disposing of an appeal" within section 31 of the Act, but an order under the proviso to section 30 (*1*) ; consequently an application for reference under section 66 (*2*) and (*3*) of the Act was not maintainable.—*Shri Maharani Lakshmi Pat Mahadevi Garu* v. *C. I. T., U. P. & C. P.*, 8 I. T. R. 489 (*Ananda* v. *C. I. T., B. & O.*, A. I. R. 1931 Pat. 306 : 133 I. C. 753 *dissented* from ; *In re Jotram Sher Singh*, A. I. R. 1934 All. 559 : 7 I. T. C. *followed*). *Vide* also the case of *Sheodutrai Pannalal* v. *C. I. T., U. P.*, A. I. R. 1940 All. 530.

But under the present Act, appeals lie to the Appellate Assistant Commissioner and references are also permissible.

Time limit for filing application under section 27 of the Act :

Section 27 definitely lays down that an application under this section can be filed within one month from the date of service of demand notice under section 29. It is not necessary to file any copy of the order when presenting an application under section 27, but on a strict interpretation of section 67A, it is reasonable that the assessee should be allowed the time spent in obtaining a copy of the assessment order for the purposes of limitation of an application under section 27 of the Act.

Penalty for concealment of income or improper distribution of profits.

28. (*1*) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (*1*) or sub-section (*2*) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (*4*) of section 22 or sub-section (*2*) of section 23, or

(*c*) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he 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 payble 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 :

"(*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.

Provided that—

(*a*) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (*2*) of section 22 ;

(*b*) where a person has failed to comply with a notice under sub-section (*2*) of section 22 or section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees ;

(*c*) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in British India for failure to furnish the return required under section 22 unless a notice under sub-section (*2*) of that section or under section 34 has been served on him.

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

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

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

(*5*) An Appellate Assistant Commissioner or the Appellate Tribunal on making an order under sub-section (*1*) or sub-section (*2*), shall forthwith send a copy of the same to the Income-tax Officer.

(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

Amendment :

Clause (*a*) to sub-section (*1*) has been added by the last Amendment Act and comes into force from the 25th January, 1941. The other changes made by the Act are that the words "Appellate Tribunal" have been substituted for the word "Commissioner" wherever it occurred in the section.

Object

The amendment of 1939 is designed to give the income-tax department more effective means of dealing with illegal evasion. The penalty is increased from the amount of the tax avoided to one and half the amount, it is to include super-tax as well as income-tax. It is imposable for failure to file a return or to submit accounts or to submit other evidence in support of a return. To prevent hardship in the case of a person with no income liable to tax the penalty is limited to rupees twenty-five only and in the case of the agent of a non-resident the penalty for failure to file a return can only follow the issue of a specific notice calling for a return. Provision is also made [proviso (*c*) to sub-section (*1*)] to prevent an assessee scenting penalty proceedings from avoiding them by the submission of a return.

Penalties,—Who can impose and When :

Penalties may be imposed by the Income-tax Officer, Appellate Assistant Commissioner or the Tribunal.

Penalties are imposable in the following circumstances :—

(1) Failure to furnish a return of total income under section 22 (*1*) without any reasonable cause.

(2) Failure to comply with a requisition under section 22 (*2*) or 34 without any reasonable excuse.

(3) Failure to furnish the return within the time allowed and in the manner required by such notice without any reasonable cause.

(4) Failure to comply with a notice under section 22 (*4*) or 23 (*2*) without reasonable cause.

(5) Concealment of particulars of income and deliberately furnishing inaccurate particulars.

(6) Failure to distribute the profits of any registered firm, otherwise than in accordance with the deed of partnership.

Reasonable Cause :

There is no definition in the Act, as to what constitutes "reasonable cause". But it is apparent that it is a question of fact, pure and simple, to be determined by the taxing authorities. There is a sharp line of demarcation between the expression "reasonable cause" and "sufficient cause", because, however reasonable a cause, may not always be sufficient. This lends support to the view that failure due to inadvertance, illness, etc., or any other cause, may be reasonable. Circumstances and facts will be the guiding factor.

Power of Income-tax Officer :

Income-tax Officers and others must be satisfied in the course of any proceedings, otherwise no action is maintainable. The power of the Income-tax Officer has been considerably reduced. Section 28 (*6*) makes it obligatory on the Income-tax Officer not to impose any penalty without the previous sanction of the Inspecting Assistant Commissioner. This is imperative on the Income-tax Officer—the Inspecting Assistant Commissioner being the approving authority, it is likely that while sanctioning the penalty, he may have his say as to the quantum of penalty. Where the principle for the imposition of penalty is accepted, interference with the quantum will seriously affect the interference of the Income-tax Officer and it seems reasonable that the Inspecting Assistant Commissioner can only approve or disapprove and he shall have nothing to do with the quantum.

It is all the more reasonable, because there may be appeals against an imposition of penalty before the Appellate Assistant Commissioner, against the quantum or against the imposition. If the Inspecting Assistant Commissioner says that so much should be the penalty, it becomes very difficult for the assessee to get any relief from the Appellate Assistant Commissioner.

The imposition of penalty by the Income-tax Officer, after approval, sounds very well, although such approval is a positive stumbling block for an assessee before an Appellate Assistant Commissioner.

Section 28 (*6*) categorically lays down that the Income-tax Officer shall not impose any penalty without previous approval of the Inspecting Assistant Commissioner. But this does not certainly oust his jurisdiction to issue a notice to show cause under

section 28 before previous approval. All that the section requires is previous approval before any penalty is imposed.

Approval—copy of :

Where imposition of penalty is approved, can the assessee get a copy of the order of approval ? In my humble opinion there is no bar to grant that portion of the copy only which approves imposition. There may be cases where an assessee can challenge the Income-tax Officer or move before the Assistant Commissioner that proper approval was not taken or that action under section 28 was taken on a general circular.

Proviso—Effect of :

Income-tax authorities shall not impose any penalty for failure to submit a return under section 22 (*1*) where the total income is less than 3500 rupees. But this privilege is denied to an assessee who has been served with a notice under section 22(*2*). It is to be understood that this privilege is only for failure to submit a return under section 22 (*1*), other failure or failures attract penalty.

Where penalty is imposed for non-compliance of notice under section 22 (*2*) or section 34, if the person can prove that he has no income liable to tax, the penalty imposable shall be a penalty not exceeding rupees twenty-five.

So far as the agent of a non-resident is concerned, penalty for failure to submit a return, can only be imposed where there has been a service of notice under section 22 (*2*), otherwise not.

Penalty on Income-tax and Super-tax :

Under the previous Act, by virtue of the decision in *Batuk Prosad* v. *C. I. T.*, 5 I. T. C. 138, and *In re Guru Charan Prosad*, 1931 A. L. J. 336 : A. I. R. 1931 All. 421, penalty was imposable on income-tax alone and not on super-tax. But the present Act has definitely made it imposable on both. Under the previous Act, Assistant Commissioner could not enhance the amount of penalty (*in re Hara Krishna Das*, 8 I. T. C. 275 : 132 I. C. 430) but this is no longer a good law.

Claim of False Deductions :

The word "income" has been used in a much wider sense and it connotes the assessable figure arrived at after accounting for all legitimate deductions and exemptions. Falsehood in accounts may generally take two forms ; either an item may be suppressed dishonestly or an item may be claimed fraudulently, section

28 penalises both forms of falsehood. Where an assessee claims a false deduction, he falls within the ambit of section 28—*Nagin-chand Shib Sahi* v. *C. I. T.*, A. I. R. 1938 L. 620.

Principle :

Section 28 aims at penalising an individual who attempts to conceal his income and thus cheat the revenue authorities and not the penalising of an individual who makes a *bona fide* mistake in submitting the return.

It would appear that under the provision of section 28 while the Income-tax officer in determining the question of penalty has got to see as to what income-tax would have been levied, if the income returned by the assessee had been accepted and what income-tax has actually been levied on the assessee, under the assessment order and then to penalise the assessee on the difference between the two sums (*A. A. R. Chettyar Firm*, 1934 R. 354 *approved*)—(*Ibid*).

Discretionary or Mandatory :

The expression "may direct" in section 28 (*1*) lends colour to the view that action under section 28 is discretionary, pure and simple. It is for the Income-tax Officer to decide whether he should proceed under section 28 or not.

In the Course of any Proceedings,—Meaning of :

The income-tax authorities must be satisfied, before starting proceedings under section 28, that there has been a concealment of income or that there has been improper distribution of profits. But this satisfaction must be in the course of any proceedings. It, therefore, stands that the discovery of concealement o rim-proper distribution of profits must be detected in the course of any proceedings and a proceeding under the Income-tax Act includes cases falling under sections 22, 23, 30, 31, 32, 33, 46, 48 and 49. Section 46 refers to mode and time of recovery of taxes and necessarily it is a proceeding within the meaning of the Act. When assessment has been completed and tax realised for the year under assessment, a notice under section 28 is not maintainable.

The expression "in the course of any proceedings" under the Act in section 28 (*1*) means in the course of proceedings which terminate in assessment, that is, the original assessment and all powers to make use of section 28 cease in respect of the return which resulted in that assessment.

The Allahabad High Court in the case of *Mayaram Durga-prasad* v. *Commissioner of Income-tax, U. P.*, 5 I. T. C. 471, espe-

cially lays down that section 28 is not maintainable in a supplementary proceeding under section 34.

Concealment :

Concealment is a question of fact pure and simple. An omission of a petty item may be concealment. It is for the Income-tax Officer to determine whether it is an act of omission due to inadvertance or it is an act of commission. An act of commission is tantemount to *malafide* concealment whereas an act of omission due to ignorance or inadvertence, is not an act of concealment in the literal sense of the term within the meaning of the Income-tax Act. The extent and the circumstances under which the income is omitted should be the guiding basis.

Deliberately :

This use of the expression "deliberately" clearly indicates that accidental slip, mistakes or omission do not attract the provisions of section 28. The Income-tax Officer is to be satisfied that there has been a deliberate suppression of income, *i. e.*, inaccurate particulars have been furnished wilfully to hoodwink the department. In the absence of any deliberate intention to furnish inaccurate particulars, imposition of penalty is not justified.

Partnership Profit :

Under section 22 (*2*) read with section 38 of the Indian Income-tax Act, an assessee is required to submit his return and to furnish the Income-tax Officer with the names of the members of the firms, or of the manager or adult male members of the family with addresses. The prescribed form of return under section 22 (*1*), clearly states "any source other than those mentioned above including any income earned in partnership with others". The omission to put this in the return is a serious matter and the Income-tax Officer is justified in imposing penalty under section 28 for this non-disclosure.

Since section 22 (*2*) requires the person on whom a notice has been served to submit a return of his total income during the previous year, it is implied that income of branch business, if any, is also to be furnished, no matter where the branches are situate.

Registered Firm and Improper Distribution of Profits :

Section 28 (*2*) applies to a case where 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. It therefore stands that when distribution of profits has been made improperly, in direct disregard of the instrument of partnership, section 28 (*2*) comes into operation.

Where the partner of such a registered firm returns his income below the real amount, the Income-tax Officer is within his jurisdiction to impose a penalty under section 28. Cases falling within the previous section 28 (*2*) as indicated above, are penal inasmuch as no refund under section 48 or other adjustment shall be claimable by any other partner by reason of such direction. Before imposition of penalty, the partner should be allowed a reasonable opportunity to represent his case. An *ex parte* decision behind the back of the assessee is not contemplated under this section.

Revised Return—Effect of—on Penalty :

Under section 22 (*3*) the assessee is entitled to file an amended return ; but this does not absolve him from being penalised under section 28, if the original return filed under section 22 (*2*) is found to be false. Of course subsequent filing of a revised return before assessment is completed may be an extenuating circumstance and due consideration should be paid to it. But there is nothing in section 22 (*3*) that an offence is to be condoned where revised or amended return is filed : *In re* : *Gangasagar*, 28 A. L. J. 26.

In the case of *Commissioner of Income-tax* v. *A. R. M. A. L. A. Arunachalam Chettiar*, A. I. R. 1932 Mad. 433, it has been definitely held that although the revised return may for the purposes of assessability to income-tax, be treated as a revised return under section 22 (*3*), the Income-tax Officer is entitled to look at the previous false return and is under section 28 entitled to inflict a penalty on the person who has made it.

Under the view expressed by the High Court, a revised return under section 22 (*3*) cannot condone the offence committed in the original return under section 22 (*2*), but such an amended return should always weigh with the Income-tax Officer as to the amount of penalty to be imposed. After the filing of a revised return under section 22 (*3*) the Income-tax Officer can, with the approval of the Assistant Commissioner, prosecute the assessee under section 52 of the Act in respect to the original return. But it must be understood that both penalty and prosecution for the same offence are not permissible. An assessee may be prosecuted for one offence and penalised under section 28 for other offences in the same return—*Narayandas Mohonlal* v. *Commr. of Income-tax, U. P.*, 6 I. T. C. 248 : A. I. R. 1933 All. 231.

Maximum Penalty and the Right of the Assessee to adduce Evidence :

The maximum penalty that can be imposed under section 28 is a sum representing the difference between the tax on the income declared by the assessee and the tax on the income ascertained under the Income-tax Act in respect of which assessment has been made.

In an enquiry under section 28 as to whether penalty ought to be imposed, evidence adduced by the assessee is relevant and admissible, not for the purpose of varying or affecting the assessment made for the purpose of imposing the tax under the Act, but in order to show either that no penalty ought to be imposed or that the amount of the penalty ought to be less than the maximum prescribed under section 28, and the Income-tax Officer will not be justified in refusing to admit such evidence, *C. I. T.* v. *A. A. R. Chettyar*, 142 I. C. 708. The power to levy penalty is not tenable in a supplementary proceedings under section 34 where the supplementary proceedings have not been properly started—*Abdul Kader Maracayar*, 54 M. L. J. 298 : 2 I. T. C. 372.

The view I have taken is on the basis of decision in *Commissioner of Income-tax, Burma* v. *A. A. R. Chettiar Concern*, 142 I. C. 758. It may be mentioned in this connection that it is not incumbent on the Income-tax Officer to levy maximum penalty, his discretion in imposing penalty is unfettered, which even the appellate authority cannot interfere. An order under section 28 should clearly show—

(*i*) the amount of income concealed,

(*ii*) the amount of tax that would have been evaded had such concealment been successful.

The maximum penalty that can be imposed under section 28, is determined by ascertaining the difference between the amount set up in the false return and the amount of tax on the income in respect of which the assessment has been made, but, whether a penalty ought to be imposed and the amount of the penalty are matters, that, subject to sections 30 to 32, lie within the discretion of the Income-tax Officer and upon these questions the assessees are entitled to be heard—*A. A. R. Chettyar Firm* v. *C. I. T.*, 152 I. C. 941 : 1934 I. T. R. 386.

Appeal and Power of the Appellate Authority :

An appeal under section 30 lies against an order imposing penalty under section 28 before the Assistant Commissioner ; similarly a second appeal lies before the Commissioner against

the order of the Assistant Commissioner hearing appeal against imposition of penalty by the Income-tax Officer.

But as a matter of practice, the Assistant Commissioner's order is very often challenged before the Commissioner by presenting a petition of review under section 33. But no reference lies to the High Court against the order of the Commissioner imposing a penalty under section 28—*In re* : *Jongibhagat Ramabatar* v. *Commissioner of Income-tax, B. & O.*, 1930 Patna 121 : 3 I. T. C. 418 : 8 Pat. 877.

The Assistant Commissioner has no jurisdiction to enhance the amount of penalty in appeal, as such a jurisdiction is not contemplated by the Act and it amounts to an illegal assumption of authority not vested by law—*In the matter of Rai Shaib Harakrishna Das*, 132 I. C. 430 : 5 I. T. C. 275. The Assistant Commissioner is within his rights in imposing penalty, while hearing appeal, if the return filed before the Income-tax Officer is found to be false—*In re* : *Pitta Ramaswamy*, 49 M. 831.

In order to make a person liable under section 28, it must be done in the course of any proceeding. Where an Assistant Commissioner hearing an appeal against an assessment under section 28, rejected the same, holding that no appeal lay, after that order, he cannot impose a penalty on the appellant, because all proceedings before him under the Income-tax Act ended as soon as the order was passed. After passing that order he becomes *functus officio*.

Of course the Commissioner while giving hearing under section 32 or 33, can impose penalty. But as the Commissioner imposed penalty without serving a notice on the assessee to show cause against the imposition of penalty, it is not maintainable—*Benarsi Das* v. *C. I. T.*, 163 I. C. 658 : 1936 I. T. R. 217.

But in *Vir van Bansilal* v. *C. I. T.*, 178 I. C. 724 : A. I. R. 1936 Lah. 750, it has been held that once the Income-Tax Officer starts proceedings under section 28 within the time prescribed therein, he is empowered to make an order imposing penalty under that section even after the assessment order has been finally passed and the tax has been paid. In *Ratanchand Lallumal* v. *C. I. T.*, 9 I. T. C. 12 : 163 I. C. 324, it was held that when accounts stand closed which show non-receipt of interest, penalty cannot be imposed.

Notice under section 28 :

The Central Board of Revenue has not prescribed any standard Form of notice under section 28. All that it requires is that the assessee must be given a reasonable opportunity to have his

say. Thus a penal assessment is untenable where the assessee has not been heard or notice has not been served. The taxing authorities cannot do away with the formality of a notice. When a case comes under the purview of section 28, the following formalites are to be observed :

(*i*) A formal notice must be served.

(*ii*) Reasonable opportunity must be given to the assessee to represent his case.

Prosecution :

Where a penalty has been imposed, prosecution cannot be launched, but it can be launched for a different fact with the express approval of the Assistant Commissioner. There is no bar to impose penalty for one fact and prosecution for the other. This view finds support in the case of *Husanali & Co.*, 43 M. 498, where it is held : "perhaps the clearest way to put it is by an illustration. Suppose a man to have committed an offence by withholding his books and to have been prosecuted and convicted for it before he made a return of his income, as he clearly might be, suppose that, subsequently he returns his income, at a figure found to be false, could any one say that his conviction was a bar either to his being penally assessed or convicted under section 200 of the Indian Penal Code.

Assessee to be heard :

Sub-section (*3*) of section 28 lays down that 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.

The sub-section contemplates actual hearing. There is no definite case law on this point, although the language is sufficiently clear. *In the case of Seth Kaniya Lal Goenka*, 9 I. T. R. 25, while dealing with section 64 (*3*), held that the proviso to section 64 (*3*) was ignored and the assessee was not given an opportunity of representing his views.

The words occurring in the proviso are that the assessee should have had an opportunity of representing his views and not that the assessee should have been formally heard on his objection. This is in all fours with section 28 (*3*), where the expression is "has been heard" and the Legislature has used a different phraseology in section 28 (*3*) and as such there must be a formal hearing. Submission of a written statement is not tantamount to a hearing.

In an enquiry under section 28, evidence adduced by the assessee during such hearing regarding total income cannot be refused by the taxing authorities. Such evidence is relevant and germane and as such is admissible, not for the purpose of varying or affecting the assessment made for imposing income-tax but in order to show that no penalty can be imposed or that the amount of penalty ought to be less than the maximum prescribed under section 28 of the Act.—*C. I. T.* v. *A. A. R. Chettyr Concern*, 6 I. T. C 385 : A. I. R. 1933 Rang. 30.

Statement of Objects and Reasons :

As the section read with section 23 (*5*) stands, it is not possible to penalise a registered firm since tax is not payable by the firm but by its partners. The amendment remedies this defect and merely puts a registered firm in the same position as other assessees, *e.g.*, Hindu undivided families or unregistered firms. The insertion of clause (*d*) removes the loop-hole.

Notice of Demand.

29. Where any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable.

Demand Notice :

Notice of demand must be served on the assessee in the manner prescribed under section 63. Usually demand notice is served where there has been an assessment, but there is no reason why it should not be issued in *nil* cases, for an assessee in a *nil* case can have his grievances removed by an appeal. Executive instructions have been issued to furnish the assessee in *nil* cases with details of this assessment where he has income from business only. Where there is a perfectly good assessment order, the fact that a mistaken notice was sent to the assessee, in no way prevents a proper notice being sent when the mistake is discovered.

Time Limit, if any, for Service :

No time limit has been specially mentioned in the section. In the case of *Rajendra Narayan Bhanjo*, reported in A. I. R. 1925 P. 581, Justice Dawson Miller observes : "The first thing to be observed is that no period within which such a notice

demanding income-tax is to be issued is prescribed in the Act and, therefore, *prima facie* a notice issued about 14 months after the expiration of the year of assessment would not necessarily be too late..... Although no time is prescribed for issuing the notice in question, I suppose, it may be said that such a notice must be issued within a reasonable time. What would be a reasonable time might vary according to circumstances... . ... There is no period of limitation in the Act.

* ' ' "But where a rivised notice of demand is served, limitation will run from the order of revised assessment and not from the original notice of demand". (32 Cal. 287).

Notice of Demand :

Section 29 is amended which is consequential on the amendment or section 49, that the notice of demand shall be served on the assessee who is liable to pay tax or penalty.

Return after Assessment Order :

Return furnished after the assessment order is made but before the service of demand notice, is not a valid return—*Dhani Ram Dharam Pal* v. *C. I. T.*, 9 I. R. C. 233 : A. I. R. 1936 L. 468 : 163 I. C. 857.

Appeal against assessment under this Act.

30. (*1*) Any assessee objecting to the amount of income assessed under section 23 or 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26-A or to make a fresh assessment under section 27, or objecting to any order under sub-section (*2*) of section 25 or section 25-A or sub-section (*2*) of section 26 or section 28, made by an Income-tax Officer or objecting to any penalty imposed by an Income-tax Officer under sub-section (*6*) of section 44-E or sub-section (*5*) of section 44-F or sub-section (*1*) of section 46, or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48, 49 or 49-F, 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 23-A, may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie against an order under sub-section (*1*) of section 46 unless the tax has been paid :

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income :

Provided further that a shareholder in a company in respect of which an order under section 23-A 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.

(*2*) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (*1*) of section 25-A, or to register a firm under section 26-A or of the date of the refusal to make a fresh assessment under section 27, or of the intimation of an order under sub-section (*1*) of section 23-A or under section 48, 49 or 49-F, as the case may be ; but the Appellate Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

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

Appealable orders :

Section 30 clearly specifies the cases where appeals can be lodged to the Appellate Assistant Commissioner of Income-tax and the following are appealable orders :—

1. Against any assesement under section 23, including assessment under section 23 (4).

2. Against any order refusing to reopen the assessment under section 27 of the Act.

3. Against computation of loss under section 24.

4. Against the determination of the amount of tax under section 23 or section 27.

5. Against any order, denying liability to be assessed under this Act.

6. Against any order of refusal to register a firm under section 26A.

7. Against any order under section 25 (2)

8. Against any order under section 25A

9. Against any order under section 26 (2) of the Act.

10. Against any order under section 28 imposing penalty.

11. Against any order imposing penalty under sub-section (1) clause (b) of section 44E or sub-section 44F.

12. Against any order imposing penalty under section 46 (1) for non-payment of tax, but this appeal can only be *lodged if the tax has been paid.*

13. Against any order refusing to grant refund under sections 48, 49 or 49F of the Act.

14. Against any order under section 23A by a Company assessee.

15. In the case of a registered firm, or of an unregistered firm treated as a registered firm, the right of appeal against the amount of total income or loss of the firm or the apportionment between the partners is given to the firm only, and that when the assessment on the firm has become final these matters cannot be raised in appeal against the assessments on the partners individually. A similar provision is made to prevent a share holder in a Company from appealing against an order under section 23A, since the right of appeal against the order under section 23A is specifically given to the Company and not to the shareholders.

The matter is really now made clear by the amendment of section 30, the proviso in that amendment showing that, *while an individual partner may appeal from the assessment of the firm, the individual partner cannot, in an appeal from an order assessing him personally, ask for a re-determination of the question of the assessment of the firm and the income which has come to his share according to that assessment.*

Attention is also invited to the fact that there is no provision for an appeal against an order passed under section 26 (*1*) of the Act.

Procedure for filing appeal :

Whenever an appeal is preferred against the amount of income assessed or against the amount of tax charged or against any penalty imposed under any of the sections 25 (*2*), 28, 44-E (*6*), 44-F (*5*) and 46 (*1*), the notice of demand received by the appellant must be attached to the form of appeal. The forms prescribed for appeal against (*a*) the Income-tax Officer's order refusing to reopen an assessment under section 27, (*b*) the amount of loss computed under section 24, (*c*) the order of rejection of application for refund, (*d*) the amount of refund granted, (*e*) the order refusing to pass an order under section 25-A (*1*), (*f*) the order refusing to register a firm under section 26-A, and (*g*) the order under section 23-A, require that copies of the relative orders should be attached to the forms. One copy of any such order will, therefore, be supplied to the assessee free of cost and without application as soon as the order has been passed. Additional copies would be charged for.

One copy of any other order will also be supplied to the assessee, on application, free of cost. Additional copies will be charged for.

Duty of the Assistant Commissioner :

It is the duty of the Assistant Commissioner to satisfy himself that the proceedings of the Income-tax Officer were in order and the mere fact that he professes to act under section 23 (*4*) would not be enough to prevent the Assistant Commissioner from satisfying himself that the Income-tax Officer's action was correct : *In the matter of Radhakishen*, 101 I. C. 321, A. I. R.

The law does not allow an appeal against an order under section 23 (*4*) : *in the matter of Mohanlal Hardeo Das*, 122 I. C. 810, 4 I. T. C. 90. But this does not mean that where an assessment has been made under a wrong sub-section no appeal

lies. In the Full Bench case of *Dunı Chand*, A. I. R. 1929 L. 593 : 117 I. C. 69, it was held that "the mere fact that assessment purports to have been made under section 23 (*4*) does not shut out appeal ; but persons assessed under section 23 (*4*) cannot prefer an appeal on the ground that he is not liable to tax."

Non-liability :

But persons assessed under section 23 (*4*) are not entitled to appeal on the ground that they were not liable to be assessed under the Act : *In re* : *Dunı Chand*, A. I. R. 1929 L. 593 (Full Bench). It was an appeal on the ground that he was not a resident of British India but it was dismissed as the assessment was made under section 23 (*4*).

Appeal in Nil Cases :

There is no bar for an assessee to prefer an appeal against any assessment made at *nil*, *i.e.*, in case of faulty depreciation allowance, or overvaluation of house property, income, etc., when the assessment has been made under section 23 (*3*) (1927 Lah. 5: 3 I. T. C. 73).

Appealable Orders :

The following are the appealable orders, *i.e.*, assessment under sections 23 (*3*), 25 (*2*), 25-A, 26-A, 28, and in such cases when the assessee claims not to be liable under the Act of 1922.

In the case of *Pıtta Rama Swamiah* v. *Commıssıoner of Income-tax, Madras*, reported in 49 Mad. 831 : 2 I.T.C. 199, the High Court held that an appeal is competent.

Reasons, if to be stated :

The Assistant Commissioner hearing an appeal is not bound to set out reasons fully and the High Court cannot interfere when no reasons are recorded—*E. M. Chettyar Firm* v. *Commissioner of Income-tax*, A. I. R. 1930 Rang. 224.

Assistant Commissioner—Power if Limited :

Assistant Commissioners have certain powers of hearing appeals as are specifically mentioned under section 31. In the case of *Jagannath Therani*, reported in 86 I. C. 777 : A. I. R. 1925, Pat. 405 Justice Ross observes : "The appellate authority has no power to travel beyond the subject-matter of the assessment and for all the reasons advanced by the appellant, is, in my opinion, not entitled to assess new sources of

income. To do so would not in reality be enhancing the assessment but adding a new assessment to the old, the subject-matter being different, but the Assistant Commissioner has power to enhance an assessment made by the Income-tax Officer." In the case of *Rai Saheb Hara Krishna Das*, 132 I. C. 430, it has been held that the Assistant Commissioner has no authority in law to enhance the penalty while hearing an appeal.

An Assistant Commissioner has no authority under sub-section (*2*) of section 30 to admit a new matter raised in the form of an additional ground of appeal, after an appeal has once been admitted, whether within the period prescribed therefor or after its expiry. All that he can do is to admit an appeal even if it is presented after the period, prescribed therefor. In the Limitation Act, section 5 has been enacted to confer authority upon the appellate Courts to admit appeals in certain circumstances even after the expiry of the period of limitation. The Legislature has specifically provided in rule 3 of Order 41 of the Civil Procedure Code for the admission of additional grounds of appeal and has enabled the appellant to argue any ground of appeal not taken before, by leave of Court. The discretion vested in the Courts in this matter is not circumscribed within those limits, which hedge it in under section 5 of the Limitation Act.

No such provision, however, was made in the previous Act. There was clear that after once a memorandum of appeal was presented under section 30, no new matter could be raised—*Ram Rakhamal & Sons, Ltd.* v. *C.I.T.*, A.I.R. 1937 L. 830 : 1937 I.T.R. 137. In *C. I. T.* v. *Beharilal Ramchandra*, A. I. R. 1937 O. 416 : 10 I. T. C. 473, it was stated "It may be hoped that order 41, rule 2 of the C. P. C. provides that the appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal. The object of this rule clearly is to give notice of the grounds of objection to the opposite party. There is no such rule to be found in the Income-tax Act or in the rules framed under section 59 of the Act." But it is also a rule of general law that when a Court is allowed discretion in any matter, the discretion must be exercised in a judicial manner. It is also well settled that the proper or improper exercise of discretion is a question of law. But when there has been an improper exercise of discretion, it might be open to correction. But these decisions are practically obsolete, as the Amendment Act has in section 31 (*2A*) definitely laid down that the 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 Under the previous Act there was not the same need of stringency as in order 41, rule 2, because there was no question of notice being given to any officer of the Crown, as the Crown was never

represented at the hearing of appeals by Assistant Commissioner. But since the Income-tax Officer shall have the right of representation in appeals under the Amendment Act of 1939, additional grounds can now be taken in appeal even after the appeal is filed.

Appeal—if can be withdrawn :

The Income-tax Act is a fiscal piece of legislation, dealing with a special subject and so far as it goes it is self-contained. Once an assessee presents an appeal against assessment under section 30, he is not at liberty to withdraw it : *C. I. T.* v. *Nawab Shah Nawaj Khan*, A. I. R. 1938 L. 741. (*King* v. *Income-tax Special Commissioner*, (1936) 1 K. B. D. 447 *relied on*). In the words of Lord Wright, "It would indeed be a curious position, if, notice of appeal having been given by the tax-payer in the hope of reducing his assessment, he should be able when the information elicited shows quite conclusively that the assessment, so far from being an over-charge was an under-charge, to prevent the Commissioner from estimating or valuing or assessing his liability according to the true facts which have been elicited or that they should be debarred from proceeding further to develop the facts so as to ascertain the true position."

Objection Against Jurisdiction after Assessment :

From the language of the section it is clear that an assessee has a right to appeal only as regards his liability to assessment, he is not competent to object in appeal as regards the want of jurisdiction. It appears to be the policy of the Act that if there is to be any questioning of the Income-tax Officer's jurisdiction, it must be done in the assessment proceedings and not at any later stage. Section 21 of the Civil Procedure Code also enacts "No objection as to the place of suing shall be allowed by Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice." : *In re Seth Kanhaiya Lal*, 9 I. T. C. 68.

Limitation :

(*Appeal to be presented ordinarily within 30 days*)

As a matter of rule an appeal is to be presented within 30 days from the receipt of notice of demand. But the use of the word "ordinarily" indicates that an appeal can be entertained even after the expiry of 30 days. The law of limitation has been relaxed and practically an appeal is governed by section 5 of the Indian Limitation Act. But no second appeal or reference

is permissible against the refusal by the Assistant Commissioner to entertain an application after the expiry of 30 days. "The word 'ordinarily' means that there is nothing to prevent the authorities from entertaining an appeal preferred after 30 days :" *Mitchel* v. *Macneil & Co.*, 31 C. W. N. 630 : 130 I. C. 120.

The general rule is to present an appeal within thirty days of receipt of the notice of demand relating to assessment or penalty. But as to an order under section 25-A, section 26-A, section 27, initiation of an order under section 23-A or under sections 48, 49, or 39-F, limitation is 30 days from the date of intimation of the refusal to pass an order. But when there is a sufficient cause for not presenting the appeal within 30 days, appeal may be admitted after that period.

Assessment for two years where an appeal is preferred against two years' assessment, separate appeals are to be filed—*Nawal Kishore Khairatilal* v. *C. I. T.*, A. I. R. 1930 L. 1014.

Court Fees :

The prescribed form of appeals must bear a Court-fee stamp of eight annas for all appeals presented before the Assistant Commissioner.

Prescribed Form and Duly Verified :

The appeal must be in the prescribed form and must be duly verified. The Assistant Commissioner may reject an appeal *in limine* if not duly verified and in proper form.

Power of Registration at Appellate Stage :

An assessee can apply for registration even when preferring an appeal and when he can show that such application could not be made before Income-tax Officer for some tangible cause, the Assistant Commissioner can allow registration at that stage.

Ad Interim Appeal :

There is nothing in the Act to warrant the suggestion that a wrong order of an Income-tax Officer as a preliminary to his passing an order under section 23 of the Act may not be made a ground of appeal when appealing against the final order of assessment, unless a seperate appeal or application for review, where no appeal lies, has been successfully filed against such order. As a matter of fact, the tendency of the Legislature has always been to prevent appeals against interim orders, leaving it open to the party aggrieved to challenge such order when appealing

against the final order : *Bul Chand Keshob Das*, A. I. R. 1938 Sindh 301 : 128 I. C. 678.

Power of Review :

Assistant Commissioner has no power of review. He cannot review his own orders but is competent to rectify any mistake apparent from the record. He cannot make a re-assessment and initiate proceedings under section 34.

Time for obtaining Copies :

In appeals, where certified copies of orders are essential, the Income-tax Officer must calculate the period of limitation after allowing the days spent for obtaining such copies : *In Romanath Radhier*, 6 Rang. 175 and *Mohonlal Hardeo Das*, A. I. R. 1930 Pat. 13 : 4 I. T. C. 90.

But no ruling of the High Court is necessary that the computation of the period of limitation must be made after giving allowance to time spent for obtaining copies, in view of section 67-*A*

Appeal—How Presented :

An assessee desirous of filing an appeal, must present it to the Assistant Commissioner in the prescribed form. On receipt of the form the assessee must put a signature and verify the form duly. The appeal can be presented either by post or personally handing it over to the appellate authority. The assessee himself can file it or he can file it through his pleader or by his authorised representative.

Appeal against an Order Refusing to reopen the Case under section 27 :

Section 30 clearly mentions that an appeal against such refusal is tenable. The proviso only lays down that no appeal lies against an order under section 23 (*4*) or that when an assessment under section 23 (*4*) has been reopened under section 27, but at the time of *de novo* assessment, a fresh assessment has been made under section 23 (*4*) read with section 27—in such a case an assessee shall be debarred from appealing against that assessment —*A. K. A. C. T. V. V. Chettiar* v. *Commr. of I. Tax*, 6 R. 652 : 116 I. C. 47 : A. I. R. 1929 R. 8.

The proviso specifically puts a bar to an assessment reopened under section 27, but again assessed under section 23 (*4*). Thus a second appeal is not permissible, it is doubtful if a second petition under section 27 can also stand.

If in appeals against an order refusing to reopen under section 27, the Assistant Commissioner upholds the order of the Income-tax Officer, he is not bound to go into the merits of assessee's return—*In re : Pratap Ch. Ganguly*, A. I. R. 1932 Cal. 417 : 4 I. T. C. 418 : 139 I. C. 593.

The scope of appeal under this head is, that in an appeal against an order refusing to reopen the case under section 27, the only question that arises is the same question of fact as tha which fell to be determined by the Income-tax Officer under section 27, and in such an appeal it is immaterial whether the assessment made under section 23 (*4*) is valid or not—*In re: Abdul Bari Choudhury* v. *Commr. of I.T., Burma*, 5 I. T. C. 358 : 133 I. C. 81 (*relying on A. K. R. P. L. A. Chettyar Firm* v. *Commr. of I. Tax*).

The only question arising in connection with an assessment under section 23 (*4*), which can come before the Assistant Commissioner on appeal is whether the Income-tax Officer was justified in refusing to cancel the assessment.

Denying Liability to be assessed :

The clause "denying his liability to be assessed" in section 30 (*1*) is wide enough to cover the case of an assessee who denies his liability to be declared as an "Agent" under section 43. An appeal, therefore, against the order of an Income-tax Officer declaring any person to be an "Agent" of a foreigner, is not barred under section 30 (*1*)—*Gokuldas Chunilal* v. *Commr. of I. Tax*, A. I. R. 1932 N. 152 : 140 I. C. 490.

Section 30, Income-tax Act, contains no provision barring an appeal against the order of an Income-tax Officer declaring a person to be an agent of a foreigner.

Every assessee, who has been assessed by the Income-tax Officer, has an unqualified right of appeal under section 30 (*1*) whether he had questioned his liability to assessment under the Act before the Income-tax Officer or not.

The words "denying his liability to be assessed under this Act" in section 30 (*1*) are not confined to the denial of liability before the Income-tax Officer but include his denial in the appeal filed by him.

There is nothing in the Indian Income-tax Act to justify the view that it is incumbent upon the assessee to deny his liability to assessment before the Income-tax Officer to invest him with a right of appeal under section 30 of the Act.

The absence of a dispute by an assessee as to his liability of being assessed under the Act where he had an opportunity of

raising it may be a ground for not entertaining it in appeal but would not take away the right of appeal that is granted to him in express terms by Statute or for saying that in such a case there can be no proceedings in law under section 31 of the Act. *Mere filing of a return cannot be said to be tantamount to an admission by the person submitting the return that he is liable to assessment* : *Rani Anand Kunwar* v. *C. I. T., C. P. & U. P.*, 8 I.T.R. 126 : 184 I. C. 827 : A. I. R. 1940 Oudh 52. The following cases may be read with advantage, *e g. Asoka Mills Ltd.* v. *C. I. T., Bombay*, 6 I. T. C. 339 ; *Biradhmal Lodh* v. *C.I.T., U. P.*, 56 All. 504 : 1934 I. T. R. 164 : A. I. R. 1934 All. 217 , *Karam Chand* v. *C. I. T.*, A. I. R. 1931 Lah. 601 : 131 I. C. 630 . 12 Lah. 714.

Appeal against an Assessment under section 23 (4) :

Section 30 of the Act specifically enumerates the appealable orders. When assessment is made under section 23 (*4*), an appeal lies to the Assistant Commissioner against it.

But cases may be forthcoming, when it is found that the Income-tax Officer has made an assessment under a wrong sub-head, (*viz.* an assessment has been made under section 23(*4*), which should have been made under section 23 (*3*)). It is a matter of common knowledge that an appeal is a matter of procedure—*Colonial Sugar Refining Co.* v. *Irving*, (1905) A. C. 365.

In the Full Bench decision in the case of *Dunichand*, A. I. R. 1929 L. 593 : 117 I. C. 69, it has been held that the mere fact that the assessment purports to have been made under section 23 (*4*) does not shut out an appeal. In *In the matter of Radha Kissen*, 101 I C. 321, it is stated that it is the duty of the Assistant Commissioner to satisfy himself that the proceedings of the Income-tax Officer are in order, and the mere fact that he professes to act under section 23 (*4*) is not enough to prevent the Assistant Commissioner from satisfying himself that the findings of the Income-tax Officer are correct.

Before the Assistant Commissioner denies the right of appeal from an order under section 23 (*4*), he must be satisfied that the assessee had really incurred the penalty sustained by law and that the Income-tax Officer has acted illegally in assessing him under section 23 (*4*). The mere fact that the assessment is under section 23 (*4*) does not shut out an appeal—*In re* : *K. Ananda* v. *Commissioner of Income-tax, B. & O* , 5 I. T. C. 417 12 P. L. T 915.

It is said : "The law punishes a person who does not comply with a requisition by the Income-tax Officer by depriving him of his right of appeal. But the appellate authority must, before

denying him the right of appeal, be satisfied that he had really incurred the penalty prescribed by the law, and that the Income-tax Officer had acted legally in assessing him under section 23 (*4*) of the Act. The mere fact that the assessment purports to have been made under that sub-section does not shut out appeal, it must be shewn that the circumstances of the case bring it within the scope of that sub-section. When the Assistant Commissioner is satisfied that the assessment was made, not ostensibly but genuinely under that sub-section, he must stay his hands and decline to adjudicate upon the merits of the appeal on the ground that the proviso to section 30 (*1*) bars an appeal in such a case."

Thus when an appeal is presented before the Assistant Commissioner against an assessment under section 23(*4*), the Assistant Commissioner cannot refuse to entertain it—he has no power to reject it simply because it is an assessment under section 23 (*4*).

But section 30 now provides an appeal against all assessment under section 23. The fact that an assessment under section 23 (*4*) has been made does not now estop an assessee from filing an appeal direct, by virtue of the Amendment Act of 1939.

Another important result is that all previous rulings to the effect that as appeals were not competent and as such no reference is permissible, it not being an order arising out of section 31, is no longer sound law. If any question of law arises out of an order in section 31 against an appeal under section 23 (*4*), a reference is competent.

If Partner of a Firm can ask for reconsideration of the assessment of Firm in his personal case :

"While an individual partner may appeal from the assessment of the firm, he can not, in an appeal from an order assessing him personally, ask for a re-determination of the question of assessment of the firm and the income which has come to his share according to that assessment", *Lala Suraj Dev Khanna* v. *C. I. T.*, 9 I. T. R. 190.

Hearing of Appeal.

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

(*2*) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further

inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(*2-A*) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

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

(*a*) confirm, reduce, enhance or annul the assessment, and, in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association, or

(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment,

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

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

or, in the case of an order under sub-section (*2*) of section 25 or sub-section (*1*) of section 23-A, or sub-section (*2*) of section 26 or section 48, 49 or 49-F,

(*d*) confirm, cancel or vary such order,

or, in the case of an order under sub-section (*1*) of section 25-A,

(*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 25-A,

or, in the case of an order under section 28 or sub-section (*6*) of section 44-E or sub-section (*5*) of section 44-F or sub-section (*1*) of section 46,

(*f*) confirm or cancel such order or vary it so as either to enhance or reduce the penalty;

or in the case of an appeal against a computation of loss under section 24,

(*g*) confirm or vary such computation :

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

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative.

Appeal against an Order imposing Penalty under section 28, if Penalty can be Enhanced :

It can be stated as a matter of general principle that a penalty is not, as a rule, to be enhanced in appeal by mere implication of language. Assistant Commissioner has no authority in law to enhance the penalty while hearing an appeal against imposition of penalty.

The Allahabad High Court decision in *Hara Krishna Das*, 5 I. T. C. 277 : 132 I. C. 429, is worth quoting :

"We find that section 31 is not oblivious of the fact that there is the word enhance or enhancement in the English language and does not fail to use it when the idea was that the assessment should be enhanced, If we see that the legislature has not used the word enhance or enhancement dealing with a case of penalty, we can easily say that some different intention was intended to be conveyed. It is true that the word 'vary' has been used in conjunction with the 'order' in clause (*d*) of sub-section (*3*) of section 31. But the idea could have been easily expressed by altering the sentence and using the unambiguous word 'enhance' with respect to penalty. The fact that no provision was made for hearing the assessee before enhancing the penalty is a clear argument in support of the contention of the Counsel of the assessee. The fact again that a further appeal is provided for in the case of an enhancement of penalty is another argument against the view that a penalty could be enhanced.

".. ...We notice that no provision is to be found within the four corners of the Indian Income-tax Act by which the Department may ask by way of an appeal, any authority to enhance a penalty which has been imposed by the Income-tax Officer. This shows that if the assessee decides not to file an appeal against an order imposing penalty, the Department cannot seek to have the penalty enhanced."

The above view represented the law before the amendment. But the amended section 31 which gives power to the Appellate Assistant Commissioner to admit fresh grounds of appeal and to direct the Income-tax Officer to amend the assessments of partners of firm or members of associations in accordance with the appellate orders in the firm's or association's assessment, *also gives him power to enhance a penalty*. The Income-tax Officer is given the right to be represented at the hearing of an appeal.

The decision in *Hara Krishna Das*, 132 I. C. 429, that an Appellate Assistant Commissioner cannot enhance the amount of penalty imposed by the Income-tax Officer, is no longer a good law, owing to the amendment of 1939 authorising the Assistant Commissioner to confirm or cancel such order or vary it so as either to enhance or reduce the penalty.

Additional Grounds of Appeal :

Under the previous Act, there was a conflict of decisions, if the Assistant Commissioner could admit a new matter raised in

the form of additional ground of appeal after an appeal had been once admitted. *In Ram Rakhamal & Sons* v. *C. I. T.*, A. I. R. 1937 L. 830, it was enunciated that no new matter could be raised afterwards, while in the case of *C. I. T.* v. *Beharilal Ramchandra*, A. I. R. 1937 Oudh 416 : 10 I. T. C. 473, the opposite view was taken.

The amendment Act by inserting sub-section (*2-A*) has empowered the Appellate Assistant Commissioner to allow an appellant to go into any ground of appeal not specified in the grounds of appeal.

Powers of Assistant Commissioner in dealing with Appeals :

The provisions of this section have been re-worded in order to make it clear that the Assistant Commissioner in entertaining an appeal has power to remand a case to the Income-tax Officer for report or disposal on its merits and also that the Assistant Commissioner is not required to pass orders on the actual date of hearing, but may pass orders after the last day of hearing.

An Assistant Commissioner in dealing with an appeal may enhance the assessment made by the Income-tax Officer, but under the proviso to sub-section (*3*) he must first give the appellant reasonable opportunity of showing cause against the enhancement. The appellant in such a case may under section 32 appeal to the Commissioner against the order of enhancement.

Appeals should never be simply dismissed for default of appearance,—they should always be decided on their merits, and a reasoned decision written, whether the appellant appears or not. If the notice of hearing has not been served on the appellant in time to permit of his appearing in person or by pleader at the time and place fixed for the hearing of the appeal, the appeal should not be disposed of, but should be adjourned and a fresh notice issued to the appellant. (I. T. M.)

Assistant Commissioner's Powers :

He can remand, confirm, reduce, enhance and annul assessment, but where it is enhanced reasonable opportunity should be given to the assessee. The Assistant Commissioner must state facts and give reasons for his finding and if he does not do so, he fails to perform his duty : *In the matter of Sukdial*, 122 I. C. 238. He cannot enhance penalty while hearing appeal against imposition of penalty by the Income-tax Officer against

an order under section 28—*In re* : *Hara Krishna Das*, 132 I. C. 429, but under the (Amendment) Act, 1939, he can.

Power of Review :

The Assistant Commissioner has no power to review his own order, however erroneous it may be. The Commissioner has alone the power of review under section 33. Where a case has been decided *ex parte*, no petition can be entertained by the Assistant Commissioner for rehearing the case.

Dismissal for Default :

When an appeal is presented, the Assistant Commissioner cannot dismiss it for default. The appeal must always be decided on merits. The Assistant Commissioner is competent to entertain a petition if the appeal is decided *ex parte*, on any ground as mentioned under section 27. The Assistant Commissioner should not dismiss appeal *ex parte*. He should hear the assessee or his Counsel and then decide on merits. The Assistant Commissioner should not merely scrutinise the memorandum of appeal and the assessment order of the Income-tax Officer, behind the back of the assessee or his Counsel, and dismiss the appeal when it is not allowable—*In re* : *Bhagabatiprasad*, A.I.R. 1932 All. 390.

Jurisdiction of Assistant Commissioner in hearing Appeal :

As stated under section 30, in the case of *Jagannath Theram*, 86 I.C. 777, the Assistant Commissioner cannot assess a source of income which was not at all assessed by the Income-tax Officer. "Section 30 exists for the assessee's benefit and unless the statute expressly gives authority to the Assistant Commissioner, he cannot be said to possess the same jurisdiction as the original Court. The right of appeal cannot be taken away by any Act of the Assistant Commissioner. Proceedings could have been taken under section 34 without impairing the right of appeal, but the Assistant Commissioner cannot usurp the powers of an original court under section 31." In an appeal against an order refusing to re-open under section 27—the Assistant Commissioner is not bound to enter into the merits of the case.—*In re* : *Protap Ch. Ganguly*, 139 I. C. 593 : 4 I. T. C. 418.

Defective Appeal :

A defective appeal not verified in the prescribed form and not bearing signature, can be rejected *in limine* :—*In the matter of Damodar Prosad*, 120 I. C. 639 . 3 I. T. C. 405.

Right of Appellant :

An appellant has no higher right in adducing fresh evidence in appeal than he would have in a Civil case under order 41, rule 27, Civil Procedure Code : *E. Mt. Chettyar Firm*, 122 I. C. 898, Rangoon 635.

Order 41, Rule 27 of the Civil Procedure Code runs thus :—

(1) The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the appellate Court. But if, (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause, the appellate Court may allow such evidence or documents to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, the Court shall record the reason for its admission.

Power, wider under the Amendment Act of 1939 :

In the case of an order under section 28, or sub-section (*1*) (cl. *b*) of section 44-E, or sub-section (*5*) of section 44-F, or sub-section (*1*) of section 46, the Appellate Assistant Commissioner can confirm or cancel such order or vary it so as either to enhance or reduce the penalty.

The amendment Act of 1939 thus gives a right of appeal against imposition of penalty for default of payment under section 46(*1*), a privilege long over due. But it must be understood that an appeal against this imposition can be presented only after deposit of the Tax.

As the Assistant Commissioner is empowered to enhance the penalty imposed under section 28, it follows from the wordings of the section, that even in case of penalty imposed under section 46(*1*), it can be enhanced as well.

Appeal, if can be withdrawn :

The Income-tax Act is a special piece of legislation dealing with a special subject, and so far as it goes, it is self-contained. It will be seen that whereas the powers of a Civil Court are vested in the Income-tax authorities by virtue of section 37 of the Act, they have been restricted to the particular matters dealt within the body of the section itself.

A right of appeal under the Act and the method of disposing appeals and the powers to be exercised in connection therewith

have been clearly defined in section 31. Nowhere, however, has it been mentioned that the assessee is at liberty to withdraw an appeal which has been once presented under section 30 of the Act.

If it were assumed that the right of withdrawal of an appeal vested in an assessee on the general principle of law governing appeals, it would clearly nullify the powers of the Assistant Commissioner to enhance an assessment inasmuch as at any time that an assessee would be convinced that the Assistant Commissioner was disposed to enhance the assessment, he would withdraw appeal and thus prevent him from proceeding further with the matter. In other words, this would obviously lead to absurd results. It is to avoid such an absurdity and similar other complications which might arise, that no power of withdrawal has been vested in the assessee. This view gains support from (1936) 1 K. B. D. 487, which lays down that an appeal against an assessment cannot be withdrawn : *C. I. T.* v. *Nawab Shah Nawaz Khan*, A. I. R. 1938 L. 741 : 1938 I. T. R. 370.

Plea not taken before Income-tax Officer cannot be raised in Appeal :

A plea raised for the first time in appeal cannot be entertained. The appellant has no higher title to raise a new point in appeal. He should have raised that objection before the Income-tax Officer. The appellant is estopped from asking the Assistant Commissioner in an appeal before him to go into a question, which should have been raised before and decided by the Income-tax Officer. This is opposed to the clear and unmistakable provisions of section 30 itself.

Justice Broadway in *Karam Chund* v. *Commr. of Income-tax, Punjab*, 5 I. T. C. 315 : 12 Lahore 714 : A. I. R. 1931 Lahore 601, observes :—

"The objection which the petitioner made in his appeal to the Assistant Commissioner ought to have been taken by him before the Income-tax Officer under section 25-A of the Income-tax Act Had such objection been taken, it would have been incumbent on the Income-tax Officer to make such enquiry as he thought fit and to pass an order under that section, if he found that the requirements of that section had been fulfilled. If the petitioner finds himself dissatisfied with the order passed by the Income-tax Officer he could prefer an appeal against that order under the provisions of section 30 (*1*) of the Act. What the petitioner claims to be entitled to do is to call upon the Assistant Commissioner in an appeal to him to go into a question which should have been raised before and decided by the

Income-tax Officer on an appeal against the assessment. This appears to me to be opposed to the clear and unmistakable provisions of section 30 itself. I consider that the opinion of the Income-tax Commissioner is correct and that he has rightly held that the petitioner could not appeal to the Assistant Commissioner on the ground set out by him, inasmuch as no objection under section 25-A had been made, and that the Assistant Commissioner was right in refusing to go into the matter and further, in my opinion, the provision of section 30 (*1*) barred the Assistant Commissioner in entertaining the plea."

In the case of *Biradhmal Lodh* v. *Commissioner of Income-tax*, A. I. R. 1931 All. 217 : 56 All. 504, the appellant assessee raised a plea of division of the Hindu undivided family before the Assistant Commissioner on appeal, but it was refused.

All that section 25-*A* provides is that a claim which comes under that section should be made at the time of making an assessment and necessarily it must be put forward before the Income-tax Officer in charge of assessment.

Under the Civil Procedure Code, it is not open to the party in appeal to advance a claim for relief on a ground which he has not taken in his plaint and even as regards the production of additional or new evidence, Order 41, Rule 27 lays down that additional evidence can only be admitted in appeal when such evidence is required by the Appellate Court itself in order to enable it to pronounce a judgment or when such evidence has been refused by the Court of the first instance. If the Civil Courts are so stringent in regard to the rule that new matter should not be raised for the first time in appeal, why should it be laid down that appeals under the Income-tax Act should be conducted with greater laxity.

But Justice Niamatulla attached a dissenting judgment and he observed :—

"I may note that no analogy can be drawn from Order 41, Rule 27 of the Civil Procedure Code, to determine the powers of the Assistant Commissioner hearing an appeal under section 31(*2*) as the latter gives unrestricted discretion to the Assistant Commissioner to make further inquiry, that is, to obtain more evidence throwing light on the question which he is called upon to decide, while Order 41, Rule 27, confers very limited powers upon a Court of appeal in the matter of admitting fresh evidence."

In *Seth Kanhiyalal*, 9 I. T. C. 368, it was laid down that an objection as regards the place of assessment should be made at the time of the assessment proceedings and could not be taken for the first time in appeal. This view is on the analogy of section 21 of the Civil Procedure Code which enacts :—

"No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

Sub-section (*4*) of section 64 has now set at rest any complication. It runs thus : "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."

Apparently it resolves into this, that objection if any, against the place of assessment must be taken before the Income-tax Officer and not before the Appellate Assistant Commissioner, etc., for the first time.

Right of Representation :

The new proviso in the section gives the Income-tax Officer the right to be heard either in person or by a representative.

Under the previous Act, there was no such provision but the Amendment Act of 1939 has made the provision that at the time of hearing any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be represented.

Section 54 which deals with non-disclosure of the contents of assessment order, etc., to any party other than the assessee, necessarily undergoes a change when the Income-tax Officer is being represented by any lawyer or Accountant.

Order under Section 31 :

An order of the Assistant Commissioner rejecting an appeal against an assessment under section 23 (*4*), although not maintainable is still an order under section 31—*In re* : *K. Ananda* v. *Commissioner of Income-tax, B. & O.*, 5 I. T. C. 417. This overrules the case of *Pallu Mal Bholanath*, 146 I. C. 759. 1933 I. T. R. 235.

If an appeal, purporting to be an appeal under section 30, is filed against an assessment purporting to have been made under sub-section (*4*) of section 23, it is not within the competence of the Assistant Commissioner to make an *ex parte* order declining to entertain the appeal on the ground that by reason of the proviso

to sub-section (*1*) of section 30, no appeal lies. The appeal must be formally heard in accordance with sub-section (*1*) of section 31 and a finding recorded on the preliminary issue whether the appeal lies. The decision on this preliminary issue will depend on whether the assessment expressed to have been made under sub-section (*4*) of section 23 was in fact capable of being made under that sub-section. If the decision on this issue is adverse to the appellant, the appeal will be dismissed on the ground that no appeal lies. An order dismissing the appeal on this ground is an order under section 31. (*Executive Instructions.*)

But now that the barrier, if any. has been removed by the Amendment Act of 1939, it automatically follows that all orders relating to an appeal against an assessment under section 23 (*4*), are orders arising out of section 31 and if any question of law is involved, a reference under section 66 (*2*) is competent.

Duties and Obligations of the Appellate Assistant Commissioner :

When an appeal is filed before the Appellate Assistant Commissioner, it is imperative on him to fix a date of hearing and the place of hearing , and

(*a*) he can adjourn the appeal from time to time according to his convenience,

(*b*) he may make further inquiry or cause further inquiry to be made by the Income-tax Officer,

(*c*) he has been given power to admit additional grounds of appeal under sub-section (*2-A*) of section 31.

Power at the time of Disposal of Appeal :

Sub-section (*3*) of section 31 gives wide power to the Appellate Assistant Commissioner, at the time of disposing an appeal. The powers he can exercise are enumerated below :—

(1) He can confirm, reduce, enhance or annul any order of assessment and in the case of an assessment of firm or association of persons, he can authorise the Income-tax Officer to make any amendment.

(2) He can set aside an order of assessment and direct the Income-tax Officer to make a fresh assessment after making such inquiry as the Income-tax Officer thinks fit or as the Appellate Assistant Commissioner directs.

(3) When registration is refused under section 26-A or objection under section 27 is rejected by the Income-tax Officer the Appellate Assistant Commissioner may confirm such order or cancel it or direct the Income-tax Officer to register the firm or to make a fresh assessment as the case may be.

(4) In the case of an order under section 25 (*2*) or sub-section (*1*) of section 23-A, or sub-section (*2*) of section 26 or section 48, 49 or 49-F, he can confirm, cancel or vary such order.

(5) In the case of an order under sub-section (*1*) of section 25-A, he can confirm or cancel such order. He can ask the Income-tax Officer to make a further inquiry and pass a fresh order or to make an assessment as laid down in section 25-A (*2*).

(6) In the case of an order imposing penalty under sections 28, 44-E (*6*), 44-F (*5*) and 46 (*1*), the Appellate Assistant Commissioner may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty.

(7) Where appeal against computation of loss under section 24 is filed, he can confirm or vary such computation.

The provisions of sub-sections (*1*) and (*2*) of section 31 have been reworded in order to make it clear that the Appellate Assistant Commissioner in entertaining an appeal has power to remand a case to the Income-tax Officer for report or disposal on merits and also that the Appellate Assistant Commissioner is not required to pass orders on the actual date of hearing, but may pass orders after the last date of hearing.

An Appellate Assistant Commissioner in dealing with an appeal *may enhance the assessment made or the penalty imposed by the Income-tax Officer*, but under the proviso to sub-section (*3*) he must first give the appellant a reasonable opportunity of showing cause against the enhancement. The appellant in such a case may, until the Appellate Tribunal commences functioning under section 32, appeal to the Commissioner against the order of enhancement.

Appeals, if can be dismissed for default :

Appeals should never be dismissed for default of appearance, they should always be decided on merits, whether there is any appearance or not. The Appellate Assistant Commissioner should also write out a reasoned decision. If the notice of hearing has not been served on the appellant in time to permit of his appearing in person or by pleader at the time and place fixed for the hearing of the appeal, the appeal should not be

disposed of, but should be adjourned and a fresh notice issued to the appellant.

Obligations of the Appellate Assistant Commissioner :

It is imperative on the Appellate Assistant Commissioner not to enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement. It, therefore, automatically follows that an Appellate Assistant Commissioner shall have to serve notice before he makes an enhancement. The appellant shall have to be given a reasonable opportunity.

Tax has been paid—meaning of :

The expression "tax has been paid" conveys a restricted meaning, to wit, bare income-tax and super-tax, and in my opinion, not the amount of penalty, otherwise section 47 would not have provided separately the procedure for the recovery of penalty under sections 25 (*2*), 28 and 46 (*1*) of the Act.

Appeals against orders of Appellate Assistant Commissioner.

***32.** (*1*) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or to an order under sub-section (*3*) of section 31 enhancing his assessment or a penalty imposed under section 28 or sub-section (*6*) of section 44-E or sub-section (*5*) of section 44-F, may appeal to the Commissioner within 30 days of the date on which he was served with notice of such order.

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

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

*As the Commissioner of Income-tax has been divested of his judicial powers, section 32 has been omitted and a new section 33 has been inserted providing appeals against orders of Appellate Assistant Commissioners of Income-tax—*vide* new section 33 of the Act.

Appeals against orders of Appellate Assistant Commissioner.

33.* (*1*) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.

* The old section 33 which, as shewn below, stands omitted owing to the coming into force the machinery of the Appellate Tribunal.

Old Section 33 :

Power of revision.

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

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

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

Deletion :

The deletion of old section 33 of the Act is consequential on the coming into force of the provisions of the Appellate Tribunal and as a result of this a new section 33 has been inserted.

With the establishment of the Appellate Tribunal, the power of review so long exercised by the Commissioner goes away. It is difficult to conceive of any greater administrative blunder. The difficulties of assessees will go on increasing. Each and every assessee cannot run to the Appellate Tribunal by depositing Rs. 100/- for relief. It is no doubt well-sounding that an Appellate Tribunal is functioning now, but it is impossible for any ordinary assessee to approach the Tribunal. "To deprive the Commissioner of his powers, seldom used and never misused, is to create a world of difficulty "

Prejudicial to the Assessee :

Before omission of the old section 33 of Act, no reference to the High Court was permissible unless the order under section 33 was one which involved an enhancement of the assessment or was otherwise such as was "prejudicial" to the assessee.

Where the Commissioner simply maintains the decision or, rather confirms the order of the Appellate Assistant Commissioner and the assessment made by him, it cannot be said that the order of the Commissioner is "prejudicial" to the assessee : *Venkatachallam Chettyer* v. *C. I. T.*, 8 I. T. C. 74 : 48 I. L. R. Madras 867. See *Adamjee Haji Dawood* v. *C. I. T., Burma*, 8 I. T. C. 387 . A. I. R. 1936 Rang. 85 ; *Trimbaka, son of Totaram Lingyatwari* v. *C. I. T.*, A. I. R. 1938 Nag. 16, the case of *Central India Spinning & Weaving Co.* v. *C. I. T.*, 10 I. T. C. 131 : A. I. R. 1937 Nag. 154.

But the Madras High Court in the Full Bench case of *Voora Sreeramulu Chetty* v. *C. I. T., Madras*, I. T. R. 266, has held that an order which dismisses an application asking for the revision of a prejudicial order, must be deemed to be "prejudicial" within the meaning of section 33 of the Act—

(*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 at any time before the expiry of sixty days from the date of the order.

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

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

(*5*) Save as provided in section 66, orders passed by the Appellate Tribunal on appeal shall be final.

Scope of new Section 33 :

Old section 33 gave power of review to the Commissioner, but with the establishment of the Appellate Tribunal, a new section 33 has been inserted, with the marginal note "appeals against orders of Appellate Assistant Commissioner". Thus an arrangement has been made providing second appeal to the Appellate Tribunal against the order of the Appellate Assistant Commissioner passed under section 31 of the Act. Where an order is also passed by the Appellate Assistant Commissioner under

---

this overrules the decisions of *Venkatachallam Chettyr*, 8 I. T, C. 74, *Central India Spinning and Weaving Co., Ltd.*, 10 I. T. C. 131.

In the illustration portion of the Manual, it is stated that an order merely declining to interfere is not an order prejudicial to the assessee.

But the Madras High Court in the case of *Indarchand Kagriwal* v. *C. I. T., B. & O.*, 7 I. T. R. 506, has held that where the Commissioner confirms the order of the Assistant Commissioner, that order is not prejudicial to the assessee. In *Nanhemal Janki Nath* v. *C. I. T., Punjab*, 8 I. T. R. 437, it has been held that the word "prejudicial" in section 33 need not have the same meaning as it has in section 66. In the former section it is obviously used in the narrower sense of prejudice occasioned to the assessee by the order of the Commissioner himself. This reasoning does not apply to section 66 of the Act.

section 28, an appeal now lies to the Appellate Tribunal in place of the Commissioner under section 32 which has been omitted.

The time-limit for filing an appeal under section 33 is within 60 days of the date on which the assessee is served with a notice of the order passed by the Appellate Assistant Commissioner.

As the power of the Commissioner has been taken away, he has been invested with authority to direct the Income-tax Officer to appeal to the Appellate Tribunal against any order of the Appellate Assistant Commissioner, which is being objected to. The time limit is 60 days from the date of the order.

All appeals must be presented to the Appellate Tribunal in the prescribed form (*vide* Rules portion) and shall be verified. Excepting in the case of Crown appeal, an appeal shall be accompanied by a fee of one hundred rupees.

The Appellate Tribunal shall hear both the parties and then pass such orders as it thinks fit and shall also communicate any such orders to the parties.

Served with notice of Order, Meaning :

Section 33 (*1*) lays down that an appeal to the Appellate Tribunal may be presented within 60 days of the date of which he is served with notice of such order. The words "served with notice of such order" do not mean "served with a written notice". In *Harkishen Das* v. *C. I. T., Punjab*, 8 I. T. C. 9 : A. I. R. 1935 Lah. 959, it has been held that notice of the order need not be in writing, it is sufficient if the order is announced to the applicant or to his lawyer present. The time required for obtaining the copy of the order is to be excluded in computing the period of limitation. See in this connection section 67-A. Just as in section 66, so also in section 33 of the Act, the Appellate Tribunal cannot extend the time prescribed under section 33. Under section 30 the Appellate Assistant Commissioner has power to entertain and admit an appeal after the expiry of 30 days but there is no such elasticity in section 33. As there is no case law under section 33, we can conveniently look to the following cases for guidance : *Ratanchand Khemchand Motishaw* v. *C. I. T.*, 2 I. T. C. 225 ; *C. I. T.* v. *Mothay Ganga Raju*, 2 I. T. C. 109 ; *Sanat Kumar Ray* v. *C. I. T.*, 2 I. T. C. 287 , *Hukumchand* v. *C. I. T.*, 2 I. T. C. 140 ; *Raghunandan Das* v. *C. I. T., Bengal*, 4 I. T. C. 468 : 1932 Cal. 411 ; and *Merchants Mohini Flour Mills Co. Ltd.* v. *C. I. T.*, A. I. R. 1937 Lah. 876.

Appeals, how to be presented :

Rule 22 lays down the prescribed forms under which appeals under different heads are to be presented—these rules will be

found in the portion dealing exclusivoly with Rules. For the sake of convenience, rules made by the Income-tax Appellate Tribunal in exercise of the powers conferred on it by sub-section (*8*) of section 5A, have also been incorporated in the Rules portion.

33A. *Reference to Board of Referees. Omitted by s. 40 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939).*

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

Income escaping assessment.

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

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

Act, 1939, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted.

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

Changes in the Act :

The Amendment Act of 1939 makes important changes in section 34 which deals with income escaping assessment. The most important change is the extension of the period making such assessments from one year to four years (eight years in extreme cases). This follows the United Kingdom law and in conjunction with compulsory returns and penalties, it will be a very effective provision for dealing with illegal evasion. As a result of the Calcutta High Court decision in the case of *Mahilaram Ramjidas*, 62 Cal. 1011, the section has been made more wide and elastic. For the sake of clarity, the amended section will remove any doubt as to its applicability to cases of under-assessment.

Under the previous Act there was no limit for the completion of assessment proceedings begun in time. Sub-section (*2*) provides that they shall be completed within the period of eight years from the end of the assessment year in cases of concealment, and in other cases within four years.

Information—Meaning of :

There is no definition in the Income-tax Act of the word "information". On a reference to Chambers' dictionary, we find that the word "information" connotes 'intelligence given , knowledge ; an accusation given to a Magistrate or Court."

If the dictionary meaning is to be followed, it certainly does give very wide power to the Income-tax Officer. Any personal knowledge of the Income-tax Officer, any news given to him or even any accusation by any person, will bring the poor assessee

under the chargo. Even an allegation by an anonymous person may amount to "information"; but the Act says that the "information must be definite".

Effect of the Amendment :

Under the previous Act the burden of showing that income has escaped assessment or it has been assessed at too low a rate lies on the Commissioner—*C. I. T.* v. *Gopal Baijnath Monohar*, A. I. R. 1935 B. 410. In *C. I. T., Burma*, v. *Dey Bros.*, A. I. R. 1936 R. 219, it has been held that an assessment made under section 34 which is based not on fact but on surmises and hypothesis for which there is no foundation cannot be sustained but it has been laid down that the onus does not lie on the taxation authorities.

Under these circumstances, the section stands amended, by introducing the words "consequence of definite information," similar to the language used in section 22(*2*), but restricted by the adjective definite before information.

In the previous Act the words "if for any reason" occurred and it gave rise to various complications and there were various conflicts of decisions.

What the Income-tax Officer should do :

Firstly, the Income-tax Officer must have in possession a definite information and then he must discover. The terms "information" and "discovers" are interdependent. If there is any definite information, it must be on the record and then he is to discover that. Under the United Kingdom law the Inspector may take steps to raise additional assessments when he finds that income has been not fully covered by the first assessments, at any time within 6 years of the end of the year of assessment concerned. (I. T. Act 1928 section 125 ; Finance Act, 1923 section 29).

Discovers—Meaning of :

There is no definition in the Indian Income-tax Act. It has been held in England under the English Act that "discovers" may mean "has reason to believe". There the condition precedent to making another assessment is that the surveyor shall do something before he "discovers". A discovery may be made anywhere in the absence of, without the knowledge of, and without reference to the assessee. The Amendment Act of 1939 now definitely adopts the English principle.

Proceeding under section 34, when to be Started :

Under the Amendment Act of 1939, when the Income-tax Officer in consequence of a definite information discovers :

(a) Income, profits or gains chargeable to income-tax have escaped assessment, or

(b) have been under-assessed, or

(c) have been assessed at too low a rate, or

(d) have been the subject of excessive relief under this Act.

The Income-tax Officer may, where he has reason to believe that the assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars thereof, within 8 years, and in other cases within 4 years, re-assess or assess such income.

On a reference to section 125, of the English Act, an Inspector is entitled to take proceeding against an assessee if he discovers :

(1) that any property or profit chargeable to tax has been omitted from the first assessment,

(2) that a person has not been assessed to tax,

(3) that a person chargeable has not delivered a full and proper statement,

(4) that a person has been undercharged on the first assessment,

(5) that a person has been allowed or has obtained from the first assessment any allowance, reduction, exception, abatement or relief not authorised by the Act.

Assessment of Income which has Escaped Assessment :

Section 34 gives wide power to the Income-tax Officer who can reopen an assessment on two grounds only (i) where income chargeable to income-tax has escaped assessment (ii) where tax has been levied at too low a rate. All that the law requires is that the Income-tax Officer should commence the proceedings within the statutory period, extended by amendment from one to four or eight years, as the case may be ; but it is not necessary that proceedings should be completed within that period.

Escaped Assessment—Meaning of :

So long as the proceedings for assessment are pending and have not ended in a final assessment, income cannot be said to have escaped assessment ; so when original proceedings are

revived after certain nugatory proceedings, assessment can be made even after expiry of one year from notice—*In the matter of Lachiram Basantalal Nathani*, 35 C. W. N. 310 58 Cal. 909 : A. I. R. 1931 Cal. 545.

Escaped assessment includes cases in which either no assessment at all has been made on the person who received the income, profits or gains liable to income-tax, or when assessment has been made in the course of the year, but some portion of the income, profits or gains of such person has not been included in the order of assessment, such income is income which has escaped assessment within the meaning of section 34 : *Commissioner of Income-tax* v. *N. N. Burjorjee*, A. I. R. 1931 R. 101 : 131 I. C. 507.

The Madras High Court in the case of *Commissioner of Income-tax, Madras*, v. *K. C. Gojapati Narayan Deo*, 91 I. C. 940, went further and was of opinion that the expression "escaped assessment" in section 34 is applicable to cases where the Income-tax Officer has deliberately adopted an erroneous construction of the Act, just as much to a case where the Officer had not considered the matter at all, but simply omitted the assessable items from his view and from his assessment. There is nothing in the statute to prevent the assessing Officer from recovering in the succeeding year Income-tax from the previous year under section 34, which must be retrospective in operation.

"Escaped assessment" also covers a case where income has been assessed in the hands of a person to whom it does not really belong : *In re* : *Ganesh Das*, 100 I. C. 675. Section 34 is also applicable to cases where escaped income is part of the income under one head or derived from any other different head—*Bulaki Saha* v. *Crown*, 1 I. T. C. 256.

Income has escaped assessment within the meaning of section 34, when it has not been assessed in the assessment under consideration ; it is immaterial that it has been assessed in some other assessment : *C. I. T., Burma* v. *Ved Nath Singh*, 186 I. C. 807 : 8 I. T. R. 222.

Until the time limited for altering the assessment under section 34 or section 35 of the Act, has expired it cannot be said that the assessment has become final and conclusive. The fact that a mistake might be remedied under section 35, is no reason why the assessment should not be altered under section 34, if the case falls within that section. Sections 34 and 35 are mutually exclusive. The words of section 34 are wide enough to cover a mistake occurring in the original assessment—*C. I. T., Bombay* v. *D. R. Naik*, 12 I. R. Bom. 201 : A. I. R. 1939 B. 362 : 41 B. L. 652 : 184 I. C. 836.

"Escaped assessment" in section 34, means also 'has not been assessed". There is nothing in section 34 to restrict the operation of the section only to cases of non-inclusion of the income in the return. An item wrongly allowed as a deduction, can be said to have escaped assessment : *In re : P. C. Mallik,* 13 Ind. Ruling. Cal. 211.

Applicability of Sec. 28 in Sec. 34 Proceedings :

Section 34 shows that proceedings taken under it follow the routine laid down in Chapter IV for the original assessment of income to income-tax, and that section 28, which is a part of that procedure, will also apply to the re-assessment proceedings under section 34. It is not necessary that an order of assessment should be made first before issuing notice to the assessee as to why a penalty should not be imposed on him : *In re Guruchaian Prasad Khatri*, A. I. R. 1931 All. 421.

Executive Instructions :

"If it appears at any stage of the proceedings that no income has escaped assessment or has been assessed at too low a rate, the Income-tax Officer must promptly stop the proceedings. It is not intended that when a man has concealed part of his income and the Income-tax Officer is proceeding to assess the income that has escaped assessment, the assessee should be entitled to have the assessment that has already become final, reopened. Still less it is intended that the Income-tax Officer should be vested with wide power of revision or review merely because he has formed a mistaken impression that certain income has escaped assessment or has been assessed at too low a rate. His power under section 34 can never be used, therefore, to effect a reduction of tax already levied.

"Where income that escaped assessment or was assessed at too low a rate is subsequently assessed or fully assessed the proviso to section 34 makes it clear that the rate applicable to such assessment or re-assessment is the rate in force at the time when the income should originally have been assessed."

Power of the Income-tax Officer :

When the Income-tax Officer has issued a notice under section 34, he can rely on facts which come to his knowledge, after one year from the end of the year of assessment. There is nothing in the section which indicates that the enquiry is to be limited in time : *Muthuppa Chettiar* v. *C. I. T.*, 180 I. C. 825 A. I. R. 1939 Mad. 302. But it is not open to an Income-tax Officer, when he has proceeded to a final assessment to reopen

that assessment whenever and however he pleases. The powers of Income-tax Officers are limited in the matter of revision by sections 34 and 35 of the Act · *C. I. T.* v. *Ibrahimji Hakimji*, A. I. R. 1941 Sindh. 9.

Action under section 34, without preliminary notice :

To enable the Income-tax Officer to initiate proceedings under section 34, it is enough that the Income-tax Officer, on the information which he has before him and in good faith considers that he has good grounds for believing that the assessee's profits have for some reasons escaped assessment or have been assessed at too low a rate. He is not required by the section to convince the assessee, or intimate to him the nature of the alleged assessment, or to give an opportunity of being heard, before he decides to operate the powers conferred by the section : *C. I. T., Bengal* v. *Mahilaram Ramjidas*, 44 C. W. N. 929 (P. C.), 8 I. T. R. 422.

(*Rex* v. *Kensington I. T. Commissioners*, (1913) 3 K.B. 870 *referred to*).

In interpreting the provisions of the statute relating to machinery or procedure, the rule is that construction should be preferred which makes the machinery workable *utres valeat potius quam pereat.* But in *Haji Ali Mohammad* v. *C.I.T., C.P.*, 8 I. T. R. 243, it has been held that the Income-tax Officer, if he receives information which would justify him in concluding that income has escaped assessment, must give the assessee a chance to be heard and to explain, but this is done not before the notice is served but in the course of the inquiry which is generally started as a consequence of the notice being served.

Application of section 34 under a wrong view :

We are confronted with several conflicting decisions. The Madras High Court in the case of *K. C. Gojapati Narayan Deo, Raja of Parlakamedi*, 49 M. 22 : 91 I. C. 940, is clearly of opinion that section 34 is applicable to cases where the Income-tax Officer has deliberately adopted an erroneous construction of the Act, just as much to a case where the officer had not considered the matter at all.

"It is said that escaped assessment must mean not that the question had been considered and decided in favour of the assessee, but that the Income-tax Officer has omitted to consider the question at all or was unware of the existence of the property now sought to be taxed and therefore passed it over and that it does not apply to cases where the Income-tax Officer on consideration came to the conclusion, *ex hypothesi*

an erroneous conclusion, that the property in question was not assessable. It seems to me that construction is forbidden by the alternative case put in the section :"

Where the income has been assessed at too low a rate :

That cannot be a matter of mere inadvertance, that must refer to a deliberate assessment, made by the Income-tax Officer in the preceding year with knowledge of the facts and circumstances. It appears to me that a similar view must be taken of the previous words "escaped assessment" and that it applies to cases where the Income-tax Officer has deliberately adopted an erroneous construction of the Act just as much to a case where the Officer has not considered the matter at all, but simply omitted the assessable property from the view and from the assessment : *Commissioner of Income-tax, Madras*, v. *Raja of Parlakamedi*, 49 M. 22 : 91 I. C. 940.

The Calcutta High Court in the case of *Messrs. Anglo-Persian Oil Co., Ltd.* v. *Commr. of Income-tax, Bengal*, 37 C. W. N. 430 : A. I. R. 1933 Cal. 777, practically endorsed and opined with the Madras decision. Chief Justice Rankin observes : "I see no way of holding that section 34 is inapplicable to put right an assessment by which a deduction has been improperly allowed. Such a case is in my opinion a case of income escaping assessment—not the whole income of the assessee but a part of it escaping assessment, and there is nothing in section 34 which limits it to cases of non-disclosure by the assessee or discovery of new matter by the Income-tax Authorities or inadvertance as distinguished from erroneous deliberations on the part of these authorities. In most cases of under-assessment of profits, it could be said that the whole profits were assessed at a certain figure but when that figure is shown to be less than the amount of assessable profit, the balance has in my opinion 'escaped assessment' within the meaning of these words as they apper in section 34. We have been referred to the Madras decision in *Raja of Parlakamedi's* case, 49 M. 22, from which I see no reason to differ, and to the English case of *Anderton and Halstead* v. *Birrel*, 1 K. B. 271, which does not seem to afford any assistance upon the construction of the Indian Act."

But the Lahore High Court in the case of *Kishen Kishore* v. *Commr. of Income-tax, Lahore*, A. I. R. 1933, L. 284, held that section 34 is not applicable to put right an assessment where the Income-tax Officer improperly allowed deductions. Justice Tailal observes : "the expression 'escape' in my opinion as used in the section connotes failure by the taxing authority to tax the income owing to accidental or deliberate omission by the assessee to declare it or to some similar circumstances. It does

not however include cases where the income is known or disclosed to the Income-tax Authorities and has been the subject of assessment."

Their Lordships of the Privy Council in the case of *Sir R. N. Mukherjee* v. *Commr. of Income-tax, Bengal*, 38 C. W. N. 320 P.C., also arrived at a similar finding. Income which has already been duly returned for assessment cannot be said to have escaped assessment within the meaning of section 34, although such income was erroneously included in the assessment of another assessee and consequently not assessed within the tax year in respect of the proper assessee. Income has not eacaped assessment if there are pending at the time, proceedings for the assessment of the assessee's income, which has not yet terminated in a final assesment thereof.

The word "assessment" as used in the Indian Income-tax Act is not confined to the definite act of making an order of assessment and "has escaped assessment" in section 34 is not equivalent to "has not been assessed." The fact that section 34 requires a notice to be served calling for a return of income which has escaped assessment strongly suggests that income which has already been duly returned for assessment cannot be said to have "escaped" assessment within the statutory meaning. (*Vide* also *Lachiram Basantalal* v. *Commr. of Income-tax, Bengal*, 5 I. T. R. 114.)

In my humble opinion section 34 is not applicable in puting right an assessment when deduction has been improperly allowed, because there is a fundamental difference between a reassessment under section 34 and a revision. The Income-tax Officer has got no revisional jurisdiction and as such when he took an erroneous construction of the Act, section 34 is inapplicable, because the Income-tax Act does not confer any revisional jurisdiction on the Income-tax Officer and this is why their Lordships of the Privy Council held that "has escaped assessment" does not or cannot mean "has not been assessed."

The words "escaped assessment' in section 34 of the Act, include all cases of mere inadvertence or conscious misapprehension of the proper situation or error of judgment. Section 33 empowers an Income-tax Officer to revise the assessment already made and assess a sum which had not been assessed by his predecessor on account of wrong application of the Act—*Amrsing Sher Singh* v. *C. I. T., Punjab*, 8 I. T. C. 199 : A. I. R. 1935 Lah. 361.

In *Madan Mohan Lal* v. *C. I. T., Punjab*, 8 I. T. C. 431, A. I. R. 1935 Lah. 742, the Full Bench of the Lahore High Court held (Justice Dalip Singh *dissenting*) that the word "escape"

has a wide meaning and the words "for any reason" in the beginning of section 34, appear to give wide interpretation of the word "escape."

Therefore, if an item of income is shewn in the return furnished by an assessee, but is left unassessed by the Income-tax Officer or is assessed at the first instance, and the assessment is cancelled by an appellate or revisional authority, it escapes assessment within the meaning of section 34 of the Act and the Income-tax Officer can lawfully serve a notice under section 34 within one year of the end of the year . *Kishen Kishore* v. *C. I. T.*, A. I. R. 1935 Lah. 361 *over-ruled*, *In re-Anglo Persian Oil Co.*, 6 I. T. C. 419, 60 Cal. 843 : A. I. R. 1933 Cal. 777 *followed*.

Section 34 gives wide power to the Income-tax Officer, and, to quote the words of Chief Justice Rankin, "I see no way of holding that section 34 is inapplicable to put right an assessment by which a deduction has been improperly allowed."

The scope of section 34 is very wide and the intention of the Legislature was to model section 34 on the model of section 125 of the English Act.

In *re Lachhmam Basantalal*, (1936) I. L. R. 58 Cal. 909, the dictum of Sir George Rankin was that no assessment had even been started and therefore there was no assessment to escape. But in the case of *C. I. T.* v. *Piroj Bhai Contractor*, A. I. R 1937 B. 214, Beaumont, C. J., observed "with all respect to Sir George Rankin, I don't think there is any force in the suggestion he made. It is quite true that the word "escape" denoted that some risk has been avoided. If a man were to say that he spent a month in Bombay and escaped the plague, one would infer that there was an epidemic of plague, or, at any rate, some risk of plague at the time in Bombay, otherwise the use of the word "escape" would be inappropriate ; but under section 34 what must escape is assessment, and that means the whole process of assessment, which in the case of individuals started with a notice under section 22 (*2*). The liability to assessment is a risk to which every person in British India entitled to income is liable, and we cannot see why the process of assessment has not been just as much escaped by a person who receives no notice, or a notice which proves in fact ineffective. It seems to me that a person who receives no notice under section 22 (*2*) has escaped assessment, although through no fault of his own, the process of assessment has never been set in motion.

In *C. I. T.* v. *Lokunul Bhojumal*, 174 I. C. 140, the Income-tax Officer on scrutiny of accounts found that notwithstanding loss, there was a substantial increase in the capital invested by the

assessee which could not be accounted for, he made an estimated assessment, and for the previous year on which an exemption was given, he drew up a proceeding under section 34 : *held*, the income of the assessee had certainly escaped assessment by the simple process of false return having been filed, and the fraud perpetrated by him was not detected at the final assessment.

Limitation & Jurisdiction :

Proceeding under section 34 can be started at any time within one year of the end of that year. Necessarily a notice under section 34 shall have to be served within that period, the assessment may or may not be completed within the time limit of one year. Whatever may be the reason for which Income-tax Officer should fail to assess any income within the period prescribed by law, he is not competent to assess it after the expiration of the period of limitation—*In the matter of Ganesh Das*, A. I. R. 1927 L. 248. This time limit of a year is applicable only to the notice, the rest of the proceedings is not further limited as to time—*In re : Kedar Nath Kesrwal*, 34 C. W. N. 1093 : A. I. R. 1931 Cal. 209.

But these rulings have no application after the amendment, the time limit being no longer one year but four or even eight years according to circumstances.

An assessee is entitled in terms of the notice under section 34 to show in any way he can that the income alleged to have partially escaped assessment has not in truth and in fact escaped assessment and for this purpose income, profits or gains have not necessarily escaped assessment because they have not been assessed under right heads. (*Satyendra Mohon Rai Chowdhury* v. *C. I. T*, *Bengal*, 4 I. T. C. 447, *approved*).

There is no doubt that if a notice is served under section 34 saying that income has wholly or partially escaped assessment it is only right and proper that the assessee should be entitled to show, if he can, that the income which is said to have escaped assessment was in fact included in the Return, even though that sum was stated under some other head.

But when it is clear from various facts that there was from first to last a deliberate attempt on the part of the assessee to withhold information from the taxing authorities and an intentional failure to produce proper accounts, on principles analogous to the principle of estoppel, the assessee cannot be heard to say that the sum assessable as dividends was in any sense included or taken into account in the sum assessable as profits of the

business.—In the matter of *Jawlo Prosad Chobey* v. *C. I. T., Bengal*, (1935) 3 I. T. R. 295.

If in the taxing year, the income assessed is not the whole of the income in the year of assessment, then within a time limit provided in the section, it is open to the Income-tax Officer to revise it, whether the previous assessment was inadvertant, deliberate or was due to a wrong allowance or improper deduction or a low rate—*C. I. T.* v. *Gopal Bajinath Monohar*, 8 I. T. C. 273.

To say that the Income-tax Officer shall be limited to facts discovered within a year of the year of assessment is to say something which the section does not say, and if acted upon, would defeat the object of the section—*Viswanathan Chettiar* v. *C. I. T.* (unreported) decided on 26th day of October 1938, O. P. No. 8 of 1927).

Assessment under Section 23 (4), if Section 34 applies :

The idea that since a summary assessment under section 23 (*4*) is a penal one, re-assessment under section 34 should not be enforced, is erroneous, inasmuch as the Income-tax Officer is competent to issue notice under section 34 and re-assess in such cases. Section 34 is operative in all assessment under section 23, *In the matter of Kedar Nath Kesriwal*, 34 C. W. N. 1093. Similar views were expressed in the case of *Monohar Lal Deo Karandas*, 108 I. C. 436, where it was held that a succeeding Income-tax Officer can start proceeding under section 34, even if the original assessment made by his predecessor was under section 23 (*4*). In the case of *Choteylal*, A. I. R. 1932 All 83, relying on the case of *Kasinath Bagla*, A. I. R. 1932 All. 1, it was held that it is open to the Income-tax Officer to reopen the assessment originally made under section 23 (*4*) when proceedings under section 34 have been started, nor does such fresh notice do away with the previous assessment under section 23 (*4*). It is competent to the Income-tax Officer to make a re-assessment under section 23 (*4*). An Additional Income-tax Officer can assess under section 34, provided he has jurisdiction under section 5 of the Act : *Hazi Taj Mahamud Hazi Abdul Rahaman & Co.* v. *Commissioner of Income-tax, U. P.*, 6 I. T. C. 240.

When once a final assessment is arrived at, it cannot be re-opened except in the circumstances detailed in sections 34 and 35 of the Act and within the time limited by those sections. This evidently implies that even a "best judgment" assessment can be reopened under section 34 : *C. I. T., Bombay*, v. *Khemchand Ramdas*, A. I. R. 1938 P. C. 175 and in *re Mahilaram Ramjidas*, A. I. R. 1938 Cal. 557 : 177 I.C. 255 ; *Shaikh Mobarek*

Ali v. *C. I. T.*, A. I. R. 1938 L. 186. *See* also A. I. R. 1938 P. C. 175, where their Lordships of the Privy Council have held : "When once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in section 34 and section 35 of the Act and within the time limited by those sections."

Assessment after the Tax Year, if Legal :

Although the language of the Income-tax Act is naturally suited to the normal case of taxation carried through all its processes within the compass of the tax year, yet apart from section 34 of the Act there is no provision which would justify the imposition into the Act of an implied prohibition against the making of an assessment after the expiry of the tax year. Section 34 is applicable in two cases, *e.g.*,

(1) When income has escaped assessment in the year,

(2) When income has been assessed at too low a rate.

In either of the two cases. an assessment or re-assessment is possible of such income which has escaped assessment or has been assessed at too low a rate ; but such notice shall be served within one year after the expiry of the tax year. Thus in two cases to which section 34 applies, if no notice is served within the year following the tax year, no subsequent assessment or re-assessment can be made, but that is not to say that in no other case can an assessment be made after the expiry of the tax year.—*Sir R. N. Mukherji and others* v. *Commissioner of Income-tax, Bengal*, 38 C. W. N. 320 P. C. : 147 I. C. 663.

It will be seen that all that the section says is to reassess or assess income that has escaped assessment. There is nothing in the section which indicates that the inquiry is to be limited in time. In the Privy Council case of *Sir R. N. Mukherjee* their Lordships held that there was no limitition to the time in which the final assessment could be made—*Viswanathan Chettiar and athers* v. *C. I. T.*, (unreported, decided on 14 Feb. 1938). But sub-section (*2*) of section 34 now lays down that in case of fraud or concealment, assessment or re-assessment shall have to be completed within 8 years and in other cases within 4 years.

Under-assessed : It denotes Under-charged :

For under-assessment in any year, the Income-tax Officer is entitled to start proceedings under section 34. There may be under-assessment for various reasons, *e.g.*, the original estimate

may be an under-estimate, but if the Income-tax Officer discovers that it was an under-charge, the estimate can be raised under section 34. Obviously this gives a decent burial to the cases of *Gopal Baijnath and U. Lu Nyo*, considered before.

Too Low a Rate :

This may be due to miscalculation. When a higher rate of tax is due, if a low rate is calculated, section 34 comes into operation.

Excessive Relief :

It implies granting more allowance than what an assessee is entitled to. It is practically the same as laid down in section 125 of the English Act. It connotes "that a person has been allowed or has obtained from the first assessment any allowance deduction, exception, abatement or relief not authorised by the Act."

Amendment :

The previous law to start proceeding under section 34 within one year has undergone a drastic change, from one year to 8 years in the case where there is a concealment of particulars of income or deliberate submission of inaccurate particulars, and in other cases 4 years.

Concealment of Income and Deliberately Furnishing Inaccurate Particulars :

When a return does not contain a true state of affairs, when particulars required are inaccurate—in short, when there is an element of fraud, 8 years rule will be the basis. But when there is an under charge or excessive relief granted, 4 years rule will govern. Where income escapes through the fault of Income-tax Officer he can assess within four years ; but where the assessee errs, it is eight years.

Notice :

In a proceeding under section 34, service of notice under section 22 (*2*) is essential. Public notice is of no use in initiating a proceeding under section 34. Thus initiation of a proceeding under section 34 can only be made after a service of notice under section 22 (*2*).

Within 8 Years or Within 4 Years :

Under the previous Act, initiation of a proceeding could only be done "at any time within one year", but the Amendment Act of 1939, has substituted it by at any time within 8 years and 4 years.

Any Year—Meaning of :

The expression "any year" must be read as meaning the year during which proceeding in assessment in respect of that very year should have been initiated.

Consequently when an assessment has been duly made but for some reason the same is subsequently cancelled, the period of limitation for taking proceedings under section 34 cannot be taken to run from the date of such cancellation—*Burn & Co.* v. *Commissioner of Income-tax, Bengal*, 38 C. W. N. 205 : 61 Cal. 132 : 7 I. T. C. 86.

The expression "in any year" must be read as meaning the year during which proceedings in assessment in respect of that very year should have been initiated.—*Nawal Kishore Khairatilal*, A. I. R. 1936, Lah. 897.

It means eight or four years from the end of the year in which the income, profits or gains were first assessable. Section 34 (*2*) has categorically laid down and set at rest any complications as to when assessments or re-assessments are to be completed.

Rate of Tax :

The rate of tax applicable to a proceeding under section 34 shall be the rate prevalent in the year in which the assessment would have normally been made. Take for instance, the income of an assessee has been assessed to tax in 1938-39, and if a proceeding under section 34 is started for that year in 1940-41, the rate shall be what was prevalent in 1938-39 and not the rate of the year it is re-assessed.

Transition Period :

When any assessment is completed prior to the commencement of the Amendent Act of 1939, or where assessment made or to be made is an assessment made or to be made on the agent of a non-resident person under section 43, the sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted.

Form of Notice Under Section 34 :

When proceedings under section 34 are initiated, it is not necessary to serve any uniform notice, although the Central Board of Revenue has got a prescribed form of notice. The Calcutta High Court in the case of *Messrs. Burn & Co.*, 38 C.W. N. 205, has rightly held that section 34 does not prescribe any standard form of notice ; a letter, written by the Income-tax Officer containing all the details provided for in the form prescribed by the Central Board of Revenue, was held to have sufficiently complied with the requirements of section 34.

Firm, if can be Registered under Section 34 :

Registration of firm can be, made under Rule 2, clause (*b*) where it is laid down that application shall be made "if no part of the income of the firm had been assessed for any year under section 23, before the income of the firm is assessed under section 34." Thus there is a provision for registration even in an assessment under section 34, provided the firm has not been previously assessed under section 23.

Estoppel and Res Judicata :

Principles of *res judicata* are not operative in income-tax proceedings. It has been held by the various High Courts that Income-tax Officer is not a Court, except to a limited extent under section 37, and that the rules of the Civil Procedure Code are not applicable. Nevertheless the assessment should not be capricious or whimsical. Income-tax proceedings are rather *quasi*-judicial in nature, formalities of the Civil Procedure Code are not necessary but still the Taxing Authorities must be guided by strict judicial principles. Since each assessment is a separate unit, and since the doctrine of *res judicata* has no bearing in the Income-tax Act, a succeeding Income-tax Officer is competent to initiate proceedings under section 34, when the original assessment was made under section 23 (*4*)—*Manohor Deokaran Das*, A. I. R. 1929 L. 273.

Similarly we find that adjudication arrived at by one Income-tax Officer can be reopened by his successor if fresh facts are forthcoming. Of course the Income-tax Officer should not act arbitrarily and he must not usurp revisional jurisdiction not vested in him by law.—*Deokinandan & Sons*, A. I. R. 1930 Mad. 209 and *In re* : *Shankarlingya Nadar*, 126 I. C. 273.

Notice Perfectly Valid, Assessment *Ultra Vires*, Whether Fresh Assessment Tenable :

When assessment by a special Income-tax Officer is *ultra vires* nd made without jurisdiction, fresh assessment by an Income-

tax Officer having jurisdiction is perfectly valid, provided the notice was served within the statutory period. "It is open to the Income-tax Department to resume the proceedings at the stage up to which it has been valid by a competent officer and proceed to assessment although the date of such resumption may be beyond one year from the expiry of the financial year concerned : *In the matter of Lachiram Basantilal Natham*, 34 C.W.N. 1206.

Chargeability and Assessability—Distinction Between :

There is a clear distinction between the two. The former expression connotes liabilities to pay income-tax, the latter has reference primarily to the machinery which ought to be utilised and the procedure that must be followed in determining the amount which should be levied as Income-tax. *Lakshmi Insurance Co., Ltd.* v. *Commr. of Income-tax, Punjab*, A. I. R. 1931 L. 441.

Notice Served, Return Made, Whether *de novo* Proceedings are to be Started Against the Successor :

Section 26 gives wide power to the Income-tax Officer to proceed to assess the successor as if he were the predecessor, if in the course of making the assessment, he discovers another person to be the successor. The Income-tax Officer can then and there assess that person under section 26 (*2*) and that section nowhere says that *de novo* proceedings are to be started.

When income has escaped assessment, it can be made under section 34 on the successor of the person, who, if no succession had taken place, would have been liable to tax and if such assessment is otherwise valid, it is not invalidated by the fact that the succession took place after the close of the year in which the income escaped assessment.—*Commissioner of Income-tax, Madras*, v. *Nachel Achi*, A. I. R. 1934, Mad. 63.

Assessment on Partner under section 34, Non-Assessment of the Firm is no Bar :

A notice under section 34 has to be served on the partner within the time allowed, whether notice has been served on the firm or not. An assessee cannot object to this procedure and he cannot possibly take his stand that unless the firm to which he is a partner is assessed, he cannot be assessed. In the case of *Nimchand Daga*, 35 C. W. N. 534, Rankin, C. J., observes : "The Indian practice is to impose Income-tax by the Finance Act of each year at certain graduated rate upon individuals and at the maximum rate upon registered firms. Super-tax is not imposed

"on registered firm but is imposed upon certain conditions upon the individual partner in respect of his total income which includes the share of the firm's profits. The firm and the individual are each required to render a return of total income under section 22 (2), and may each be required to produce accounts or documents under section 24 (1)..... .... To collect tax effectively, without unnecessary inconvenience to the subject, without inconsistency in result and without unnecessary duplication of work on the part of the income-tax authority, it is obvious that the profit of the registered firm should be ascertained as a whole before assessment is made upon the individual partners But I can find nothing in the Act by which the firm is to be assessed first, still less that the assessment on the firm is to operate as a sort of estoppel in favour of the individual shares. In clause (b) of section 14 (2) the word is 'have' and not 'has'. The language of this clause may be compared with that of clause (a) of the same sub-section and that of the proviso to section 55 This clause applies to firms which are not registered as well as to those which are registered , while both firm and individuals are liable to the tax by the plain wording of the Finance Act, the clause exempts the individuals from *payment* in respect of certain profits as soon as those profits are in the hands of the firms assessed, but it does not exempt him at all in respect of profits which have not been assessed.

"Whether a notice under section 34 was served on the firm or not, a notice under section 34 would have to be served on the partner . ...to prevent him escaping payment of super-tax and to collect income-tax on his individual income at the higher rate appropriate to his true income.

"He is clearly a person liable to pay tax on income of his own which has escaped assessment, what answer has he to the Finance Act which imposed these taxes upon him. In my opinion he has none". *See* also *C. I. T.* v. *Aryan Chettiar*, 46 L. W. 901, which lays down that there is nothing in the Act which says that a partnership or a firm is to be assessed first.

Principle enunciated when Successor is to be Assessed :

The Income-tax Act does not comtemplate any fresh notice to be served upon the successor, inasmuch as proceedings once started against the predecessor continue against the successor, even if the predecessor had ceased to exist. In the absence of any clear direction to the contrary, no obligation is imposed upon the department in this behalf—*Ram Rakhamal & Sons* v. *C. I. T*, A. I. R. 1937 L. 830. When a notice under section 34 is issued, another notice under section 22 (2) is not necessary :—*Virvan*

Bansilal v. *C. I. T.*, 10 A. I. R. 139 (Lahore) ; *Mahilaram Ramji Das*, A. I. R. 1938 Cal. 557 : 177 I. C. 255 ; *Shaikh Mobarak Ali* v. *C. I. T.*, A. I. R. 1938 L. 165.

Who can Act under the Section :

The Income-tax authorities namely the Commissioner, the Appellate Assistant Commissioner and the Income-tax Officer can rectify any mistake patent on the face of the record within four years from the date of order. Sufficient cause as mentioned in section 27 has no application here inasmuch as no petition lies after 4 years nor are the authorities entitled to rectify any mistake after a lapse of 4 years.

But rectification before the Amendment Act comes into operation can only be done within one year.

Owing to the amendment of section 35, limitation is 4 years in place of one year.

Whether Court or not :

Section 37 says that proceedings before an Income-tax Officer, Appellate Assistant Commissioner, or Commissioner under chapter IV of the Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and for the purposes of section 196 of the Code. It would seem to follow that they are not deemed to be judicial proceedings within the meaning of any other section of any other Act.

If the provisions of the Indian Evidence Act do not apply to proceedings in the Court of the Appellate Assistant Commissioner, there is no other Act which would render any circumstances upon which he relied, inadmissible as bases for conclusion at which he might arrive.

No doubt an Appellate Assistant Commissioner is a Court within the definition in section 3 of the Evidence Act because he is legally authorised to take evidence under the provisions of section 37 of the Income-tax Act, but there still remains the question whether proceedings in the Court are judicial proceedings within the meaning of the Indian Evidence Act. *In re Hazi Noor Muhamad Hazi Alemullah*, 10 I. T. C. 426. *Vide* section 37 of the Act in this connection.

Penalty under Section 23, if leviable under Proceedings under Section 34 :

So long, as a matter of practice, penalty under section 28 was levied in proceedings under section 34. The decision in the

case of *Gurucharan Prosad Khaitry* 131 I C. 575, was also to the effect that penalty could be levied. Section 28 is not merely intended by the Act to apply to an assessment under the preceding sections but it may refer to any proceeding whatever under the Income-tax Act. Now section 34 is a section which lays down proceedings under the Income-tax Act and accordingly proceedings under section 34 are proceedings in the course of which penalty under section 28 can be imposed.

Further, section 34 itself states that under that section there may be 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.

Thus section 34 shows that proceedings taken under it follow the routine laid down in Chapter IV for the original assessment of income to income-tax and that section 25 which is a part of that procedure will also apply to re-assessment proceedings under section 34. It is not necessary that an order of assessment should be made first before issuing notice to the assessee as to why a penalty should not be imposed on him.

The Allahabad High Court in the case of *Mayaram Durgaprosad*, 5 I. T. C. 130, has definitely held that section 28 is inapplicable to a proceeding under section 34. The ingredients which go to make up the condition to the infliction of a penalty are :

1. The Income-tax Officer in the course of a proceeding, must be satisfied that an assessee has deliberately furnished inaccurate particulars of his income and has thereby returned it below the real amount,

2. there must be a determination by the Income-tax Officer that the assessee has furnished inaccurate particulars of the income,

3. a refusal on the part of the Taxing Officer to accept the income returned, as correct.

The proceedings, which terminated with the original assessment, are no longer before the Income-tax Officer. The Income-tax Officer started fresh proceedings for the assessment of the Income that had escaped assessment under section 34 of the Act. It has been judicially held that when proceedings are taken under section 34, it is not open to the assessee to show that he should have been assessed at a lower figure of income than was the case, before the proceedings under section 34 were started. The reason given was that the fresh proceedings were meant to assess the "escaped income" and not to re-assess the escaped income

which had already been assessed : *Kasinath Bagla* v. *Commr. of Income-tax, U. P.*, 4 I. T. C. 472.

Thus the proceedings which ended with the original assessment, are proceedings distinct from the proceedings under section 34 of the Income-tax Act. "If the two proceedings are separate, a reference to the previous proceedings can be made only by the use of the verb "to have" in the past tense and not by the use of the verb in the present tense.

In view of this, section 28 has no application to a proceeding under section 34 and the decision in the case of *Gurucharan Prosad Khetry* is no longer a good law.

Notice how served :

Notice under section 34 is to be served in the same manner as notice under section 22 (*2*) is served. The Income-tax Authorities may call for the return of income which has partially or wholly escaped assessment.

Service of notice is obligatory and the assessee must be allowed 30 days, time to submit the return under section 22 (*2*) read with section 34.

Failure to comply with any requisition under section 34 entails the same consequence as in the case of a failure to comply with the requisition under section 22 (*2*) and the Income-tax Officer is entitled to make an assessment under section 23 (*4*) to the best of his judgment. *In the matter of Kedar Nath Kesriwal*, 34 C. W. N. 1095.

Limit of Jurisdiction :

Jurisdiction under section 34 is limited to assessment of extra income, not assessed. There is no jurisdiction to make new assessment for taxing whole of that assessment. *In re* : *Kasinath Bagla*, A. I. R. 1932 All. 1.

Where an assessment has already been made in respect of the previous accounting year under section 34, the question whether all income which had accrued and has escaped assessment had been assessed to tax or not depends on the investigatoin of the facts of the case—*Baldeodas Rameswar*, 135 I. C. 281 (Calcutta).

Income, profits or gains which the Income-tax Officer is authorised and bound to assess under section 34 is the income, profits or gains chargeable to income-tax, that have escaped assessment. It is not incumbent on him to reopen the assessment

as a whole and ascertain *de novo* the whole assessable income of the assessee—*Commissioner of Income-tax* v. *T. S. T. S. Chettiar Firm*, A. I. R. 1931 R. 333.

The executive instruction is that an assessment must not be reopened on the ground of over-assessment ; but where there has been an under-assessment, the Income-tax Officer is bound to reopen the case for proper assessment. Assessment made under section 23 (*4*) could be reopened under section 34 by the Income-tax Officer on the sole ground that there has been an under-assessment in respect of particular source of income. *In the matter of Sundersa Iyer*, 2 I. T. C. 173.

Rankin, C.J., of the Calcutta High Court in *Satyendra Mohan Roy Chaudhury*, A. I. R. 1930 Cal. 627, observes: "in my opinion it is always open under section 34 to an assessee to show in any way he can that income, profits and gains alleged to have escaped assessment have not in truth and in fact escaped assessment, and for this purpose it is not true that the income, profits or gains have necessarily escaped assessment because they have not been assessed under the right-head. But if it is once shown that income has escaped assessment, the assessee cannot under section 34 resist proceedings to be assessed merely by showing that other income, profits or gains must have been assessed at too high a figure." The language of section 34 does not point to an intention to give to the assessee a right to reopen the whole assessment before being rendered liable to further tax. It is not for the High Court to determine whether the administrative inconvenience entailed by such a right would be much or little, or whether it would afford any sufficient reason for refusing to the assessee a right to reopen the whole matter. It it clear that the initial duty of the Income-tax Officer is merely to assess the income which has escaped."

It must be borne in mind that an assessment cannot be reopened on the ground that there has been an over-assessment or other unconnected heads.

The Income-tax Officer is not bound to reopen the whole assessment for raising the rate of tax. He must confine himself to the particular item which has been omitted—*In the matter of Palaniappa Chettiar*, 122 I C. 339. Where the assessment of super-tax was completed as if the assessee was Hindu undivided family but subsequently found to be individual, proceeding under section 34 was started although no portion of income escaped assessment, but for that the income was assessed at too low a rate—*In the matter of Choteylal*, A. I. R. 1932 All. 83.

Where the Income-tax Officer made an assessment after due enquiry, the succeeding Officer cannot initiate proceeding under

section 34 simply on the ground that he does not agree with his predecessor. The principle involved is that the Income-tax Officer cannot arbitrarily change any assessment but if fresh light and facts are forthcoming, he can—*In re* : *Sankralinga Nadar*, A.I.R. 1930, M. 209.

It has been stated before that an Income-tax Officer is competent to reassess under section 34 the original assessment made on the sole ground that some income, profits or gains chargeable to income-tax, has escaped assessment.—*Monohar Lal Deokaram Das* v. *Commr. of Income-tax, Punjab*, 118 I. C. 436.

Proceeding under Section 34 started for a particular Income, can the Officer assess other sources in the same proceeding :

Section 34 as it stands, empowers Income-tax Officer to make re-assessment where he discovers on getting definite information that income has escaped assessment, etc. ; when the Income-tax Officer discovers that, proceeding under section 34 is started. But where proceeding is drawn for one income escaping assessment, it does not confer any power on the Income-tax Officer, to reassess that income for which the proceeding was not started. If the Income-tax Officer wants to re-assess other income, he is at liberty to initiate fresh preceedings under section 34 within the prescribed time limit. The Legislature never intended that the Income-tax Officer should draw up proceeding after discovering one thing and that he should assess other sources of income which he never discovered at the time of the initiation of proceedings. But to say that the Income-tax Officer shall be limited to facts discovered within a year of the year of assessment (now eight years and four years) is to say something which the section does not say and if acted upon would defeat the object of the section.

Form :

This section, as it stands after amendment, lays down that the condition precedent to an action under this section is that the Income-tax Officer must discover, in consequence of definite information which has come into his possession, that there has been complete escapement, under-assessment, assessment at too low a rate or excessive relief. As soon as he discovers so, he may proceed to issue notice under section 34 in the following form :—

NOTICE UNDER SECTION 34 OF THE INDIAN INCOME-TAX ACT, 1922 (XI OF 1922).

Income-tax, Office,
Date

To

Whereas in consequence of definite information which has come into my possession I have discovered that your income assessable to income-tax for the year ending 31st of March 19 has

(*a*) escaped assessment,
(*b*) been under-assessed,
(*c*) been assessed at too low a rate,
(*d*) been subject of excessive relief,

I therefore propose to $\frac{\text{assess}}{\text{re-assess}}$ the said income that has

(*a*) escaped assessment,
(*b*) been under-assessed,
(*c*) been assessed at too low a rate,
(*d*) been the subject of excessive relief.

I hereby require you to deliver to me not later than or within 30 days of the receipt of this notice a return in the attached form of your total income and total world income assessable for the said year ending 31st of March 19 .

Seal

Income-tax Officer.

Having proceeded in the manner aforesaid the assessment or re-assessment is not restricted to the particular information on the basis of which action under this section was started.

Rectification of mistake.

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

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

Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939.

*(*2*) The provisions of sub-section (*1*) apply also in like manner to the rectification of mistakes by the Appellate Tribunal.

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

(*4*) Where any such rectification has the effect of enhancing the assessment or reducing the refund, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying

* This sub-section is new and has come into force on and from the 25th January, 1941.

the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

Rectification of Mistakes :

The power conferred upon the Commissioner or the Appellate Commissioner of Income-tax or the Income-tax Officer by section 35 to rectify a mistake whether on his own motion or on the application of an assessee is confined to the rectification of mistakes patent from the facts or documents which were before him when he passed his revisional, appellate or original assessment order, as the case may be. This section does not confer on the officers general power of review or authorise any assessee to introduce any new facts in connection with the said assessment. An Income-tax Officer should not correct mistakes in cases that have been dealt with by the Assistant Commissioner on appeal or the Commissioner of Income-tax in revision without reference to the Assistant Commissioner or the Commissioner of Income-tax as the case may be. Sub-section (*2*) now empowers Appellate Tribunal to rectify mistakes.

Enhancement After Rectification :

Where rectification has the effect of enhancement of the demand, notice must be served on the assessee to have his say. Rectification of a mistake which has the effect of enhancing the assessment cannot be made after the expiry of one year from the date of demand, no matter if the assessee moves the Court within the prescribed period : *In the matter of Delhi Cloth and General Mills Co. Ltd.*, 117 I. C. 383 : A. I. R. 1929 L. 326. In the case of *Zesaram* v. *Commr. of Income Tax*, A.I.R. 1927 L. 421, it has been held that rectification, enhancing the assessment after a year is bad in law.

Mistakes patent on the record :

Mistakes in this section imply mathematical mistakes and nothing more. Error of law, misapplication or misinterpretation of law is not a mistake under section 35. Section 35 does not authorise revisional jurisdiction. In the case of *Trikamji Jibondas*, 86 I. C. 170, Justice Dawson Miller observes : "I do not consider that section 35 has any application to the facts of the present case.....the real question is whether there was, in the circumstance of the case, any mistake apparent from the record of assessment which would entitle the assessee to a refund. In my opinion there was not." But the mistake must

be so apparent as to justify action under section 35. It does not provide an additional reason for appeal to the Commissioner, *In the matter of Jubilee Mills*, 89 I. C. 595 : 2 I. T. C. 25 section 152 of the Civil Procedure Code is practically analogous to section 35 of the Indian Income-tax Act. It runs thus :—

"Clerical or arithmetical mistakes in judgment, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

The only difference is that under section 35, rectification must be made within four years from the date of the order.

Limitation :

Under this section rectification is permissible within four years from the date of demand, from the date of any order in appeal, and from the date of order under section 33, by the Income-tax Officer, Assistant Commissioner and Commissioner respectively. It must be remembered that in case of revised assessment limitation will run from the date of the revised assessment *In the matter of Tricumchand Dansing*, 32 C. W. N. 287.

But the Amendment Act of 1939, has substituted four years in place of one year and consequently period of limitation is four years.

Who can act under section 35 :

The Income-tax authorities, namely, the Commissioner, the Appellate Assistant Commissioner and the Income-tax Officer can rectify any mistake patent on the face of the record within *four years* from the date of order. Sufficient cause or reasonable opportunity as mentioned in section 27, has no bearing in its application to section 35 of the Act. Consequently it is apparent that an application by an assessee for rectification after four years is not maintainable, neither the taxing authorities have any right to rectify a mistake after a lapse of four years. Appellate Tribunal may also rectify mistake.

Tax to be calculated to nearest anna.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Elimination of Pies for Assessment :

Section 36 provides that in income-tax assessments or refunds fractions of an anna less than six pies shall be disregarded and fractions of an anna equal to or exceeding six pies shall be regarded as one anna. This provision has been made for the purpose of eliminating fractions of an anna for the accounts.

Income-tax Officers should also be instructed not to attempt to work out the Income-tax due on fractions of a rupee. Fractions of a rupee in income should be entirely disregarded.

Power to take evidence on oath, etc.

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

(*a*) enforcing the attendance of any person and examining him on oath or affirmation ;

(*b*) compelling the production of documents ; and

(*c*) issuing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Note —In section 37 of the Act, for the words "and Commissioner" the words 'Commissioner and Appellate Tribunal' and for the words 'or Commissioner" in clause (*c*), the words 'Commissioner or Appellate Tribunal have been substituted on the Appellate Tribunal coming into being from the 25th January, 1941.

Arrest :

An Income-tax Officer is a tribunal within the meaning of S. 135 (*2*) C. P. Code, and a person attending Income-tax Office

on a requisition under section 23 (2) is not liable to arrest—*Basheshwar Nath* v. *Amolak Ram Amin Chand & Co.*, A. I. R. 1933 Lah. 214.

Income-tax Officer whether Court or not :

So far as the Income-tax Act is concerned, there is nothing in the Act which states that an Income-tax Officer proceeding to assess the income of an assessee and to determine the amount of such assessment is a Court. On the contrary the provisions of section 37 suggest that except for certain purposes the Income-tax Officer is not a Court.

Section 37 states that the Income-tax authorities specified therein, shall for the purpose of Chapter IV have the same powers as are vested in a Court under the Civil Procedure Code when trying a suit in respect of the following matters, namely, (*a*) enforcing the attendance of any person and examining him on oath or affirmation, (*b*) compelling the production of accounts and (*c*) issuing commissions for the examination of witnesses and that any proceeding before an Income-tax Officer, Assistant Commissioner, or Commissioner, under this chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

If an Income-tax Officer in making an investigation was a Court, there would be no necessity for the provisions of section 37. It is only for the purposes stated in that section that he is to be deemed a Court.

In *Lal Mohan Poddar* v. *Emperor*, 55 Cal. 423, it was held that a proceeding before an Income-tax Officer on the production of account books pursuant to a notice under section 23 (2), Income-tax Act, is a "judicial proceeding" only for the purpose of sections 193 and 228, but not of section 196 of the Indian Penal Code and that conviction under section 196 for the production of false accounts is bad in law.

"As we read section 37, it seems to us to be clear that the legislature has, for the purpose of punishing offences under sections 193 and 228 of the Indian Penal Code (and under no others) converted proceedings before the officer mentioned therein which are not judicial proceedings ordinarily, into judicial proceedings." Similar views have been expressed by Chief Justice Rankin in the case of *Harmuk Roy Dulichand*, 56 Cal. 39. "We are of opinion that an Income-tax Officer proceeding to assess an assessee after making an enquiry as contemplated in the Income-tax Act is not a Court."

The Indian Evidence Act has got no applicability in Income-tax proceedings.

It may be pointed out in this connection that the insertion of the words "and for the purposes of section 196" overrides the decision in the case of *Lal Mohan Poddar* 31 C. W. N. 996.

In the case of *Shell Company of Australia, Ltd.* v. *Federal Commissioner of Taxation,* (1931) A. C. 275. their Lordships of the Privy Council have held that the Board of Review of Taxation is not a Court exercising judicial power, but is only an executive tribunal.

Section 37 of the Income-tax Act says that proceedings before an Income-tax Officer, Appellate Assistant Commissioner or Commissioner under Chapter IV of the Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and for the purposes of section 196 of that Code. It would seem to follow that they are not deemed to be judicial proceedings within the meaning of any other section of any other Act.

If the provisions of the Indian Evidence Act do not apply to proceedings in the Court of the Appellate Assistant Commissioner, there is no other Act which would render any circumstances upon which he relied, inadmissible as basis for conclusions at which he might arrive. No doubt an Appellate Assistant Commissioner is a Court within the definition in section 3 of the Evidence Act, because he is legally authorised to take evidence under the provision of section 37 of the Income-tax Act, but there still remains the question whether proceedings in this Court are judicial proceedings within the meaning of the Indian Evidence Act—*In re : Haji Noor Muhamad Haji Alumullah,* 10 I. T. C. 426.

In *Shell Company of Australia, Ltd.* v. *Federal Commissioner of Taxation,* (1931) A.C. 275, the Judicial Committee of the Privy Council held that the function of the appellate authority as the Commissioner or the Board of Revenue was only an administrative function. Their Lordships observed,—

"The authorities are clear to show that there are tribunals with many of the trappings of a Court, which nevertheless are not Courts in strict sense of exercising judicial power . .. It may be useful to enumerate some negative propositions on this subject : (1) A Tribunal is not necessarily a Court in this strict sense because it gives a final decision. (2) nor because it hears witnesses on oath, (3) nor because two or more contending parties appear before it between whom it has to decide, (4) nor because it gives decisions which affect the rights of subjects, (5) nor because there is an appeal to a Court, (6) nor because it is a body to which a matter is referred by another body." *See* also *Rex* v. *Electricity Commi-*

ssioners, (1924) 1 K. B. 171. The Income-tax Officer is not a Court in the usual meaning of that word. Under section 37 he has merely certain powers of a Civil Court for the purposes of Chapter IV : *C. I. T., Bombay* v. *Khemchand Ramdas*, 8 I. T. R. 159.

Judicial Proceeding :

In the Criminal Procedure Code, it is defined thus "judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath."

Power of Income-tax Officer :

Under section 37, an Income-tax Officer has a limited power, *e.g.*, of

(*a*) enforcement of attendance of any person and his examination on oath,

(*b*) compelling the production of documents,

(*c*) issuing commission for the examination of witnesses.

Document :

In the General Clauses Act, the term has been defined thus

"Document means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be issued or which may be used for the purpose of recording that matter."

It follows, therefore, that the expression 'Documents' connotes accounts as well. But having regard to the fact that in section 22 (*4*), the terms "documents" and "accounts" have not been used as having indentical meanings, when a petition under section 37 is made, it is for the Income-tax Officer to accept or reject the prayer. No appeal lies against an order refusing to call for documents, etc., under section 37 , but in my humle opinion the assessee has an inherent right to pursue that point before the appellate authority against the original assessment.

Power to call for information.

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

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

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

(3) require any 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.

Scope :

This section confers upon the Income-tax Officer or the Assistant Commissioner power to call for information, namely, (1) the names and addresses of the partners of a firm, (2) the name of the manager or the names of all adult male members of a joint family together with their addresses and the name and address of the beneficiary, namely, the trustee, guardian or agent, (3) name, style, principal place of business with branches together with shares thereof.

Non-disclosure is punishable :

Section 51 provides that if the requisition under section 38 is not complied with, an assessee shall be convicted before a Magistrate with fine which may extend to Rs. 10 for every day during which the default continues.

Section 38 as amended—Effect of :

Section 38 gives the Income-tax Officer or Assistant Commissioner power to call for lists of persons to whom rent, interests, commission or the like in any year amounting to more than four hundred rupees is paid.

The section vests the Income-tax Officer or Assistant Commissioner with very wide power.

Under section 38 *(1)* they may require any firm or H. U. F. to furnish the particulars, under section 38 *(2)* require any trustee, guardian or agent with some particulars and under section 38 *(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 amounting to more than four hundred rupees.

An obligation has been imposed on any assesee to report to the Income-tax Officer of his jurisdiction when payment of more than Rs. 400 has been made for rent, interest, commission, royalty or brokerage or annuity, and failure to report is punishable under section 51(*C*) of the Indian Income Tax Act, 1939. The return under sections 22 (*1*) and 22 (*2*) contains all particulars to be furnished under section 38.

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.

Scope :

The officers mentioned under this section enjoy certain privileges. They are empowered to inspect, take copies or cause copies to be taken from loan company, banks registration office, from the mortgagees, and from the debenture-holders without any fees. Assistant Commissioner means both Appellate and Inspecting. The power may be delegated in writing.

Evidence in Assessment Proceedings, other than Returns and Accounts of Assessee :

(*i*) In addition to his general power to call for accounts, the Income-tax Officer, where he believes that a return made under section 22 (*2*) is incorrect or incomplete, has power to call upon an assessee to attend or to produce or cause to be produced evidence of the correctness of his return. If an assessee fails when required by an order under section 23 (*2*) to attend or to produce evidence in support of his return, he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who failed originally to make a return [*see* section 23(*4*)], that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 86. But it should be noted that in effect of the amendment, section 23 (*4*) is now appealable. If the assessee is a *registered* firm, the Income-tax Officer may cancel its registration.

(*ii*) Under section 23 (*3*), the Income-tax Officer is empowered to utilise any evidence bearing on the assessment which he may obtain of his own motion, while under sections 37 and 38, he can enforce the attendance of any person for this purpose and compel the production of the information that he requires.

(*iii*) The following special instructions should be observed in calling for information from Railway Administrations .—

(*a*) The information must be relevant to an individual assessment. Income-tax Officers should not, for instance, ask for a complete statement of all consignments to or from a particular station.

(*b*) The demand for information must be couched in definite terms. For instance, it must state whether the particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected.

(*c*) The requisition for information should always be sent to the Agent of the Railway administration concerned. There is no objection, however, to Railway officers furnishing information direct to the Income-tax Authorities without the intervention of the Agent where the Agent has no objection to their doing so.

Section 37 gives power to call for Railway books.

(*iv*) Except as provided in section 19-A and Rules 42 and 43, a company should not be required to furnish the Income-tax Officer with a return of the persons (with their addresses) for the time being appearing on the share register of the company and the amounts of the dividends paid or payable to such persons during any particular period. Such a duty would be burdensome to the company with no corresponding advantage to the administration. It is for this reason that in section 39 of the Act Provision is made that the share register, the register of debenture holding and of mortgagees of any company are open to the inspection of the income-tax authorities, who may also take copies or cause copies to be taken of any entries in such registers Since the power to inspect and take copies of such register is specifically conferred by section 39, no income-tax authoritities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

(*v*) Under section 20-A and Rules 42-A and 43-A any person responsible for paying any interest not being "interest on securities" is required to furnish on or before the 15th June every year

to the Income-tax Officer in whose jurisdiction he resides, a return showing the names and addresses of all persons to whom during the previous year he has paid interest or aggregate of interest exceeding Rs. 400 together with the amount paid to each such person.

(*vi*) The Bill as originally framed contained a provision empowering an Income-tax Officer to require information to be given regarding specific payments shown in the accounts of an assessee where there is reason to believe that such payments will become liable to tax in the hands of the recipients. This particular provision was omitted by the Select Committee on the Bill as being entirely unnecessary because Income-tax Officers have ample powers to disallow any payment shown in the accounts of an assessee where proof of the payment is not forthcoming.

(*vii*) Section 37 also provides for the issue of commissions. The scale of diet money and travelling expenses for witnesses summoned under this section should be that prescribed for attendance in Civil Courts in the Province concerned.

CHAPTER V

LIABILITY IN SPECIAL CASES.

Guardians, trustees and agents.

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

Provided that in the case of a beneficiary being a person residing out of British India the tax may be levied upon and recovered from him direct.

Application :

Section 40 in chapter V provides for liability in special cases. The amendment makes it clear that an assessment can be made on a non-resident direct instead of his resident agent. Further, in order to cover all cases, it changes the basis of assessment on the guardians, trustees or agent from assessment on what he receives to assessment on what he is entitled to receive on behalf of the beneficiary.

Being entitled to receive :

The expression "being entitled to receive" has been introduced to keep it in harmony with the due basis as in section 7 of the Act. But the change is very drastic and the result is very far-reaching. Trustee, guardian or agent shall have to pay tax on the amount receivable from the assests of beneficiary, the income, profits or gains for which they will be assessed may not at all be available to them.

Extent of its Application :

This section is applicable to income, profits or gains of minors, lunatics, idiots and residents out of British India. The following conditions must be satisfied to make the guardian, trustee or agent liable to income-tax for their profits, namely, (1) the person to be charged must be either a guardian, trustee or agent of another, (2) that he must be in direct receipt of the income of such person, chargeable to Income-tax, (3) that the minor, lunatic or idiot and non-resident would, if he were not a minor, etc., be a person for whom Income-tax can be levied and recovered. Section 40 of the Income-tax Act, is not a charging section but is a machinery one. It enables the Income-tax Officer to take steps to assess trustees, guardians as representing their separate beneficiaries or wards as the case may be, if they so choose. But the Crown is not bound to resort to this and to the following section—*Commissioner of Income-tax* v. *J. V. Saldanah*, A. I. R. 1932 Mad. 378 : 138 I. C. 1.

English Act :

Under the English Act chargeability depends on the trustee having control over the property of an incapacitated person but under the Indian Act it is applicable to a person in direct receipt on behalf of any beneficiary of his income, profits or gains.

Taxation of Minor :

Where there is no guardian, etc., there is nothing to prevent direct taxation of minor, etc., in respect of his income, as the section applies only if there is a guardian. It cannot be contended that where there is no guardian, the minor, etc., cannot be assessee. He is a person and as such can be taxed in respect of his income. (*New Market Commissioner* v. *Rex*, 7 Tax Cases, 49.)

In the case of *Royal Exchange Association Co.*, 7 Tax Cases 387, it was held that where a trustee resides abroad and does not receive any dividend on foreign shares which are paid to the beneficiary resident abroad, he cannot be assessed in respect of such dividend.

Liability of a Trustee, etc :

The use of the words "in like manner and to the same amount" limits the liability of a trustee, guardian or agent. The Income-tax Officer while making an assessment, must remove from his mind altogether the trustee, etc., and consider the income of the beneficiary. He must ascertain to what allowance

the beneficiary is entitled and then to bring back existence of trustee for the purpose of recovering tax. But in India the case is governed by section 40. Under section 40 the trustee in an assessee and Income-tax Authorities would not make an assessment if the income remains abroad ; even if the trustees brought it in British India, it could not be taxed except under section 42, as such profits are part of the capital and not income.

Attention is drawn to the decision in the case of *Hotz Trust of Simla*, A. I. R. 1930 L. 1929. (Where there are trustees, the status shall be association of individuals '

Section 40 was enacted to provide for certain special cases without its affecting in any way the liability to be taxed under the charging sections. It is merely a machinery section for the collection of tax in special cases, making the trustee liable in certain cases, where the beneficiaries are difficult or impossible to get at, and where the trustee acts as a conduit pipe for the conveyance of the income to the beneficiaries. It does not affect the charging sections 3 and 10, under which trustees as an association of individuals are liable to be assessed. There is practically no difference between the English and the Indian law in this respect : *Hotz Trust, Simla* v. *Commr. of I. Tax, Punjab*, A. I. R. 1930 Lah. 929 · 129 I. C 116. (*Williams* v *Singer*, 7 T. C. 37 : *Tischler* v. *Apthorpe*, 2 T. C. 89 ; *Werle & Co.* v. *Colquhoun*, 20 Q. B. D 753 *Fry and Shivels Trustees* 6 T. C. 583, *referred to*)—

In *Williams* v. *Singer*, 7 T. C. 37, Lord Phillimore observes "It may perhaps be said that when there is a trust for accumulation or for payment of debt, no person can be said to be entitled to the profits and in such case the trustee is to be the person to be assessed or charged. There are disbursements which may have to be made in the course of conducting a business, which a prudent owner would consider as deductions from profits, which trustees would make before they paid the net income over to the beneficiary, but which nevertheless for Income-tax purposes, as the law at present stands, are not considered as legitimate deductions for income.

If the revenue is to receive its full quota, it would seem that the assessment must be put on the trustee and not on the beneficiary and in such cases the trustee is the person to be assessed". (*Tischler* v. *Apthorpe*, 2 T. C. 89, *relied on.*)

Court of Wards, etc

41. (*1*) In the case of income, profits or gains chargeable under this Act which the Courts of Wards, the Administrator-General, the Official Trustees or any receiver or mana-

ger (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, or any trustee or trustees appointed under a duly executed trust deed (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 or trustee or trustees in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable and all the provisions of this Act shall apply accordingly.

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate :

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

(*2*) Nothing contained in sub-section (*1*) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

Object :

The amendment of section 41 is consequential. It makes trustees assessable in respect of the trust income chargeable under

the section which is not specifically the income of a beneficiary or where the individual shares in the income are indeterminate or unknown. In other cases the income will be assessed at the rate applicable to the individual beneficiary. Provision has also been made for cases where part only of the trust income is chargeable.

Assessment and Recovery :

Section 41, sub-section (2) lays down that nothing contained in section 41 (1) shall prevent either the direct assessment of the person on whose behalf income, profits and gains therein referred to are receivable or the recovery from such persons of the tax payable in respect of such income, profits or gains.

Thus it has been made abundantly clear by the sub-section (2) that a direct assessment of the ward is permissible and that tax can also be recovered from the ward.

Although sub-section (1) of section 41 lays down that Administrator-General, the Official Trustee and others are liable for the profits of the person whom they represent, section 41(2) specifically lays down that sub-section (1) of section 41 is no bar to a direct assessment of the wards and recovery of tax from them.

Scope of Section 41 (1) :

Section 41 (1) is merely auxiliary to section 40 and is confined to Court of Wards, Administrator-General, Official Trustee, trustees appointed under a duly executed trust deed which includes trustees under wakf deeds.

Liabilities :

Such receivers, managers, courts of ward, etc., are liable only in respect of the amout receivable by them as such, but in case of distribution of assets, they may be made personally liable for the tax. Generally speaking, the beneficiary is the person who should be charged, but in certain cases the trustee might be the person to be charged, as for instance, when he holds property in trust for some body who cannot deal with it, say an infant or lunatic, or in cases of trusts for accumulating of income, etc., the person charged with the tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach :—*In re : Currimbhoy Ebrahim Baronetcy*, 5. I. T. C. 491. (*Williams* v. *Singer*, 7 T. C. 387 ; *Pool* v. *Royal Exchange Assurance*, (1921) A. C. 65 *approved.*) On appeal to the *Privy Council* (A. I. R. 1934 P. C. 116) it has been held that the money employed for maintaining the funds and defraying outgoings the appellants are liable to be

assessed. It has been further held that the balance of the trust income paid to the Baron is also liable to tax.

Executors and Trustees :

Executors and trustees will be assessable to tax in respect of any income of the estate which has not been taxed at the source. When, for instance, a business is carried on by trustees, assessment will be made on them in respect of the statutory profits of the business :—(*Reid's Trustees* v. *C. I. R.*, 8. I. T. C. 213).

When there are circumstances that would entitle any other tax-payer to relief, similar claims may be made by trustees, but they are not entitled to claim earned income or personal allowances or tax at the reduced rate, as these are personal to the recipients of the income. Where one of the trustees is himself a beneficiary, he cannot claim earned income allowances in respect of his share of the profits, although he has actually been engaged in earning it, since such activities have been exercised *qua* trustee and not *qua* recipient : *Fry* v. *Shiel's Trustees*, 6 T. C. 58 ; *McDougall* v. *Smith*, 7 T. C. 134.

When a salary is paid to a trustee, including a trustee-beneficiary, such salary will be allowed as an expense in computing the profits of the business and will be assessable subject to earned income relief in the hands of the recipient. Where remuneration is paid to a trustee out of the general income of the estate, the payment in question is annual in nature and subjected to tax at the source—*Baxendale* v. *Murphy*, 40 T. L. R. 784 ; *Jones* v. *Wright*, 6 A. T. C. 895.

Remuneration paid in full will be regarded as a payment out of income after receipt and not as an expense in earning it—*Committee of A. B. Lunatic* v. *Simpson*, 7 A. T. C. 222.

The duties of Trustees regarding the payment of tax and its deduction from any annual payments made, extend to trustees in bankruptcy and under deeds of arrangement, etc., liquidators or receivers. Thus a trustee in bankruptcy is liable to assessment on the profits which he may derive from carrying on the business—*Armitage* v. *Moore*, 4 T. C. 199.

In such a case tax would be payable at the full rate on the amount of the statutory profits—*Commissioner of Inland Revenue* v. *Fleming*, 7 A. T. C. 387.

Minors :

Under the English Act a minor may be charged to tax personally. The Indian Act does not put a bar to assess a minor

personally. In default of his paying the tax, the taxing authority can call upon the trustees having control over the funds of a minor, to make necessary payment. The trustees should not, however, be assessed on behalf of the minor. Both minor and trustees may be called upon to submit a return, but the trustees need not give information on any matter outside the estate for which they are acting—*C. I. R.* v. *Longford* and *C. I. R* v. *Pakenham* 7 A. T. C. 211.

Court of Wards, etc. :

Section 41 does not make out an exhaustive list of persons who are liable to tax under special circumstances and cases. The persons made liable should be appointed by or under an order of a a Court.

Persons liable :

Sub-section (*1*) of section 41 specifically speaks of the Administrator-General, the Official Trustee, receiver or manager or trustees but the bracketted line "including any person whatever his designation—who in fact manages property on behalf of another" covers all cases of persons who manage the property of another.

In the matter of Keshordia Chamaria, 10 I. T. C. 249 : 63 I. L. R. Cal. 40, it was held that the Income-tax Officer having found, as he was entitled to do, that the assessee and *Ramprotap* were owners of the property in equal shares, was at liberty, if not bound, to treat them as managing, not on behalf of an unascertained owner. but on behalf of themselves.

Their Lordships of the Privy Council affirming the judgement of the Calcutta High Court, held that the assessee and the defendant were not 'receivers or managers' appointed by Court within the meaning of section 41 and that section, therefore, had no application—*Keshordia Chamaria* v. *C I T*, *Bengal*, (*supra*).

Assessment of Beneficiary :

All complications have been set at rest by the insertion of sub-section (*2*) of section 41 with respect to the vexed question as to who should be assessed and from whom tax should be received. While section 41 (*1*) authorises the assessment of the beneficiary, sub-section (*2*) of section 41 permitting direct assessment on the wards and recovery of tax from them—this is designed to have the assessment and recovery of tax from either of them, on the principle as enunciated in section 26 of the Act.

Rate :

Under the proviso to section 41 (*1*), tax shall be levied and recoverable at the maximum rate, when income, profit, or gains are not specifically receivable on behalf of any one person or where the individual shares are indeterminate or unknown ; but in other cases at the rate applicable to their total income.

Income in Special cases, Unspecified or Indeterminate, no minimum limit :

For the year commencing on 1st April, 1939, in the case of Court of Wards, Administrator-General, Official Trustee, receivers, managers appointed under any order of a Court or any trustee or trustees appointed under a duly executed Trust deed, when the income, profits or gains or part thereof are not specifically receivable on behalf of any one person, or when the individual shares of the persons on whose behalf they are receivable, are indeterminate or unknown. there is no minimum limit to taxability of income.

In cases where even the Receiver appointed by Court is not aware of the shares of the beneficiaries, owing to litigation between parties with respect to shares, it can safely be assumed that the shares are indefinite or indeterminate.

But where an executor is appointed on the death of the father, the Income-tax Officer cannot tax the four sons, holding their shares as indeterminate ; the status of the brother is sufficient to hold otherwise.

Basis of Assessment :

The Amendment Act of 1939 has radically changed the basis of assessment and the basis of assessment is what the assessee is "entitled to receive on behalf of any person".

Non-residents.

42. (*1*) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind, shall be deemed to be income accruing or arising within British India, and where

the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of income-tax :

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

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount :

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.

(2) Where a person not resident or not ordinarily resident in British India, carries on business with a person resident in British India, and it appears to the Income-tax Officer, that owing to the close

connection between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(*3*) In the case of a business of which all the operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India.

Scope of section 42 :

The amendments made in sub-section (*1*) of this section make it applicable to *both residents and non-residents*, and this sub-section now covers all incomes, profits or gains accruing or arising through or from any *business connection, property, 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. This sub-section extends to all income which arises in a primary sense in British India even though that income may not be received or brought into British India. The only exception is that provided in *Explanation* 2 of section 4 (*1*) for pensions payable without India.

It is important to note that where the owner of the income described in sub-section (*1*) is a non-resident, the assessment can now be made either in his name or in the name of his agent.

The tax chargeable on a non-resident person may be recovered by deduction under any of the provisions of section 18, and any arrears of tax may be recovered from any assets of the non-resident which are or may at any time come within British India. There is no time limit to such recovery.

Now that the position of an agent of a non-resident is more onerous, provision is made to enable such an agent to retain from

money payable by him to his non-resident principal, a sum equal to the tax which the agent estimates he will have to pay under this section. If the non-resident principal and the resident agent cannot agree on the estimated amount to be so retained, the resident agent can obtain from the Income-tax Officer a certificate stating the amount to be retained pending final settlement of the liability.

Sub-section (*2*) applies to the business relations between persons not resident or not ordinarily resident in British India and persons who are such residents. It is no longer necessary, for the purpose of this sub-section, for the person not resident or not ordinarily resident in British India to exercise any control over the business of the resident person.

A very important amendment has been made to sub-section (*3*) and in this connection the distinction between profits and gains which are assessable because they *arise* in British India, and the profits and gains which are assessable because they are *deemed to arise* in British India should be carefully noted. Thus if a non-resident's business consists of buying goods in British India and selling them in a foreign country, he will be assessable (either directly or through an agent) only in respect of that part of the profits which is attributable to the buying operations. If, on the other hand, the business consists of buying goods abroad and selling them in British India the full profits and gains *arise* (*i.e.*, they are not merely *deemed to arise*) in British India, and are taxable by virtue of the provisions of section 4 (*1*) (*c*) and section 42 (*3*) has no application to them.

Indian branches of non-resident firms are liable to assessment under the Act. In order to secure an accurate assessment in such cases, sections 22 (*4*) and 37 enable an Income-tax Officer to require the production of the balance sheet and profit and loss account of the firm as a whole in addition to that of the Indian branch, and also to require the submission of a detailed statement of all the profits credited to the head office on account of transactions carried out on its behalf. In some instances, however, the form adopted for the accounts and balance sheets of the head office or the Indian branch does not enable the share of profits properly due to the Indian branch to be gauged accurately. Rule 33 gives the Income-tax Officer wide powers to determine how the profits of the Indian branches shall in these circumstances be calculated and enables him to fix as the income of the Indian branch for assessment purposes either a percentage of the turn-over of the business done by the branch or, where this procedure proves unsuitable, an amount which bears the same proportion to the total profits of the business as the Indian receipts bear to the total receipts of the business, or in such other manner as he deems suitable.

Indian agents of non-resident firms of which they are not technically either branch or subsidiary firms are liable for the payment on account of their principals, of tax on their principals' Indian profits under the provisions of sections 42 (*1*) and 43 of the Act. It will be observed that these provisions permit the levy of the tax on a non-resident's business not only where he has established a regular agency in India but also where he conducts his business regularly through a particular agent or casually through various agents. Tax cannot, however, be levied on any part of the income of a non-resident which does not accrue or arise, or is not received in British India, or which cannot be deemed to accrue or arise or be receivsd in British India. No attempt will be made by the Income-tax Officer to deem the income of a non-resident to arise in British India if it is clear that the business operations in which he is engaged consist entirely of trading *with* British India as distinct from trading either wholly or partially *in* British India. It is the nature of the business operations and not that of the agency which determines liability and even though a person resident may regard the agency as of a casual nature . this will not exclude the possibility of assessment as an agent if the non-resident either through one or more persons is really trading *in* British India. Each case will he dealt with on its merits and such factors as the bearing of bad debts by the resident, the non-existence of privity of contract between the non-resident principal and the principal in British India have to be taken into account but no one of them taken alone is conclusive for general guidance. A few examples are appended but it must be understood that they are only for the purpose of general illustration and, having regard to the complexity of business relations they cannot be comprehensive, nor must the precise wording in any illustration be taken as binding the Department in any case in which the facts warrant the taking of a different view

(*a*) B, a distiller in Glasgow sells whisky direct to A an importer in Bombay. The relationship is that of principal and principal, and not that of principal and agent. Moreover as B has no agent or connection in British India he must be treated as trading *with* British India and not trading *in* British India. Even if B agreed to sell to no other person in British India but A, the position for income-tax purposes is the same provided that the selling in British India is definitely A's business and does not constitute sales by A on behalf of B.

(*b*) A, an Indian resident and a large supplier of mill stores, has a monopoly for the sale in India of the belting of a non-resident B. A is paid commission by B on all

orders executed. A does not confine his purchases of belting to B. So long as B exercises any control over the pricing of the goods or the method by which his agent A conducts the business he must be deemed to have a business connection in British India and is assessable accordingly, either directly or through an agent (which may be A or may be somebody else). If on the other hand, B sends the goods to A for sale at best prices obtainable A undertaking for a commission to sell entirely at his discretion how he likes and to whom he likes and A bearing any bad debts, B is really only trading *with* British India and not *in* British India. The relationship between A and B may, however, be closer than the mere description of the terms of the agreement would indicate and in that event the Income-tax Officer may determine that B is really trading *in* British India through an agent.

(*c*) A is the Indian agent for hardware and sundries of B, a British manufacturer. A receives salary and commission from B and bad debts fall on B. Here the position is that B is actually trading in British India through his employee and quite clearly he is liable to tax either directly or through any person (including A) who can be deemed to be his agent under section 43.

(*d*) A is a broker in British India who in the ordinary course of his business agrees to sell on commission certain standarised commodities. B, C, D, E and many other exporters of such commodities from England send their goods regularly to A who entirely at his own discretion and according to the rules of the market in which he deals sells all such goods sent to him at current market prices. A is responsible for any bad debts incurred and on the sale of goods remits the proceeds to B, C, D, E, etc., less his regular commission. B, C, D, E, etc., are trading *with* British India and not *in* British India.

In all these cases A's own commissions or profits as agent are of course liable to the tax whether or not he has to pay tax as agent in respect of his foreign principal's profits.

Non-residents whose income arises in more than one province, and who are assessed direct and not through statutory agents under section 43 of the Act, will be assessed by the Income-tax Officer, Non-resident Refund Circle, Bombay, who will also deal with applications from them for relief, whether under section 48 or under section 49 of the Indian Income-tax Act, 1922, or

under any Notification issued by Government under section 60(*1*) and section 49A of the Act, providing for relief on account of double payment of income-tax. Persons not resident in British India who have income arising in more than one province and are assessed direct and not through statutory agents under section 43 and a part of whose income is derived from horse-racing, will be assessed by the Income-tax Officer, Poona.

Non-residents whose income aries in a single province and who are assessed direct and not through statutory agents under section 43 of the Act, will be assessed by one or more Income-tax Officers to whom such assessments are specially assigned by the Commissioner of Income-tax.

It is important, however, to note that with effect from 1st April, 1940, the jurisdiction of the Income-tax Officers to assess or grant refund to non-residents will be as follows :—

Non-residents whose income is wholly taxed at source or whose only income for direct assessment to either income-tax or super-tax is derived from dividends or both, will be assessed by the Income-tax Officer, Non-resident Refund Circle, Bombay. Non-residents (not assessed through statutory agent under section 43 of the Indian Income-tax Act) with any income for direct assessment (*e.g.*, house property, interest, etc.) but excluding those any part of whose income is derived from horse-racing or whose only income for direct assessment to either income-tax or super-tax consists of dividends, will be assessed by the Income-tax Officer of the circle in which the greater part of their income arises in 1939-40 or in the previous year of the first year of assessment whichever is later and will continue to be assessed by the same officer in subsequent years so long as some income for direct assessment arises within his jurisdiction. If in any year there is no income arising in that officer's jurisdiction the assessment will be made by that Income-tax Officer in whose jurisdiction a greater part of income arises in that year. Non-residents (not assessed through statutory agents under section 43 of the Indian Income-tax Act) a part of whose income is derived from horse-racing will be assessed by the Income-tax Officer, Poona. (*I. T. M.*)

Effect of the Amendment :

Section 42 deals with the income of non-residents occurring or arising without British India but deemed to accrue or arise within British India. Under the previous Act, sub-section (*1*) applied to income accruing or arising through or from any business connection or property in British India.

In order to bring within the net of taxation all income arising in a primary sense from British Indian sources, the sub-section

has been amended so as to include income occurring or arising "from any assets or source or income in British India or through or from any money lent at interest and brought into British India in cash or in kind."

Application :

Under the previous Act, if money was borrowed without British India and then brought into British India for business and interest was payable without British India, such interest was not taxable as there was no business connection between lender and the borrower. Attention is invited to the decision of *C. I. T.* v. *Currimbhoy Ebrahim & Sons, Ltd.*, A. I. R. 1936 P. C. 1. The assessee took a loan from his Exalted Highness the Nizam. The agreement was executed in Bombay but actual advance was made without British India, it was held by their Lordships of the Privy Council that there was no business connection between the Nizam and the company.

In *C. I. T.* v. *P. V. R. Visalakshmi Achi*, A. I. R. 1937 R. 258, their Lordships held—"The mere lending of money purely as a loan, to a person in business does not establish business connection with the person, the business of the borrower does not thereby necessarily become connected with the lender." Thus the amendment nullifies the above decisions by giving a wider meaning to the terms business connection. Under this provision, interests on sterling securities payable outside British India become taxable.

When income accrues or arises :

Income may accrue or arise or be deemed to arise through business connection, through or from any property in British India (nullifying the decision reported in A. I. R. 1936 P. C. 1 *Supra*), through or from any money lent at interest and brought into British India in cash or in kind. (Nullifies the case of *Visalakshmi Achi*, A. I. R. 1937 R. 258.)

Whom to assess :

Sub-section (*1*) provides that the non-resident shall be chargeable to income-tax either in his name or in the name of his agent. When the agent is chargeable, he should be deemed to be the assessee in respect of such income-tax.

Deduction at Source :

The proviso gives legal sanction that tax may be recovered by deduction at source under any of the provisions of section 18 and that arrears of tax may be recovered from any of the

assets of the non-resident person which are or may at any time come within British India.

Agent :

In the matter of *Sir Aditya Narayan Singh*, 176 I. C. 171: A. I. R. 1938 Bom. 318, it will be seen that the word agent, for the purposes of section 42 has a wider scope than it has in ordinary use. The only construction that can be placed on the language of section 42 (*1*) is that the agent alone and not his non-resident principal, shall for the purposes of the Act, be treated as the assessee. When the agent in British India is invested with the character of assessee in the mandatory terms in section 42 (*1*) to the apparent exclusion of the principal, it would seem to follow that the non-resident principal is divested of that character.

The above is a decision before the Amendment Act of 1939, which provides for the assessment either in the name of non-resident principal or in the name of his agent, thereby investing the non-resident principal also with the character of an assessee.

Any person apprehending that he may be treated as the agent of a non-resident, may retain a sum equal to the estimated liability from the amount payable to the non-resident. The agent may secure a certificate from the Income-tax Officer for the retention of the amount, in case there is any disagreement with the non-resident.

The agent shall be liable for the amount specified in the certificate—and to the extent such agents may have in his hands additional assets of the non-residents.

Scope of Section 42 (*2*) :

Where a person who is not a resident or not ordinarily a resident in British India carries on business with a person, the resident person shall be chargeable for the profits derived therefrom and he shall be deemed to be an assessee in respect of such income-tax.

All Operations not carried in British India :

Where all operations are not carried out in British India, profits or gains of the business shall be only such profits and gains which can reasonably be expected from that part of the operations.

Service of Notice :

In the case of a non-resident, who has property or business connection in British India, the Income-tax authorities are not

competent to serve notices upon him, such notices must be served upon his agent within the meaning of section 43 and who will be treated as such. The proviso to section 42 does not militate against the view—*In re Aditya Narain Singh*, 176 I. C. 171.

Assessment on Principal and Agent :

In *C. I. T.* v. *Bhanjee Ramjee*, 9 I. R. 44 Mad. 773, the learned Chief Justice held that the principal could be assessed under section 42 without the necessity of appointing an agent under section 43. Similar views were expressed in *C. I. T.* v. *National Mutual Association of Australasia*, 57 I. L. R. B. 519. The Legislature has now removed the lacuna by the present amendment of section 42.

Applicability :

Section 42 (*3*) refers only to a person who sells goods purchased by him from any place outside British India, and not to one who sells the produce of his own lands, situate outside British India. The clause deals only with "profits and gains", and not with income generally—*C. I. T.* v. *S. L. Mathias*, 171 I. C. 1 : 46 L. W. 247 : A. I. R. 1937 Mad. 795. (Subsequently aproved by the Privy Council.)

Object :

Section 42 deals with income of non-residents accruing or arising without British India but deemed to accrue or arise within British India. Under the previous Act, sub-section (*1*) applies to income accruing or arising through or from any business connection or property in British India. In order to bring within the net of taxation all income arising in a primary sense from British Indian sources, the sub-section has been amended so as to include income accruing or arising "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."

Sub-section (*1*) has also been amended so as to make it clear that either the non-resident or his agent may be assessed so as to allow the agent to retain enough of his principal's money to pay the tax.

Sub-section (*2*) has been amended to put a British subject or a subject of Indian State in no worse position than a non-British subject or person who is not a subject of an Indian State.

Sub-section (*3*), a new provision, narrows the scope of the whole section by confining it to that part of the profits attributable to operations in British India.

Business Connection :

The words "business connection" in section 42 (*1*) mean any adventure or concern in the nature of trade, commerce or manufacture being a business in which he, that is, the person residing out of British India, is concerned. The mere lending of money, purely as a loan, to a person in business, does not establish a business connection with the person ; the business of the borrower does not thereby necessarily become connected with the lender—*C. I. T.* v. *Visalakshmi Achi*, 170 I. T. C. 127 : 10 R. R. 58 : A. I. R. 1937 R. 259.

Where there is a regular connection of advancing money on interest against shipping documents, such interest is profits or gains accruing or arising through or from business connection —*C. I. T.* v. *Ghulam Hyder Bundali*, 10 I. T. C. 14.

Beaumont, C. J., in the case of *C. I. T.* v. *Metro-Goldwyn Mayer Ltd.*, (decided on 2nd Nov. 1938 in Civil Reference No. 10 of 1938) 7 I. T. R. 176, observed "The difficulty arises from the expression 'through or from any business connection'. I think the words denote some element of continuity in the relationship between the person in India who makes the profits and the non-resident who receives them. A single transaction would, I think, not fall within the section. If a manufacturer of a motor car in England or America sells it to a customer in India, there is no doubt a business connection in relation to that sale between the manufacturer and the purchaser, and the manufacturer probably makes a profit but nobody would suggest that in respect of the profit on that single transaction he is liable to pay British Indian Income-tax. I think there must be some element of continuity in the relationship between the parties and in every case one has to look at the particular facts of the case to see whether it falls within section 42."

In *C. I. T., Burma* v. *Hazi Md. Osman*, 10 I. T. C. 330 : 1937 Rang. L. R. 174, a business connection was established in Burma. But as Burma is without British India now, this ruling does not help us any more, because if the businesses are without British India and there is no connection with British India, section 42 is inapplicable.

As a result of the decision of the Privy Council in *C. I. T.* v. *Currimbhoy Ebrahim & Sons, Ltd.*, 60 I. L. R. Bom. 172, section 42 is to be regarded as a taxing section and not merely as

[illegible] manifestly as held in the section—*Board of Revenue v. Madras Export Co. Ltd.*, 46 I. L. R. Mad. 330.

Under the previous Act the agent was chargeable but the Amendment Act provides assessment in the name of the non-resident or in the name of his agent.

Transactions outside a country may lead to a business connection within it as the decision of the Privy Council in *C. I. T. v. The Remington Typewriter Co.*, 57 Bom. 243 shows. The decision of the Bombay High Court in *C. I. T. v. The National Mutual Association of Australasia*, 57 Bombay 31 is also in point.

Guidance as to what is "business connection" is to be obtained from the judgment of the Privy Council in *C. I. T. v. Currimbhoy Ebrahim & Sons, Ltd.*, 60 Bombay 172. Attention is invited to *C. I. T. v. Bombay Trust Corporation*, 52 Bombay 711, and on appeal, 54 Bombay 216, when it was held that a business connection may be implied from a course of dealings. But whether there is a business connection depends on the particular facts of each case—*C. I. T., Madras v. The Bank of Chettinad, Ltd.*, 7 I. T. R. 1.

The case went on appeal to the Privy Council. Their Lordships held that it is wrong to suggest that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position. The Judicial Committee views with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute.

The words of section 42 (*1*) are wide enough to cover profits or gains which can be said to accrue or arise to the assessee in British India directly or indirectly through or from any "business connection" which may exist between the assessee and his other firm in British India.

The agent contemplated by section 43 is, so to speak, an artificial creation, for it is provided that any person having a 'business connection' with a person residing out of British India, upon whom the Income-tax Officer has served a notice of his intention of treating him as agent of the non-resident person, is to be deemed to be such agent—The *Bank of Chettinad, Ltd.* v. *C. I. T., Madras*, 190 I. C. 218 (P. C.)

The Allahabad High Court in the case of *Nandlal Bhandari Mills, Ltd., in re*, 7 I. T. R. 452, has held that there is a "business

connection" within the meaning of section 42 and term "business connection" has wider significance than "business" as used in section 6 of the Act.

Property, meaning of :

The word "property", as it occurs in the sub-section (*1*) of section 12, cannot be given so special a colour, but is used as an ordinary English word to be taken in its usual signification, subject to the context provided by the rest of the sub-section. There is nothing in the sub-section to exclude from its scope any of the six classes of income mentioned in section 6 of the Act. Their Lordships of the Privy Council agree with the view expressed by the learned Chief Justice of Bombay that the word "Property" as used in sub-section (*1*) of section 42 means something tangible although they cannot accept his suggestion that it is confined to immovable property or to buildings or lands appertaining thereto.

The phrase to be construed is "property in British India" and it seems to their Lordships that the plain implication is that the property is to be situated in British India. No doubt for purpose of administration or succession or for purposes of jurisdiction to attach a debt, a chose in action is treated notionally as situated in a particular country or district. The statute however does not intend to import questions of this character as the test whether income which does not accrue within British India shall be deemed so to accrue. In their Lordships' opinion the phrase is to be taken literally and simply.—*C. I. T., Bombay* v. *Currimbhoy and Sons*, (1936) A. I. R., P. C. 1.

Extent of its Application :

All profits or gains of a non-resident arising through or from any "business connection" or property in British India are chargeable to Income-tax in the name of the agent who shall be considered the assessee in respect of such income-tax ; secondly, where a non-resident foreigner or a firm or company carries on business with any person resident in British India and it is found that the non-resident is exercising substantial control over the resident, he shall be charged to income-tax in the name of the resident person ; thirdly, all profits or gains arising from sales in British India of any merchandise exported to British India from outside, would be deemed to have accrued, and have been received in British India.

Non-resident with Business Connection :

In *In the matter of Bombay Trust Corporation, Ltd.*, 56 Bom. 216 : 34 C. W. N. 230, the Privy Council held that agent

in section 42 does not mean only an agent in actual receipt of profit but includes a person who comes under the term, artificially, by the operation of section 43. Under that section, after a person has been notified, he would be treated as an agent for all purposes, and consequently for assessment under section 42, although he may not be receiving profits on behalf of the non-resident but actually paying them to him. Section 40 does not control section 42 and 43 in regard to the meaning of the word "agent".

In the case of *Rogers Pratt Shellac Co.*, 52 Cal. 1 : 28 C. W. N. 1074 : 40 C. L. J. 110, the Calcutta High Court held that the company is liable to income-tax for the period 1922 and after under section 42 (*1*) read with sections 4 and 6.

A certain company was incorporated in the United States of America with its headquarters at New York having branch office in Calcutta for purchasing gum, shellac and other Indian products, and a factory in the United Provinces. No sale was conducted in India and that transaction was confined to purchase only. It is an admitted fact that no part of the company's income accrued, arose or was received in British India; it accrued or arose, indirectly through or from business connection in British India. It was held that the company was liable to pay Income-tax and super-tax for the period before 1922 and under section 42 (*1*) read with sections 4 and 6, for the period 1922 and after. The Calcutta High Court did not follow the decision in the case of *Madras Export Co.*, 46 Mad. 360, and explained away the cases of *Sudly* v. *Attorney General*, 2 T. C. 149, *Grainger & Son* v. *Gough*, (1896) A. C. 325 and *Smith* v. *Greenwood*, (1922) 1 A. C. 417.

The English Income-tax Act lays down a territorial limit. The Indian Act 11 of 1886 followed the English Law but in the Act of 1918 and Act 11 of 1922 the Indian legislature appears to have gone beyond that limit. It will be seen that under the English Act, it is essential that the profits should arise from the exercise of the trade within the United Kingdom. In the Indian Acts, however, in the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection in British India, shall be deemed to be income accruing or or arising within British India. There is no such provision in the English Act and that distinguishes the English Act and the cases decided thereunder from the Indian Act.

The Madras High Court in the case of *Madras Export Co.*, 46 Mad. 360, held that section 33 (*1*) of the Indian Income-tax Act did not create a new category of income which could be charged under the Act in addition to incomes mentioned under

section 5 as chargeable under the Act, but as section 33 (*1*) is a machinery section for charging non-resident foreigners, and not others, for income-tax purposes the learned Judges failed to appreciate the differences between the two Acts. It followed practically the decision in the English case of *Smith & Co.* v. *Greenwood*, (1922) I. A. C. 417 : 8 Tax Cases 193.

Who is Agent :

In the case of *W. H. Muller* v. *Lethem*, 13 T. C. 126, it was held that the Dutch Company were exercising a trade in the United Kingdom as agents and not as directors and as such they were chargeable to income-tax.

Similarly in the case of *Macpherson & Co.*, 6 Tax Cases 107, it was held that where an English firm receives orders for goods for delivery from a foreign firm, it must be in exercise of a trade as agent of the foreign firm.

In the case of *Grainger and Son* v. *Gough*, 3 Tax Cases 462, it was held that when a foreigner makes profitable contracts with persons in England, such a foreigner must be presumed to be exercising a lucrative business in England and as such is liable to income-tax.

In the case of *Thomas Turner*, 4 Tax Cases 25, it was held that the test for determining whether a foreigner exercises a trade in the United Kingdom is the place where contracts for sale are effected.

Under the previous Act, as decided in the case of *Narayan Parash Ram Tullu*, 20 Bom. 332, the liability of the agent of a non-resident in British India was personal and not conditional upon his having funds of the Company in his hands.

Justice Mukherjee observes : "I do not see why profits or gains from business connection should not be included in the general expression 'income derived from business' which is used in section 5..... The word 'business' is one of large and indefinite import and connotes something which occupies attention and labour of a person for the purpose of profit. ..... A concern by reason of which one can be said to have a connection with such an occupation is business connection."

In the case of *Messrs. Steel Brothers & Co., Ltd.*, 2 I. T. C. 19, the Judges of the Rangoon High Court observe : "We admit the difficulty arising from the vague expression 'from any business connection.' Taken in its wide sense it would render liable to Indian Income-tax profits made by a manufacturer in England on single consignment of goods to an importer in India. This is

the meaning which the Commissioner of Income-tax seems to have attached on the phrase and is the meaning which the learned Government Advocate contends, is the correct one. It is, however, which we cannot adopt, and as such meaning would be repugnant to the word 'business' in section 6 as defined by section 2, clause (*4*). and we can assign no wider meaning to it than the latter words of the definition as 'any adventure or concern in the nature of trade, commerce or manufacture.' It was probably used, as Mr. Justice Chatterjee conjectures, as a compendious expression to cover such concerns in the nature of trade, commerce, or manufacture as arises through a branch, partnership, agency, receivership or management. But be that as it may, its meaning, in our opinion must be strictly confined to the meaning of the word 'business' in section 6".

Attention is invited to the decision in the case of the *Eastern Extension Australia and China Telegraph Co.*, 44 Mad. 489, and the observations of Justices Oldfield and Kumar Swami Sastri.

Income deemed to arise in British India :

The Imperial Tobacco Co. of India Limited, (26 C. W. N. 745 : 67 I. C. 902) was incorporated in England with Head Office in London and admittedly non-resident in British India. It had business connection with Burma. There were also numerous rice mills, saw mills, cotton ginning mills and vegetable oil mills. Raw materials "worked up into forms suitable for use" were exported to London. It was held that the produce being sold in London the money received therefrom could not be deemed to be profits or gains liable to tax. It was further held that sections 42 and 43 of the Indian Income-tax Act are to be read jointly, the latter section merely defining who may be included as an agent under section 43. Thus the agent must be in clear receipt of income within the terms of section 42. But Justice B. B. Ghosh observes : "Section 43, in my opinion, was enacted for the purpose of assessing the income of persons residing outside British India who are chargeable with income-tax here but who have not appointed any agent residing in British India who might be assessed under section 42 (*1*). To hold otherwise, it seems to me, would be to support an anomaly that a person receiving his income through an agent in this country would be assessed, but if he asks his debtor to remit the income direct to him he would escape liability to pay the tax, a thing which this section was intended to remove. It is only necessary that the person on whom the Collector has served a notice under section 43 is a 'person employed by, or on behalf of a person residing out of British India or having any business connection with such person,' and if that condition is satisfied

the person on whom such notice has been served shall for the purposes of the Income-tax Act be deemed to be the agent of such person. The question whether the company is a person coming within the description of section 43 presents to my mind very little difficulty."

In the case of *Messrs Steel Brothers & Co.*, 94 I. C. 466, it was held that the fact of the produce being sold in London and the money being received there did not prevent profits or gains accruing and arising or being deemed to accrue or arise in British India, from being taxable under the Indian Income-tax Act. It was further held that no distinction, so far as liability to income-tax is concerned, could be drawn between profits on produce, which have undergone some process of conversion or working up by the company in Burma and profits on produce purchased by it in Burma and exported in same form as when purchased : *Commissioner of Taxation* v. *Kirk*, (1900) A. C. 588 ; (*Re : Rogers Pratt Shellac Co.* v. *The Secretary of State for India*, 52 Cal. 1 *followed*. *The Secretary, Board of Revenue* v. *Madras Export Co.*, 46 Mad. 360, *dissented* from ; *Greenwood* v. *Smith*, 3 K. B. 275, *was distinguished*).

Direct Taxation of Non-residents :

The old section 31 (*1*) is akin to new section 42 (*1*) ; under the old Code under section 33 (*1*) in the case of any person residing out of British India "all profits or gains accruing or arising to such persons whether directly or indirectly through or from any business connection shall be deemed to be income accruing or arising in British India." But in *In the matter of Bhanjee Ramjee & Co.*, 1 I. T. C. 147, it was held that these are profits or gains arising to the petitioner through or from his business connection in British India in respect of which he is assessable under the Act.

Non-resident liable for Source of Income :

In the case of non-residents, income which neither accrues, nor arises nor is received, within British India, may be liable to tax under the combined operation of sections 3, 4 and 12. Profits made by a company outside India or premiums of participating policies collected and sent by its branch in India, by investment outside India, are profits or gains liable to tax in India. *Commissioner of Income-tax, Bombay* v. *National Mutual Association of Australia, Ltd.*, A. I. R. 1933 B. 427. (*Rogers Pratt Shellac & Co.*, 52 Cal. 1 ; *Steel Brothers*, A. I. R. 1926 R. 97 *followed*).

Implications of the Section :

Under section 42 (*1*) liability of a person resident out of British India can only arise when he has "business connection" or "property" in British India. This section seeks to charge profits or gains accruing or arising to him through the medium of an Agent in British India. The expression "property" should be interpreted liberally and not in the restricted sense as defined in section 9 of the Act.

In *Pondichery Railway Company* v. *Commissioner of Income-tax, Madras*, A. I. R. 1931 P. C. 165, it was held by the Madras High Court that the Pondichery Railway Company carried on business in British India and profits derived therefrom accrued or arose in British India within the meaning of section 4 (*1*) of the Act and as such the Agent received payment from the South India Company, within British India. The Pondichery Company was chargeable to tax. (*South Behar Railway Co.* v. *Indian Revenue Commissioner*, (1925) A. C. 476 *referred to*).

Section 42 (*2*) makes a person resident in British India liable when there is an actual carrying on of business by a non-resident and non-British subject with a person resident in British India —of course the Principal can be charged if available.

In *Tarn* v. *Scalnan*, (1928) A. C. 34, a Danish and an English Company opened a line of steamers, the English Company was appointed sole Agent at Hull, which controlled the business. It was held that the Danish company exercised a trade or business through the British Company. The Danish Company was liable. (Attention is drawn to the case of *Remington Typewriter Co.*, 54 Bombay 214 P. C.)

Section 42 (*3*) :

Section 42 (*3*) fastens liability on a person who disposes any manufacture in British India through himself or branch of his business or through Agency : tax should be levied and no allowance shall be allowed under sub-section (*2*) of section 10.

Manufacture in Foreign Country but Sale in British India :

The purpose of section 42 in its first sub-section is to enact that all profits accruing to a person through or from any business connection or property in British India shall be deemed to come within the class of profits taxed by section 4. The third sub-section shows that profits arising from sale of merchandise exported to British India are within the class that has been

made taxable under section 4.—*In Port Said Salt Association Ltd.*, 6 I. T. C. 123 : A. I. R. 1932 Cal. 626.

An assessee assessed under section 42 in respect of business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, is not entitled, in computing the profits or gains of such business, to make a deduction representing the proportion of profits earned by manufacture in the country of origin. The phrase "earning such profits" occurs in clause (*ix*) of sub-section (*2*) of section 10, but the section contains no limitation that part of the profits will be exempted although they arise or are received in British India because they have been earned elsewhere.

United Kingdom Law :

Where a non-resident person derives profits from enterprises carried on in the United Kingdom, assessments may be raised and tax charged either directly on the non-resident when that can conveniently be done, or upon any agent, factor, branch or local manager, whether that agent has or has not the receipt of any of the profits or gains of the non-resident principal, and whether the entire profits do or do not arise directly from the agency. When the agent has the receipt of any moneys of his principal he is entitled to retain any tax he has borne on account of the liability of his principal out of such moneys. These provisions do not apply in the case of a broker or general commission agent in respect of transactions carried through on behalf of non-resident principals in the ordinary course of his business.

It should be noted (*a*) that there is no need to assess and charge the agent when the principal can be charged personally —*Tischler* v. *Apthorpe*, 2 T. C. 89 ; and (*b*) that the transactions in question must be, technically, carried out in the United Kingdom. This principle is one which is not always easy to interpret in practice. As a rule the fact that a contract is made in the United Kingdom will be sufficient to establish the fact that the profits arising from that contract are profits or gains arising in the United Kingdom.

But when contract is completed entirely outside the United Kingdom the profits arising thereout will not be chargeable to British Income-tax by reason only of the fact that the contract was actually made in this country—*Maclaine* v. *Eccott*, 42 T. L. R. 416. The situation may be summarised briefly by stating that when a non-resident person makes contracts and derives profits therefrom as the result of opening a branch or employing a regular agent in this country he can be assessed

and charged to United Kingdom income-tax, but when he conducts his business from his own country he cannot be reached, notwithstanding that he may make considerable profits out of his transactions with customers in this country.

Where a non-resident carries on business with a resident in circumstances which lead to the belief that, by reason of the close connection between the two parties, the true profits arising in the United Kingdom do not come into the hands of the resident party so as to be charged to United Kingdom tax, the Commissioners dealing with the assessment may charge the resident person in respect of the profits of the non-resident person as though he was the agent of the latter. When it appears that it is impossible to readily ascertain the profits of the non-resident in such cases, the assessment may be made on a percentage of the turn over and returns may be required from the resident person with a view to computing such percentage.

When a non-resident person is charged in the name of an agent in respect of the profits from the sale of goods produced outside the United Kingdom, the agent concerned may claim to have the assessment made on the figure which a merchant or retailer, as the case might be, could reasonably be expected to secure if he had bought the goods in question from the producer or manufacturer direct (Newport.)

Requirements :

Section 42 requires, first of all, that there should be profits or gains accruing or arising to a person residing outside Britsh India and those profits or gains must directly or indirectly arise from or through business connection or property in British India. When that happens, an agent can be charged, but, of course, there may be no Agent in British India, and to get over that difficulty, section 43 provides the appointment by the Income-tax Officer of a statutory Agent. But section 43 is really machinery for giving effect to section 42 and the mere appointment of an agent under section 43 would be of no consequence unless tax can be levied under section 42—*C. I. T.* v. *Metro-Goldwyn Mayer (India) Ltd.*, (as agents to Culver Export Corporation, 7 I. R. T. 176).

As a result of the decision of the Privy Council in *C. I. T.* v. *Currimbhoy Ebrahim and Sons, Ltd.*, I. L. R. 60 B. 172, section 42 is to be regarded as a taxing section and not merely as providing machinery as held in *The Secretary, Board of Revenue* v. *The Madras Export Co., Ltd.*, I. L. R. 46 Mad. 360.

Agent to include persons treated as such

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

Provided that 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.

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

Extent of its Application :

The scope of this section is very wide and it is always a question of fact whether the connection between the non-resident and the resident is of such a nature that an agency can be safely presumed. A person can be treated as an agent of the non-resident where it is proved that he has any business connection with such person, or that he is in receipt of any income, profits or gains on behalf of the non-resident and further the Income-tax Officer is competent to treat any person as an agent of the non-resident provided he is given an opportunity of being heard by the Income-tax Officer.

Definition of Agent :

Agent in section 42 does not mean only an agent in actual receipt of profits but includes within its scope a person who

comes under the term *artificially* by the operation of section 43. Under that section, after a person has been notified that he would be treated as an agent of a non-resident, he is to be deemed an agent for all purposes and consequently for assessment. He may not be in actual receipt of profits on behalf of the non-resident. Section 40 does not control section 43 in regard to the meaning of the word "agent". This is the view expressed in the case of the *Bombay Trust Corporation Limited*, 34 C. W. N. 230 Privy Council.

Petition under Section 33, if lies against an Order treating a Person as an Agent :

Any person aggrieved by the decision of an Income-tax Officer treating him as an agent of the non-resident may file a petition under section 33 for the interference by the Commissioner in the matter and the Commissioner is bound to adjudicate on the point.

Interpretation of the word "Agent" :

Sections 40, 42 and 43 should be read jointly and not disjunctively. The term "agent" in section 40 is extended by section 43, and income, profits or gains are extended by section 42 and, therefore, such agents should be in receipt, on behalf of the non-resident, of the income, in order to make the agent liable to be assessed, *In re* : *Bombay Trust Corporation*, 113 I. C. 593.

Similar views have been expressed in the case of the *Imperial Tobacco Co.*, 49 Cal. 721. Therein it was held that where a person satisfies the condition of an agency, such a person shall be deemed to be the agent of such a non-resident. Similarly in the case of *Remington Typewriter Co., Ltd.*, 52 Bom. 726, it was held that the Bombay Co. was an agent of the Remington Co. of New York.

It has already been stated that sections 40, 42 and 43 are to be read jointly and not disjunctively. But the case of the *Bombay Trust Corporation*, 52 Bom. 702, was reversed by the Privy Council, as reported in A. I. R. 1930, *Privy Council*, 54, where it was held that the interest accrued to the bank outside British India through a business connection in India, and that the word "agent" in section 43 is not overridden as regards its meaning by section 40 and is not restricted to an agent in receipt of the profits or gains.

Agent in Actual Receipt of Profit :

In *In re* : *Imperial Tobacco Co., Ltd.*, 67 I. C. 908, Justice Woodroffe observes : "On consideration of this matter I am of

opinion that section 43 merely defines who may be included as an agent under section 42. If so, the agent, whether we look to section 42 or 43 must be in receipt of income within the terms of the former section." Therein it was held that the company was not an agent.

But Justice B. B. Ghosh of the Calcutta High Court observes: "Under section 42 an agent of any person residing out of British India being in receipt on behalf of such non-resident person of any income chargeable under the Act, is held liable for the tax. If he is actually an agent and in receipt of income on behalf of the principal, nothing more is necessary in order to render him liable, but the tax is to be levied upon and recoverable from him under section 42 irrespective of any other provision in any other section of the Act.....As I read the section, the agent of such a non-resident person need not be in receipt of the income on behalf of such person. The mere fact of agency is sufficient to make him liable to be assessed in respect of the income of the principal."

"It is only necessary that the person on whom the Collector has served a notice under section 43 is a 'person employed by or on behalf of a person residing out of British India or having any business connection with such person'. And if that condition is satisfied, the person on whom such notice has been served shall for the purposes of the Income-tax Act be deemed to be the agent of such person."

Appeal against an Order declaring a Person to be the Agent of a Foreigner :

When a person is declared an "agent" of a foreigner under section 43, the agent who is assessed for the non-resident principal, is entitled to prefer an appeal under section 30. against such an adjudication, provided of course, he denies his liability to be assessed as such.

The clause "denying his liability to be assessed" in section 30 (*1*) is wide enough to cover a case of an assessee who denies his liability to be declared as agent under section 43 of the Act. An appeal, therefore, is competent against an order declaring a person to be an agent. For authority the case of *Gokuldas Chunnal*, A. I. R. 1932 Nagpur 152, may be referred to.

Agent—When to be Determined :

The weight of the authority is that the Income-tax Officer is not bound to issue a show cause notice each year and that

objection if any, can be made at any time before assessment is made.

In *Nawal Kishore Khairatilal* v. *Commr. of Income-tax*, A. I. R. 1930 L. 1014, the objection of the assessee was that no fresh notice had been served upon them under section 43, but this objection was negatived as not pressed at all.

With due respect for the Hon'ble Judges, the above decision in my humble opinion seems to ignore the plain provisions of the Act itself. Section 43 clearly says that Income-tax Officer shall have to cause a notice to be served of his intention of treating him as the agent of the non-resident.

The proviso further lends countenance to the view 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.

The crux of the whole point is that (*a*) there must be an issue of notice by the Income-tax Officer, and (*b*) the person on whom the notice is served shall be given an opportunity.

It seems that the section 43 is not independent of the proviso, one is interdependent on the other and therefore the Income-tax Officer is bound to determine the "agent" annually.

Proviso—Effect of Amendment :

The first proviso lays down that when transactions are conducted through a broker in British India in the ordinary course of business, the same broker shall not be treated as an agent under this section.

It has further been provided that without a hearing such person shall not be deemed to be the agent of the non-resident person.

Agent :

Section 43 gives an Income-tax Officer discretion to treat certain persons as agent of a non-resident for the enforcement of the liability in special cases under section 42. This section does not create any liability that is not already there under section 4 of the Act, and is an extension of the meaning of this section, not a section that creates a new liability but one that facilitates assessment and collection of the demand in the case of non-residents or in other words a machinery section—not a section that lays down that the profits or gains are assessable to income-tax only in the name of an agent of the non-resident. It is

therefore open to the Income-tax Officer to address notices direct to the assessee, even though he be a non-resident. When notices are served on the representatives of the assessee in British India without recourse to the provisions of section 43, it makes no difference to the validity of the assessment—*In re Aditya Narayan Singa*, 176 I. C. 171 : A. I. R. 1938 All. 318.

In *C. I. T.* v. *Bhanjee Ramjee*, 44 I. L. R. Madras 773, it was held that a principal was liable to assessment under section 42 without an agent being appointed under section 43. The Bombay High Court in *C. I. T.* v. *The National Mutual Association of Australasia, Ltd.*, 57 I. L. R. Bombay 519, adopted the above view as correct. (See also *Tischler and Co.* v. *Apthorpe*, 52 L. T. 814, and *Wearle and Co.* v. *Colquhoun*, 20 Q. B. 753.)

It will be seen that the word "agent" for the purposes of section 42 has a wider scope than it has in ordinary use. It is not necessary to the validity of a notice calling for a return under section 22, when it is served upon a person as agent of a non-resident under section 43, that it should have been preceded not only by the notice of intention and by the opportunity of being heard, prescribed by the proviso thereto, but also by an order "declaring the assessee to be the agent of a non-resident person" and "treating him as such agent."

It may be reasonable that A should not be required to render a return of B's income until it has first been decided that he is agent for B, on the other hand, having regard to the circumstances which for the purpose constitute agency, it may well be thought advisable that the information afforded by a return and by books of accounts produced in support thereof should be available for the purpose of deciding as to agency. The avoidance of delay may be also a consideration. The matter must be decided entirely upon the language of the Act and it does not impose the technical requirement.

It is open to the Income-tax Officer under the Act to postpone any final determination of the agency until the time comes to make an assessment under section 23.

The fact that the notice under the proviso to section 43 does not mention any particular year for which the Income-tax Officer purposes to treat the assessee as agent, does not make assessment under section 43 illegal : *C. I. T.* v. *Nawal Kishore Khairatilal*, 172 I. C. (P.C.) 332 : A. I. R. 1938 P. C. 8.

Under the proviso to section 43, the Income-tax Officer may serve a notice on a person intending to treat him as agent of a non-resident and having given him a hearing may serve a notice under section 22 (2) as agent of the non-resident, before declaring

him to be the agent of the non-resident. The declaration made subsequently and the assessment made on the basis of the notice, under section 22 (2) issued before that declaration, though unreasonable from the point of view of equity and justice, would be legal according to the language used in the proviso.

In *Golam Hyder Bundayally* v. *C. I. T.*, 10 I. T. C. 141, it was held that the assessee was the agent of the non-resident under section 43, the London firm having business connection with the assessee.

Proviso to Section 43 :

As difficulties may arise in the application of the agency principle to "hedging and straddling" operations when these operations take place through a person carrying on a *bona fide* business as broker in British India and a foreign broker acting for an undisclosed foreign principal, the proviso has been inserted in the Act to ensure that the British Indian brokers shall not in such a case be deemed to be an agent of the foreign principal.

Liability in case of a discontinued firm or partnership.

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.

Section 44—Amendment :

The addition made to section 44 of the Act is intended to ensure that all privileges accorded by Chapter IV shall be available to an assessee assessed under this section.

Object :

The object of section 44 is perfectly clear. It is to enable the tax on the profits of a firm which has been discontinued to be got

by the taxing authorities and to prevent the avoidance of taxation, by the discontinuance of the firm. The words "tax payable" in the section means "tax that is to be paid" ; tax which the firm or partnership would be liable to pay if it had not been discontinued', or "tax either found to be due already or that will be found to be due in future."

Therefore the partners of the discontinued firm are jointly and severally liable to be assessed in respect of the profit earned by the firm before it was discontinued. *C. I. T.* v. *P. T. Chengal Varoya Chettiar*, A. I. R. 1937 : Mad. 300 : 167 I. C. 864 : 10 I. T. C. 136.

Notes :

Where there has been a discontinuance of any business, profession or vocation of a firm, all partners at the time of such discontinuance shall be jointly and severally liable for the tax. Attention is also invited to sections 25 and 26 of the Act. Section 44 refers merely to liability of a discontinued firm and nothing more.

Liability of Successors :

In the case of *Nihal Chand Kishorilal*, A. I. R. 1927 All. 397, it was observed : "In our view section 44 makes this abundantly clear. It deals with liability in the case of a business which has been carried away by a firm and been discontinued."

What is Discontinuance :

"Discontinuance may consist of various forms. It may mean total abandonment or extinction, it may mean self-extinction for the purpose of reconstruction under another form." (*Ibid.*)

Sections 26 and 44 :

"It appears to us that section 44 could not have been designed for any other purpose and applies without any straining of language. Section 26 is equally clear, but in our view it applies to a different consideration, namely, the ascertainment of the assessee within the meaning of section 2 at the time when the assessment is made and it does not affect the rate or the period in respect of which the profits have to be computed. Where any change occurs in the constitution of a firm or where any person has succeeded to any business of the undivided family,—the assessment shall be made on the firm as constituted at the time of making the assessment, that is to say, in this case, on the registered firm." (*Ibid.*)

Section 44 only applies when there has been a discontinuance of the business. When a partner retires and the other partner continues the business, the section applicable is section 26 and not section 44 : *Karuppia Pillai* v. *C. I. T., Madras*, 8 I. T. R. 1.

Scope of Section 44 :

Originally this section imposed on the partners of a firm discontinued the joint and several liability to pay the tax due on the firm's income. The section, as amended, extends this liability to members of an Association of persons discontinued or dissolved, and also widens the liability to include the liability of the partners of the firm or members of the Association to be assessed on the income of the firm or of the Association as the case may be. (*I. T. M.*)

Rate :

"We agree with the principle laid down in *Begg Sutherland and Co.*, 2. I. T. C. 30, and are of opinion that the decision in this case follows from it as a necessary corollary. Our answer to the question is that the rate to be assessed upon the income, profits or gains of the accounting period is to be determined by the fact as to who was in fact carrying on the business and making such income, profits or gains during the accounting period. In other words they must be assessed on such income, profits or gains of a Hindu undivided family, the liability for payament thereof falling on the assessee of the registered firm which is the successor to the joint family which has ceased to carry on the business." *In the matter of Nihal Chand Kishorilal*, A. I. R. 1927 All. 397.

Accounting year :

The Income-tax Officer cannot insist on a judicial consideration that the successor is to follow the accounting period of his predecessors. This will work hardship on the successor and he is entitled to adopt any accounting year he likes. He is not bound to apply to the Income-tax Officer for his approval and sanction. On the other hand the Income-tax Officer cannot treat the return of a successor as invalid where the successor does not follow the previous year as adopted by his predecessors.

CHAPTER V-A

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 the 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, livestock or goods shipped at the port since the last arrival of the ship thereat.

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

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

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

Adjustment.

44C. Nothing is this Chapter shall be deemed to prevent a principal from claiming, in the year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, 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.

Sections 44A, 44B, and 44C :

Occasional shipping—(*Tramp steamers, etc.*)—Only one person can be taxed under Chapter V-A in respect of a particular ship taking up passengers, live-stock or goods at ports in British India, and that person is the "principal" within the meaning of section 44A. Such principal may be either the owner or the charterer of the ship and it will be a question of fact to be determined in each case in which the ship has been chartered whether the owner or the charterer is the principal. For such determination some general factors to be taken into account are referred to below.

These sections are only applicable where the principal (1) carries on business in British India as the owner or charterer of a ship, (2) does not reside in British India, and (3) does not employ an agent from whom the tax would be recoverable under section 42. The business of which the profits are to be calculated and assessed for income-tax under section 44B is the business of carrying passengers, live-stock or goods shipped at ports in British India. The criterion to be applied is, "who is the person to whom or on whose behalf money is paid or payable on account of carriage of passengers, live-stock or goods from a port in British India ?"

Generally speaking, where there is what is known as a 'Time Charter', under which the owners may be said to let the ship out

to the charterer for a fixed sum for a certain period during which the owners retain no further control over the vessel or her movements, the owners (if they are non-resident) cannot be held in respect of such a vessel to be carrying on business in British India, or even to have a 'business connection' in British India, and are therefore not liable to Indian income-tax either under section 44B or under section 42.

Where, however, the ship has been chartered under what is known as a 'Voyage' or 'Trip Charter' the position is different. Under this kind of Charter party, the Charterers are practically in the position of brokers, who guarantee to secure a certain quantity of cargo for the owners at certain rates of freight. If the full amount of freight cannot be secured, the Charterers are liable to make good the deficiency. Any such deficiency is to be paid by the Charterers to the Master, on behalf of the owners, in cash, *minus* a certain percentage, at the time and place of loading. Similarly, if freight is secured in excess of that stipulated the Master of the ship has to pay such excess to the Charterers, at the time and place of loading, by demand draft on the owners. The Bills of Lading are signed by the Master on behalf of the owners ; and the cargo as soon as shipped is therefore in the constructive possession of the owners ; and at their risk. The ship is usually consigned to the Charterers or their agents, who look after its interests when in port, and for doing so are paid a commission by the owners. The owners also pay brokerage. In such a case, the owners are carrying on business in British India through their agent, the Master, who receives cargo on their behalf, and receives and makes payments on their account in British India, and thus the owners, if they have no regular or permanent agent in British India, are liable to tax under section 44B on the profits of the business conducted by the Master on their behalf.

If a ship has arrived in a British Indian port, either on owner's account or under a charter and the non-resident owner, or the non-resident Charterer, causes the ship to be chartered, or transfer the existing charter, or effects a sub-charter of the vessel as the case may be, such a transaction, though it does constitue the carrying on of business in British India by the non-resident, does not of itself amount to carrying on business within British India as the owner or Charterer of a ship within the meaning of section 44A. But if the ship is loaded in any British Indian port the question whether the non-resident owner or the non-resident Charterer is assessable to income-tax under section 44B must be decided on the principles stated above. Whoever, of these two persons causes the ship to be loaded with cargo, and is paid the freight for carrying such cargo, is the person who carries on business within the meaning of section 44A. (*I. T. M.*)

CHAPTER V-B

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF LIABILITY TO INCOME-TAX AND SUPER-TAX

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

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 purpose of this Act.

(*2*) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in British India, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

(*3*) Sub-sections (*1*) and (*2*) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—

(*a*) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation ; or

(*b*) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability of 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 enure for the benefit of the first mentioned person, or

(*b*) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit, or

(*c*) such first mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income

and on any assets which represent that income, or

(*d*) such first mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*e*) such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income.

(*6*) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(*7*) For the purposes of this section—

(*a*) the expression 'assets' includes property or rights of any kind, and the expression 'transfer' in relation to rights includes the creation of those rights ;

(*b*) the expression 'benefit' includes a payment of any kind ;

(*c*) references to income of a person not resident or of a person not ordinarily resident in British India shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (*1*) of section 23-A, 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.

(*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.

Avoidance of tax by certain transactions in securities.

44E. (*1*) Where the owner of any securities (in this sub-section and in sub-section (*2*) referred to as 'the owner') agrees to sell or transfer those securities, and by the same or any collateral agreement—

(*a*) agrees to buy back or re-acquire the securities, or

(*b*) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person.

(*2*) The references in sub-section (*1*) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(*3*) Where any person carrying on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(*a*) agrees to sell back or retransfer 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 retransferring the securities included references to selling or transferring similar securities.

(*5*) For the purpose of this section—

(*a*) the expression 'interest' includes a dividend ;

(*b*) the expression 'securities' includes stock and shares ;

(*c*) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those 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.

Avoidance of tax by sales *cum* dividend.

44F. (*1*) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received

by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

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

(*3*) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which the 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 44-E have been applied in his case in respect of such income.

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

(*5*) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundered 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 stock and shares."

Avoidance of Income-tax :

The Taxation Enquiry Committee of 1936 considered in details about "legal avoidance" and recommended certain stringent measures for adoption which the legislature has incorporated in the Amendment Act, 1939.

The Taxation Enquiry Committee observed as below in pages 66 to 68 :

"Non-Distribution as Income of a Company's Profits" :

"(*a*) *Distribution in the form of bonus shares, etc.* We think that this type of case should be countered by the enactment of a wide and simple clause, without conditions and exceptions that would still leave loopholes for avoidance. We have considered that clause in the Dividend Duties Act, 1902, of Western Australia which defines a dividend as follows :—a 'dividend' shall

include every dividend, profit, advantage or gain intended to be paid, credited to or distributed... . This wording was held by the Privy Council to cover an issue of bonus shares and we suggest that the same definition be applied to dividends in the Indian Income-tax Act. It is, however, a matter for consideration as to whether its application should be limited to companies whose control is in the hands of not more than five persons as defined in section 23-A of the Act. We find that legal avoidance is not confined to such companies and we do not therefore recommend any such limitation.

"(b) *Non-Distribution.* We are informed that in practice section 23-A (2) of the Act, which is designed to deal with non-distribution of profits by companies under the control of not more than five of its members, is virtually a dead letter only one order having been passed under that sub-section from its insertion in 1930 up to the end of the year 1935-36. The main difficulty in the way of the application of the sub-section may lie in the fact that before an Income-tax Officer can pass an order thereunder he must be satisfied that a company's 'profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business', and that 'such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated'. This task, involving as it does not only an assessing of motives, but also an estimation of the future possibilities of an individual business, may well deter an Income-tax Officer. The section could, we think, be made more effective if the criteria for the application of the section are made more specific.

"In considering this question it may be borne in mind that in the case of a business carried on by an individual or a registered firm, the whole of the profits irrespective of the requirements of the business, or of the extent to which profits are drawn from the business, are liable to super-tax at the graduated rates for individuals in the hands of the individual proprietors. On the other hand, a company pays company super-tax at a flat rate in addition to the super-tax paid by its share-holders on the dividends received by them Having regard to these considerations, we are of opinion, notwithstanding the practice in the United Kingdom, that questions of motive and of possible future requirements of the business for expansion, etc., should not be taken into account but that the fairest test is the ratio of the amount distributed to the total income of the company. This ratio must obviously be less than 100 per cent., and we suggest that the section should apply only to cases where the profits distributed (grossed up to include

Income-tax) are less than 60 per cent., of the assessable income of the company, provided that where the reserves representing past profits which have not been the subject of an order under section 23-A (*2*) exceeds the paid up capital, the section shall apply if the profits distributed are less than the whole of the assessable incone of the company.

"There are other respects in which the section is susceptible of improvement :—

"(i) Since a company can be controlled by persons who are not members but who hold shares through nominees, the word 'members' in the third line of sub section (*2*) should, we suggest, be altered to 'persons'.

"(ii) Under the section as it stands at present the only possible order provides that no tax including company super-tax shall be payable by the company, with the possible result that the tax payable by the members may be less than that which would have been payable by the company if the section had not been invoked. In any case, the section does not necessarily encourage distribution of profits because distribution involves for that part of the profits individual super-tax as well as company super-tax whereas the application of the section at present cancels the liability to company super-trx. We recommend that orders under the sub-section should merely deem a member's proportionate share of the income of the company to be dividends and therefore part of his total income, leaving the company assessable in the ordinary way both to income-tax and company super-tax.

"(iii) In the United Kingdom, since the law requires determination of questions of motive and of future needs of a business, provision is made for all cases to be dealt with by the Special Commissioners, and for appeals against their orders to be heard by a Board of Referees. As, however, we have recommended the adoption of a simple quantitative test only, we consider that the assessment and appeal provisions relating to other assessments should apply to orders under section 23-A and that the present provision for appeals to Boards of Referees under section 33-A should be repealed.

"(iv) The section is silent as to the time within which distribution of profits would operate to prevent application of the section. We suggest that this condition should be made specific, the section applying where a sufficient distribution has not been made within, say, six months of the date on which the accounts for the year in question have been presented to the share-holders in general meeting.

"(v) Income of a company which has under section 23-A (*2*) been deemed to be part of the income of a share-holder which is itself a company should be deemed to be part of the income of the latter company for the purpose of comparison with the dividends paid by that company.

"(*c*) *Distribution by companies in liquidation* It is possible for individuals to arrange that their incomes shall be received by them in the form of a distribution by a liquidator of a company which holds shares in another company which receives the primary income and escapes the provisions of section 23-A by declaring adequate dividends. This case, we think, can be met by legislation on the lines of sub-section (*6*) section 20 of the United Kingdom Finance Act, 1936. There is the further case of a company with large accumulations of undistributed profits which goes into liquidation with the result that all distributions thereafter must be treated as capital. This course of action is sometimes used as a device for the avoidance of tax and we recommend that in the case of a company, other than a company to which the proviso to section 23-A (*2*) of the Act applies, all distributions in a liquidation to the share-holders out of accumulated profits should be deemed to be 'dividends' within the meaning of that word in section 14 (*2*) (*a*)."

"Section 4—Transfer of Assets Abroad" :

"The outstanding instance in British India of this type of case is one recently the subject of a Privy Council decision Briefly, the result of a series of operations in that case is the creation of a liability on the part of a British India company to pay a large sum of interest to a company resident in China So far as Income-tax is concerned, the position should be met by our suggestions in Chapters VIII and X that tax on such interest be paid at source, but given accumulation of its income by the foreign company and no declaration of dividends, super tax is avoided, section 23-A having no application to a non-resident company. The only means of dealing with such a case would be, in our opinion, legislation on the lines of section 18 of the United Kingdom Finance Act, 1936, which moreover is designed to cover a wide variety of other schemes for avoidance of tax."

The recommendation of the Taxation Enquiry Committee has been incorporated in the new Chapter V, exactly on the line of section 18 of the English Finance Act, 1936. The relevant English section is therefore given in detail so that the applications of all these enactments may be understood.

Finance Act, 1936, Section 18.
(26 Geo. 5 & Edw. 8, C. 34)
Part II. Income-tax.

18. Provisions for preventing avoidance of income-tax by transactions resulting in the transfer of income to persons abroad :—

For the purpose of preventing the avoidance by individual ordinarily resident in the United Kingdom of liability to income-tax by means of transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom, it is hereby enacted as follows :—

(*1*) Where such an individual has by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy whether—forthwith or in future, any income of person resident or domiciled out of the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income-tax by deduction or otherwise, 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 that individual for all the purposes of the Income-tax Acts :

Provided that this sub-section shall not apply if the individual shows in writing or otherwise to the satisfaction of Special Commissioners that the transfer and any associated operations were effected mainly for some purpose other than the purpose of avoiding liability to taxation.

(*2*) For the purpose 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 accumulation of income arising from any such assets.

(3) An individual shall, for all the purposes of this section, be deemed to have power to enjoy income of a person resident or domiciled out of the United Kingdom 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 enure for the benefit of the individual ; or

(*b*) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit ; or

(*c*) the individual 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 directly or indirectly represents that income ; or

(*d*) the individual 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 consent of any other person, the beneficial enjoyment of the income ; or

(*e*) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of income.

(*4*) In determining whether an individual 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 operation, and all benefits which may at any time accrue to the individual as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(*5*) For the purpose of this section :—

(*a*) a reference to an individual shall be deemed to include the wife or husband of the individual ;

(*b*) expression "assets" includes property or rights of any kind and the expression "transfer" in relation to rights includes the creation of these rights ;

(*c*) the expression "benefits" includes payment of any kind ;

(*d*) references to income of a person resident or domiciled out of the United Kingdom shall, where the amount of income of a company for any year or period has been apportioned under section 21 of the Finance Act, 1922, include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person ;

(*e*) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other persons to whom, those assets, that income or those accumulations are or have been transferred.

(*6*) The provisions of second schedule to this Act shall have effect for the purpose of carrying this

section into effect and otherwise for supplementing the provisions of this section, and this section is referred to in that schedule as "Principal section."

(7) The provisions of this section shall apply for the puposes of assessment to income-tax for the year 1935-36 and subsequent years and shall apply in relation to transfer of assets and associated operations whether carried out before or after the commencement of this Act :

Provided that for the year 1935-36, no income shall be charged to tax at the standard rate by virtue of provisions of this section but super-tax shall be assessed and charged as if any income which would, but for this proviso, have been charged as aforesaid had in fact been so charged.

Avoidance by Transfer :

Section 44-D removes certain provisions relating to evasion of tax by transfer of assets. Transfer to persons resident in but not domiciled in British India are covered by sub-section (*1*), and by sub-section (*2*) evasion by transfers resulting in payment of income disguised in the form of loans or payments made without adequate consideration, is provided against. By sub-section (*3*) it is provided that a transfer must be untainted by any purpose of avoidance in order to escape the mischief of the section and the addition of new clause in sub-section (*7*) clarifies the position of companies incorporated outside but resident in British India.

Sections 44-E and 44-F are designed to prevent avoidance of tax by what are known as "bond-washing" transactions, involving the manipulation of securities so that the security will pass temporarily into the legal ownership of some second person who is either not liable at all or liable in a lesser degree to tax, under such conditions that the interest on the securities is the income of the second person. A common form of process is the sale of securities *cum* interest with a simultaneous contract to repurchase them *ex*-interest. Where foreign securities are concerned this second person may be a foreigner resident abroad entitled to claim exemption from the tax on the interest. More often a financial concern in India is utilised whose computation of profits includes the results of realising securities so that the concern can profitably offer "bond-washing" facilities

to the owner of securities bearing fixed interest, when the owner himself is not liable to taxation on the realisation of the securities.

Assessment of Non-Residents :

Under the United Kingdom Law, where a non-resident person derives profits from enterprises carried on in the United Kingdom, assessments may be raised and tax charged either directly on the non-resident where that can conveniently be done, or upon any agent, factor, branch or local manager, whether that agent has or has not the receipt of any of the profits or gains of the non-resident principal, and whether the entire profits do or do not arise directly from the agency.

When the agent has the receipt of any moneys of his principal he is entitled to retain any tax he has borne on account of the liability of his principal out of such moneys. These provisions do not apply in the case of a broker or general commission agent in respect of transactions carried through on behalf of non-resident principals in the ordinary course of his business (which must be a *bona fide* brokerage business, carried on in Great Britain or Northern Ireland) for a consideration not less than the rate of remuneration customary for that class of business (General Rule 10 and Finance Act, 1925, Section 17).

It should be noted, (*a*) that there is no need to assess and charge the agent where the principal can be charged personally (*Tischler* v. *Apthorpe*, 2 T. C. 89), and, (*b*) that the transactions in question must be, technically, carried out in the United Kingdom. This principle is one which is not always easy to interpret in practice. As a rule, the fact that a contract is made in the United Kingdom will be sufficient to establish the fact that the profits arising from that contract are profits or gains arising in the United Kingdom (see *Gavazzi* v. *Mace*, 42 T. L. R. 389 ; *Boyd* v. *Stephens*, 5 A. T. C. 247 ; *Nielson, Anderson & Co.* v. *Collins*, and *Tern* v. *Scanlan* 42 T. L. R. 420). But where the contract is completed entirely outside the United Kingdom profits arising thereby will not be chargeable to British Income-tax by reason only of the fact that the contract was not actually made in this country—*Maclaine* v. *Eccott*, 42 T. L. R. 416 and General Rule 11. The situation may be summarised briefly by stating that where a non-resident person makes contract and derives profits therefrom as the result of opening a branch or employing a regular agent in this country he can be assessed and charged to United Kingdom income-tax, but when he conducts his business from his own country he cannot be reached, notwithstanding

that he may make considerable profits out of his transactions with customers in this country.

Where a non-resident carries on business with a resident in circumstances which lead to the belief that, by reason of the close connection between the two parties, the true profits arising in the United Kingdom do not come into the hands of the resident party so as to be charged to United Kingdom tax, the Commissioners dealing with the assessment may charge the resident person in respect of the profits of the non-resident, as though he were the agent of the latter. When it appears that it is impossible to readily ascertain the profits of the non-resident, in such cases the assessment may be made on a percentage of the turn over and returns may be required from the resident person with a view to computing such percentage.

Where a non-resident is charged in the name of an agent in respect of the profits from the sale of goods produced outside in the United Kingdom, the agent concerned may claim to have the assessment made on the figure which a merchant or retailer, as the case might be, could reasonably be expected to secure if he had brought the goods in question from the producer or manufacture direct.

Section 44, When not applicable :

Where it can be shown by an assessee to the satisfaction of the Income-tax Officer, that the transfer or the associated operation is not for the purpose of avoidance of liability and that the transfer and all associated operations, are *bona fide* commercial transactions and are not designed for the purpose of avoiding liability to taxation, sub-sections (*1 & 2*) are inapplicable.

Associated Operation :

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.

Power to enjoy—What it means :

The expression "power to enjoy income" in sec. 44-D (*1*) is very comprehensive and it covers the following cases :—

(*a*) Where any person deals with any income reserving right of enjoyment at some point of time it is called

power to enjoy income. Thus where the income enures to the benefit of the person transferring the income it tantamounts to enjoyment.

(*b*) Where the receipt or accrual operates to increase the value of the assets of the transferor.

(*c*) Where the transferor receives or is entitled to receive any advantage out of income or out of money as out of which are available on that income and any assets which represents that income.

(*d*) Where the transferor has power to retain the beneficial enjoyment of the income by means of the exercise of any power of appointment or revocation or otherwise.

(*e*) Where the transferor is able to control the application of the income in any manner, directly or indirectly.

Determination :

In determining whether any 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. All benefits accruing or arising at any time to such person as a result of transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

Assets—meaning of :

It includes property or rights of any kind. Apparently the scope is very wide.

Transfer and Benefit :

'Transfer' in relation to rights includes the creation of those rights ; while benefit includes a payment of any kind.

References :

References to income of a person not resident or of a person not ordinarily resident in British India, shall, where distribution is in accordance with section 23-A (*1*), include reference to so much of income of the company as is equal to the amount distributed ; while references to assets representing any assets, income or accumulation of income, include references to shares in or obligations of any company or obligation of any other person to whom those assets etc. had been transferred.

Corporate body :

Where a corporate body is incorporated outside British India, it shall be treated as it it were resident out of British India. In the United Kingdom Law, it has been held that a company incorporated in the United Kingdom must be regarded as resident there—*Swedish Central Railway* v. *Thompson*, 9 T. C. 342. But in the *Egyptian Delta Land and Investment Co. Ltd.* v. *Todd*, 44 T. L. R 747, the House of Lords held that mere incorporation in the United Kingdom did not necessarily make the company resident there.

Retrospective or Prospective :

Section 44-D is applicable for the purposes of assessment for the year ending March, 1940, that is, from the assessment year 1939-40 and thereafter and shall apply in relation to transfer of assets and associated operations, whether carried out before or after the Amendment Act of 1939.

Obviously the section will come into operation from 1st April, 1939, that is, from the assessment year 1939-40, but activities prior to the year ending March, 1940 shall attract tax and exemption cannot be claimed on the ground that the activities were of long standing.

Under the United Kingdom Law, where shares or other securities have been purchased *cum* dividend, the revenue authorities will accept a certificate issued by an authorised stock-broker in lieu of usual dividend voucher, when the latter has been sent to *the seller of the shares in question. The seller will, of course,* have passed the dividend itself on to the purchaser, and not be repaid any tax in the event of his producing the voucher in question with any repayment claim of his own.

Interest :

The word "interest" includes dividend.

Power of the Income-tax Officer :

The Income tax Officer may by a written notice require any person to furnish him within 28 days in respect of all securities of which such person is the owner and such other particulars as he deems necessary with a view to ascertain if tax has been borne in respect of the interest on those securities. Where such person fails without any reasonable cause to comply, he shall be liable to a penalty not exceeding Rs. 500 and a further penalty of the like amount for every day after the infliction of such penalty.

Section 44-F gives authority to Income-tax Officer requiring any person to furnish with particulars relating to any securities in which he had beneficial interest at any time during the period specified in the notice. He is further entitled to require any such person to furnish the income from such securities which had accrued from day to day and apportioned accordingly.

If it appears that the person has avoided 10 p. c. of income-tax and super-tax, if the income is from day to day accrual and apportionments accordingly, then those securities shall be deemed to be securities to which sub-section (*3*) applies. Sub-section (*3*) lays down that income from securities to which this sub-section applies is deemed to accrue from day to day.

Income cannot be charged twice :

Where any person has been charged on any income under the provisions of this section, he shall not again be charged for that, whether received as income or in other form if received subsequently.

"Bond-washing" Transactions :

Section 44-E is designed to prevent avoidance of tax by a fraudulent transfer of securities—generally known as a "bond-washing transactions." By manipulation, the securities are made to pass temporarily to a second person who is either not liable to tax or liable to a lesser degree to tax. The most common practice is the sale of securities *cum* interest with a simultaneous contract to repurchase them *ex*-interest. In such cases the owner shall be charged and not the second person.

Securities :

The word "securities" includes shares and stock and securities shall be deemed to be similar if they entitle their holders the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights. Any difference in the total nominal amounts or in the form in which they are held or the manner in which they can be transferred, are immaterial or irrelevant.

Imposition of Penalty if Appealable :

Section 30 provides an appeal and any person objecting against the imposition of penalty under section 44-E (*6*) is entitled to file an appeal before the Appellate Assistant Commissioner of Income-tax.

Section 44F :

This relates to avoidance of tax by sales *cum* dividend.

Jurisdiction :

If it is proved to the satisfaction of the Income-tax Officer that the avoidance of income-tax and super-tax is not systematic but rather exceptional and that there was no such avoidance in any of the preceding years or if he can show to the satisfaction of the Income-tax Officer that action under section 44-E was already taken, this section is inapplicable there.

Non-compliance :

In case of any non-compliance in furnishing particulars, or if Income-tax Officer is not satisfied with any statement of particulars, the Income-tax Officer may estimate any income and it will form part of the person's total income. Further, when there is a non-compliance without any reasonable cause, a penalty not exceeding Rs. 500 is imposable and a further penalty of like amount for every day during which failure continued.

Appeal, if lies :

As in section 44-E (*6*), so also in 44-F (*5*), any person objecting against an imposition of penalty may file an appeal under section 30 to the Appellate Assistant Commissioner.

Sections 44D, 44E, and 44F :

These new sections aim at preventing avoidance of tax (1) by transactions resulting in the transfer of income to persons not resident or not ordinarily resident in British India, (2) by certain kinds of transactions in securities including shares and (3) by sales of securities and shares *cum* Interest and Dividend.

It is important to note that the provisions of section 44D apply for assessments of years 1939-40 onwards *whether the transfer of assets or the associated operations were effected before or after the 1st day of April, 1939.*

Sub-section (*6*) of section 44E and sub-section (*1*) of section 44F give the Income-tax Officer power to call for certain particulars in respect of securities and shares. Failure to comply with any of these requisitions will make the assessee concerned liable to pay an initial penalty not exceeding Rs. 500 *plus* a further penalty of the like amount for every day of default the imposition of the initial penalty. (*I. T. M.*)

CHAPTER VI

RECOVERY OF TAX AND PENALTIES

Tax when payable.

45. Any amount specified as payable in a notice of demand under sub-section (*3*) of section 23-A or under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that when an assessee has presented an appeal under section 30 the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

Provided further that where an assessee has been assessed in respect of income arising outside British India in a country the laws of which prohibit or restrict the remittance of money to British India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalized or not has been brought into British India in any form.

Notice of Demand :

Question of payment arises as soon as a notice of demand is served on the assessee specifying the date and place of payment. The Income-tax Officer must allow reasonable time for payment. Income-tax Officer has discretion to allow extension of time if necessary.

Income-tax Officer is the Sole Authority :

So far as realisation of tax is concerned, the Income-tax Officer is the sole authority for realisation. The mere fact that an appeal has been preferred or a petition under section 33 is pending, cannot stop collection. Even the High Court cannot interfere in such matter. Of course the Income-tax Officer in his discretion may stay collection till the disposal of the appeal or review as the case may be or he can ask the assessee to deposit such amount of tax for which there is no dispute.

Liability :

A liquidator distributing all assets to contributors without any provision for payment of Crown debt is personally liable. (*Watchmakers' Alliance and Earnest Goode's Stores*, 5 T. C. 117).

Default :

Question of default arises when an assessee fails to deposit the tax charged within due or extended date. The term "default" covers cases of the nature, *e. g.*, when payment has not been made through forgetfulness even. It does not make the least difference whether the default is deliberate or not.—*In re*: *Woods and Lewis*, (1898) 2 Ch. 211.

Realisation of tax for income without British India :

By virtue of the amendment of section 4 of the Act, cases may crop up where an assessee may be 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 ; such an assessee shall not be treated as in default in respect of that part of the tax which is due in respect of that amount of his income which by season of such prohibition or restriction cannot be brought into British India, untill the prohibition or restriction is removed.

Income when deemed to be brought into British India :

The expression "income shall be deemed to have been brought into British India" for the purposes of section 45 connotes that

it income has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee outside British India or if the Income has been brought into British India in any form whatsoever, capitalized or not.

Where assets are purchased without British India and then brought into British India, it shall be deemed to be bringing income into British India.

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.

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

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

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

(*3*) In any area, with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery

of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(*4*) The Commissioner may direct by what authority any powers of 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 payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition and shall pay the sums so deducted to the credit of the *Central* Government, or as the Central Board of Revenue directs.

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

(*7*) Save in accordance with the provisions of sub-section (*1*) of section 42 or of the proviso to section 45 no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act.

† Government of India (Adaptation of Indian Laws) Order, 1937.

Method of Recovery of the Tax :

(*i*) The Income-tax Officer is responsible for the recovery of the tax whether the demand represents the tax assessed by himself under section 23 or sub-section (*3*) of section 23-A or whether it represents an enhancement made by the Assistant Commissioner on appeal under section 31 or by the Commissioner in exercise of his powers of review under section 33. Notices of demand under section 29 or under clause (*iii*) of sub-section (*3*) of section 23-A in the form prescribed in rule 20 should be issued at as early a date as possible after the assessment is made under section 23 or sub-section (*3*) of section 23-A or when intimation is received of orders of enhancement from superior authorities in order that the tax may be promptly collected. The fact that an appeal has been lodged against an assessment should not stop the collection although the Income-tax Officer is empowered under section 45, in his discretion to treat an assessee as not being in default until an appeal is disposed of. When the Income-tax Officer considers that an appeal is a *bona fide* appeal, he should in exercise of his discretion under section 45 postpone the collection of the disputed portion of the tax requiring the assessee to pay only the portion of the tax that is not in dispute as the collection thereof cannot be delayed. Similarly section 66 (*7*) of the Act provides that a reference to the High Court shall in no way stop the collection of the tax.

(*ii*) When the tax is not paid within the time prescribed in the notice, or, if no such time is prescribed, by the first day of the second month following the date of the *service* of the notice or order, the Income-tax Officer should use the powers conferred upon him by sections (*1*) and (*1-A*) of section 46 and impose a penalty for the default. A penalty can be imposed under section 46 (*1*) on the person who is responsible for deduction of tax under section 18 and who by failing to discharge this responsibility has become liable to be treated as a defaulter under section 18 (*7*) of the Act.

(*iii*) Section 46 sub-sections (*3*) and (*4*) provide for cases where a special whole-time income-tax staff for the actual collection of the tax is employed in any area. Where such a staff is employed, the Commissioner of Income-tax may confer upon that staff any of the powers for the enforcement of any process for the recovery of a municipal tax or local rate imposed under any enactment which is in force in any part of the province, *e.g.*, the powers of distraint, if the Income-tax Officer is satisfied that the failure to deduct tax was wilful. In other areas, and, in the areas in which a special staff is employed where the powers for the recovery of municipal taxes or local rates have proved insufficient, the Income-tax Officer may, under section 46 (*2*), forward

under his signature a certificate specifying the amount of arrears due from an assessee to the Collector of the district and the Collector of the district on receipt of such a certificate must proceed to recover the amount specified in the certificate as if it were an arrear of land revenue. The Collector has, without prejudice to any other power he may have, the power to attach and sell a debt due to a defaulter to recover the arrears.

(*iv*) Where the defaulter is a salaried person the Income-tax Officer may, under the provisions of section 46 (*5*), require the persons paying salary to such assessee to deduct from any subsequent payments of salary any arrears of tax due from such assessee whether those arrears are due on account of tax on 'salary' or on income from any other sources or on account of any penalty.

(*v*) The necessity for prompt collection of the tax should be impressed upon Income tax Officers since not only is delay in the collection of this tax likely to result in loss of revenue for other reasons, but, under the provisions of section 46 (*7*), no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made, with the exception of the special case referred to in sub-section (*1*) of section 42. That sub-section refers specially to arrears of tax due from a non-resident. For the collection of such arrears no time-limit is prescribed as such arrears may be recovered from any assets of the non-resident which may *at any time* come within British India.

(*vi*) The phrase "proceeding for the recovery of any sum payable under this Act" should be interpreted as relating to proceedings taken under section 46. The issue of a notice of demand is not a proceeding for the purpose of the section.

Progressive Imposition of Penalty :

The Amendment Act of 1928 introduces the fact that the Income-tax Officer may impose any small amount of penalty in his discretion and such penalty may be enhanced to the maximum where there is a continued default. It is a discretionary matter pure and simple and the Income-tax authorities must not be unreasonably harsh.

Procedure for Recovery of Tax by Certificate :

Where an assessee fails to pay up the demand by due date, the Income-tax authorities may forward to the Collector of the district where the assessee resides, a certificate showing the arrear demand and the Collector thereupon will proceed to recover the amount as if it were an arrear of land revenue.

Distraint :

The Commissioner of Income-tax may direct that such arrear demand may be realised by any process which is enforced for the recovery of municipal tax or local rates by the Income-tax Officer direct. The issue of distraint by the Income-tax Officer must have the previous sanction and approval of the Commissioner.

Arrest and Imprisonment :

The petitioner defaulted in paying income-tax and certificates as required by section 46 were issued for recovery of the arrears. The Revenue Officer issued an order for the arrest of the petitioner. An application to the High Court for a writ of *Certiorari* to quash the proceedings on the ground that the proceedings violated clause (7) of section 46 in that they were not commenced within the expiry of one year from the last day of the year in which the demands were made and on the ground that they contravened the provision of section 48 of Revenue Recovery Act, was refused—*K. R. M. T. T. Thyagaraja Chettiar* v. *Collector of Madura*, 163 I. C. 60 : A. I. R. 1936 Mad. 398.

Priority of Debts :

Where a Receiver was appointed to collect the rent of a mortgaged property in a mortgage suit, and the Commissioner of Income-tax applied to the Court for an order calling on the Receiver to pay him the tax due by the mortgagor from his collections, it was held that the Crown had a right of preference in respect of such debts as against unsecured debts and the Court had power to direct payments out of rents collected without any attachment. But what about secured debts ?—

The right to priority has received recognition in India as far as unsecured creditors are concerned (*e.g.*, *Secretary of State* v. *Bombay Landing and Shipping Co. Ltd.*, (1868) 5 Bom. H. E. O. C. 2). Justice Leach of the Rangoon High Court, in the case of *Soniram Rameswar* v. *Mary Pinto*, 1934 I. T. R. 58, writes "with regard to unsecured creditors I hold that the Secretary of State for India in Council representing the Crown is entitled to priority in payment, and that when there are funds in Court out of which payment can be made, the Court can order payment without proper attachment. Of course notice of any such application must be given to interested parties." (*Rex* v. *Curties*, 145 E. R. 724 *discussed*).

There are various Acts of Indian Legislature which do expressly set out the priority of Crown debts in circumstances arising under those Acts, but such express enactments cannot be deemed to derogate from the general right of priority which

the Crown has. What these enactments do is merely to make clear that particular application of the rule, express words or necessary implication is required to affect the prerogative of the Crown in a Municipal statute. (*British Co. Corporation* v. *Regent*, relied on). The Crown has priority over unsecured creditors in the payment of debts ; there cannot be any ratable distribution even—*Secretary of State* v. *M. A. Nyemme and others*, 10 I. R. 248 : A. I. R. 1937 R. 380 . 172 I. C. 422.

Arrears of unpaid income-tax due by an assessee is a debt due to the Crown, and as such the debt must have precedence over all other debts. In the matter of recognition of priority of the Crown debt the Court's jurisdiction to do what is just and proper is unhampered by any forms of procedure and it can withhold payment to the attaching creditor without simultaneous attachment by any claimant and determine the claim to priority between the decree-holder and any other person including the Crown. There is nothing in the Civil Procedure Code to prevent the Court from treating any letter of request as an application to further substantial justice and from exercising the inherent powers vested in it to do what is just and right : *Governor-General in Council* v. *Chotalal Shibdas and another*, 7 I. T R 411. The following cases may be read in this connection, *e g*, *Manikkam Chettiar* v. *I. T. O.*, 1938 I. T. R. 180 ; *Soniram*, *Rameshwar* v. *Mary Pinto*, A. I. R. 1934 Rang. 8 : 2 I. T. R. 58, *Jnadabala Dassi* v. *Butto Kristo Bairagi*, (1906) I. L R 33 Cal. 1040.

Whether Police Officer has Authority to Execute Distress Warrant :

In the case of *Joyram and others* v. *The King Emperor*, A. I. R. 1923 Pat. 111 : 72 I. C. 954, it was held by Justice Ross that "section 46 describes the mode of recovering income-tax. The Collector may, on receipt of a certificate from the Income-tax Officer, recover the amount specified therein as if it were an arrear of land revenue ; but in areas notified by the Commissioner arrear demands may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rates ... . But even supposing that a distress warrant could be legally issued, the Collector had in my opinion, no authority to issue it to an officer of the Police and the Police Officer executing such warrant could not be said to be acting in execution of his duty as a Police Officer "

Form of Warrant :

Although the Income-tax Act provides a form of warrant, that is for the convenience and instructions of the Revenue

officers, there is nothing in the Act which renders the form obligatory. Of course, if a warrant is issued, it is expedient to issue it in the form as appended in the Act. But this does not take away the right to collect tax without warrant—*In re : Gulab Rani*, A. I. R. 1921 S. 51.

The proviso to sub-section (*2*) of section 46, has vested the Collector the powers of a Civil Court so far as it relates to attachment and sale of debts due to a judgment-debtor, thereby giving wide powers for recovery by way of attachment, sale, etc.

Distress Warrant or Sale :

The issue of distress warrant is permissible for recovery of any arrear demand, but where nothing is gained by an attachment, can the authorities proceed to dispose of the immovables of the assessee in default ? Certainly the authorities are within their rights to put the property to auction in the same way as "certificate sales" are conducted by the Revenue Court. Tax is recoverable by causing the defaulter's movable property to be distrained and sold—*In re : Gulab Rai*, A. I. R. 1921 S. 41.

Arrear Demand—and Land Revenue :

Where an estate is sold away for arrear of land revenue all incumbrances are annulled and the auction-purchaser enjoys it free from any lien, charge or incumbrances ; but so far as sales relating to the income-tax arrears are concerned, the purchaser takes it with all incumbrances : *In the matter of Mathu Krishna Ayar*, 26 Mad. 230. Section 30 of the Act (No. II of 1886) does not convert income-tax into land revenue, but only extends the proceeding for recovery. Sale of land for income-tax does not annul the incumbrances.—*Sankram Nambudripad* v. *Ramaswami Ayar*, 41 Mad. 691, 698.

Land Revenue :

It is only if a sale is for land revenue that the purchaser gets a preferential title free from all encumbrances, such priority does not attach itself to a sale for enforcement of other dues even if the sale is held under the provision of Revenue Recovery Act—*Chinnamal Achi* v. *Chinamuna Saithakhathi Routher*, 158 I. C. 776.

Appeal, if lies against Imposition of Penalty for Default :

Under the previous Act, there was no appeal against the imposition of penalty by Income-tax Officer for default in pay-

ment of tax. The assessee had usually to move the Income-tax Officer for remission, but when the power of Income-tax Officer was taken away, the matter could be placed before the Inspecting Assistant Commissioner, or the Commissioner, not by way of appeal but rather in their executive capacity.

But the Amendment Act of 1939 has provided that an appeal lies against the imposition of penalty under section 30, provided that no appeal shall lie against an order under section 46(*1*) unless the tax has been paid.

In my humble opinion the word "tax" includes the amount of bare tax, but does not include penalty under section 25(*2*), under sections 28, 44-E(*6*), 44-F(*5*) and under section 46(*1*), otherwise the legislature would not have inserted section 47 for realisation of penalties. In short, tax includes the amount payable as specified in section 45 of the Act, by virtue of a notice under section 29. It, therefore, necessarily follows that an assessee is entitled to file an appeal against the imposition of penalty, after depositing the original demand as shown in the notice of demand under section 29. Non-payment of penalty imposed under section 46 does not debar an assessee from filing an appeal.

Remission of Penalties :

Since an appeal against imposition of penalty has been provided for in section 30 of the Act, Income-tax Officer cannot remit the penalty.

Recovery of Tax under the English Act :

Both tax and penalties and costs even are recoverable by distraint or by proceedings in the High Court Defaulters may be committed to prison (section 165). Persons levying execution in a debtor's property, otherwise than the landlords distraining for rent, must pay to the Collector any taxes due to the revenue, not exceeding one year's tax in all

Power of Civil Court :

The Collector can enforce payment of income-tax in the manner provided for the recovery of land revenue, he can further exercise the function of a Civil Court so far as it relates to attachment and sale of debts due to the judgment debtors.

Recovery of penalties.

47. Any sum imposed by way of penalty under the provisions of sub-section (*2*) of section 25, section 28, sub-section (*6*) of

section 44-E, sub-section (*5*) of section 44-F or sub-section (*1*) of section 46, shall be recoverable in the manner provided in this chapter for the recovery of arrear of tax.

Applicability :

Section 47 is an auxiliary section which provides for the method of recovery of any sum imposed by way of penalty under the provisions of sub-section (*2*) of section 25, section 28, sub-section (*6*) of section 44-E, section 44-F (*5*) and section 46 (*1*) in the manner provided in this chapter for the recovery of arrear of tax.

The introduction of section 47 separately lends support to the view that the word "tax" conveys the meaning of bare tax unattended by penalty under any of the sections.

Proceedings or not :

Service of Notice of Demand, imposition of penalty under section 46 (*1*) or notice thereof are not proceedings under section 46 (*7*).

Proceedings for recovery begin only when the Income-tax Officer forwards a recovery certificate to the Collector under sub-section (*2*) of section 46 or takes other action under sub-section (*3*), (*5*) or (*6*). The imposition of a penalty is not a commencement of recovery proceedings.

In all cases without exception, of arrears unpaid before the expiry of the time limit fixed in section 46 (*7*), proceedings for recovery must be commenced within that time limit. Even where, pending a decision of a High Court or for some other reason, an assessee is allowed to defer payment, recovery proceedings must be commenced within the time limit in order to safeguard the revenue. In such cases, if a recovery certificate is issued to the Collector, for example, he can be informed at the same time to defer taking action on it for the present.

CHAPTER VII

REFUNDS

Refunds.

48. (*1*) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.

(*2*) The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall 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.

Object :

The amended section makes sweeping changes in section 48 which deals with refunds of tax on dividends, of tax paid by registered firms, and of tax deducted at source. The section in its reference to rates is unnecessarily cumbrous ; it would no longer apply to registered firms whose partners are to be assessed directly [section 23 (*5*)] and it leaves the position regarding double income-tax relief in doubt. Instead of the main provisions of the section a simple provision has been inserted giving an assessable person (section 3) a refund of any excess tax paid by him or on his behalf or treated as so paid over the amount with which he was properly chargeable. [As to dividend, see section 18 (*5*)]. The amended section does not require any distinction to be made between British and non-British subjects as their rates of tax are dealt with elsewhere [see section 17 (*2*)].

Refund :

This section has been completely recast by the Income-tax (Amendment) Act, 1939, and it now provides simply that when the tax paid (including super-tax) exceeds the amount chargeable, the owner of the income is entitled to a refund of the excess. As the present section 48 now covers all the matters formerly dealt with in the old sections 48 and 48A, this latter section has been deleted.

As explained in connection with section 14, dividends are no longer exempt from income-tax in the hands of the shareholder, but the full amount of income-tax appropriate to any dividend is deemed under section 18 (*5*) to have been paid on behalf of the shareholder. All that is necessary in such a case is for the tax payable on the total income of the shareholder to be determined and for credit for the tax thus deemed to have been paid on his behalf to be allowed, any difference being payable as the case may be.

Refunds are necessitated generally by the system of "taxation at source", as in the case of dividends, and "deduction at source" as in the case of interest on securities, salaries, and certain other payments. In both these groups of cases the average rate of tax, if any, appropriate to the "total income" or the "total world income" as the case may be, of the recipient of the income is not known at the time the tax is assessed or deducted. Section 18 (*9*)

makes it obligatory upon the person deducting income-tax or super-tax to issue a certificate specifying the amount of the tax deducted from the income concerned and the rate at which it has been deducted, and similarly section 20 requires the principal officer of a company distributing dividends to issue to shareholders a certificate stating that the company has paid or will pay income-tax on the profits that are being distributed. These certificates (or in the case mentioned in the notes on sections 18 and 20, a certificate by a bank) will ordinarily be accepted by Income-tax Officers as proof that tax has been paid.

For purposes of refund, dividends are deemed to have been taxed at the maximum rate of income-tax in force on the date on which they were paid, credited or distributed [see section 16 (*2*)].

The necessity for making a claim for the refund of tax on interest on Government securities (and also in respect of the tax on salaries paid to non-residents) can in many cases be avoided, by obtaining a certificate from the Income-tax Officer under section 18 (*3*) to the effect that the total income or total world income of the recipient is not liable to tax or is liable only at rate less than the maximum rate.

In cases in which a cash refund is necessary, the procedure laid down in rules 36 to 39 must be followed. The application must be made in the form prescribed in rule 36 by persons resident in British India and in that prescribed in rule 36-A by persons not resident in British India, and verified in the manner laid down in those rules and must, under rule 37 be accompanied by a return of the "total income" or of the "total world income" as the case may be in the form prescribed in rule 19 (or in rule 19A if the refund claim relates to an assessment year earlier than 1939-40) unless such a return has previously been made. A false statement in such a return or in such a verification is punishable under the provisions of section 52. The applications must also, where necessary, be accompanied by the certificates mentioned in section 18 (*9*) or section 20. Rule 39 prescribes the Income-tax Officer to whom an application under section 48 should be made.

In cases where the applicant is resident outside British India, including the case of a person resident in a State in India, the application should be made to the Income-tax Officer, Non-resident Refund Circle, Bombay. The Income-tax Officer will, however, allow a claimant who resides in an Indian State, the option of receiving payment of the refund through the Political Officer in that State, that is to say, the refund voucher that will be issued by the Income-tax Officer will be made payable, if the person applying for the refund so desires, at the Political Treasury of the Government of India in the particular Indian State, or if

there is no treasury under the control of the Political Officer, at the prescribed British Indian Treasury.

[With effect from 1st April, 1940, refunds to non-residents will be allowed by the same officer who has jurisdiction to assess them. Please see the last para of notes on section 42.]

In the case of a resident in an Indian State, refund to any tax already deducted at source which should not have been so deducted will also be allowed by the Income-tax Officer empowered to issue exemption certificates provided that the claim therefor is presented within the period prescribed by section 50 of the Act, through the Political Agent or the Resident of the State concerned.

If an agent wishes to make a refund claim on behalf of a non-resident who is being assessed through him, he will be required to show that he has been duly authorised in proper legal form to send the necessary forms so that his act will bind his principal.

Where the applicant resides in India, instead of issuing a refund order payable at a treasury or a branch of the Imperial Bank of India, the amount of refund due will be remitted by money order if the Income-tax Officer concerned is satisfied that this course is more convenient. In that event, the cost of the money order will be borne by Government. If the applicant resides out of India, the amount of refund under section 48 or 49 of the Act will be remitted to him by bank draft or money order at his cost unless he appoints an agent to receive payment in India.

The onus of proving the claim to refund (and therefore of adducing satisfactory evidence of his total income and of total world income), lies on the claimant, and if he fails to discharge it his claim will be rejected. Certificates by Income-tax authorities in the United Kingdom or a Dominion will normally be accepted as proof of the amount of the income arising or assessable in that country. Certificates of responsible official in Indian States will also normally be accepted in support of claims presented by subjects of Indian States. (*I. T. M.*)

Refund under Different Heads :

Refunds may be claimed by an assessee where tax is collected at the source, *e.g.*, in case of dividends, interest and securities and salaries. Refunds may also be due to a partner of a registered firm when taxed at the maximum rate where the income of the firm does not justify the rate applicable to the partners. It is essential to note that question of refund can arise only when there is a difference in the rates of the tax. No refund can be claimed by an applicant having indirect share in the firm or in the company. *In re* : *A. L. A. R. Bros.* v. *Commissioner of Income-tax, Madras*, 3 A. P. C. 209.

Refunds to Non-Residents :

Non-residents also claim refunds, and such application must be presented in the prescribed form to the Income-tax Officer, Non-residents Refund Circle, Bombay. But under sections 4 and 5 refunds to such persons who are non-British subjects and non-Indian State subjects are not admissible at all.

Total Income—Refunds :

So far as non-resident is concerned, refunds are to be allowed after taking into consideration the entire income both in and outside British India, were such income accrues or arises or was received in British India. This total income includes agricultural receipts outside British India.

Deceased Person's Estate :

In the matter of Mitchel v. *Macneil*, 31 C. W. N. 620, it was held that a refund cannot be claimed where payment is a voluntary one. But in the case of *Govinda Saran*, 105 I. C. 536, there is an observation to the effect that where tax is leviable from an estate of a deceased person, such estate is competent to claim refund. The estate of a deceased person is not liable to be assessed to income-tax and section 48 (*2*) of the Act cannot apply to a person who died before the assessment on his own income was made. A person who did not as assessee, deposit income-tax, is not allowed to claim refund—*Zenub Bai* v. *Secretary of State*, 136 I. C. 819 (*vide also S. M. Hajee Sulaiman & Sons* v. *S. B. Neogi*, A. I. R. 1932 R. 56).

But the new section 49-B has vested the representative of the deceased person, with power to make claim on his behalf.

Prescribed form for Application :

Rule 36 lays down : "in the case of a person resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made according to the prescribed form.

Appellate Officer and Commissioner :

Section 48 (*2*) as amended inserts the provision of section 48-A (*2*) of the previous Act (which has been deleted). It provides that the Appellate Assistant Commissioner in the exercise of his appellate powers or the Commissioner under section 32 or under section 33, on satisfaction, 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.

Section 48 (*3*) provides that when income of one person is included in the total income of any other person, the latter alone shall be entitled to a refund under this section in respect of such income.

Section 48 (*4*) provides that nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the reversion of any assessment or other matter which has become final or any review by any officer of a decision of his own which is subject to appeal or revision or where any relief is specifically provided for, to entitle any person to any relief before the commencement of the Act of 1939.

The amended section does not require any distinction to be made between British and non-British subjects as their rates of tax are dealt with elsewhere in section 17(2).

Limitation :

Limitation for a claim to refund in the case of an assessee is 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 received into British India.

But any claim of refund for income-tax and super-tax prior to the Amendment Act of 1939, shall not be allowed unless it is made within one year from the last day of the year in which tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (*11*) of section 2, in which the income arose on which tax was recovered, whichever period may expire later. In *Adamjee Hajee Dawood & Company Limited* v. *C. I. T., Burma*, (1935) 13 R. 729 : 161 I. C. 976 : the claim for a refund was refused as it was made after the expiration of the period of limitation.

Appeal :

Section 50-A which was inserted by the Indian Income-tax (second Amendment) Act of 1933 (XVIII of 1933) provided a right of appeal against a refusal to make a refund or against an order allowing a refund less than what was claimed.

The Amendment Act of 1939 has omitted section 50-A altogether as it was not necessary owing to the amendment of section 30 of the Act. Section 30 now provides an appeal and any assessee objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 or to the amount of the refund allowed by the Income-tax Officer under section 48, can file an appeal within 30 days from the date of the limitation of the order.

Under the previous Act, a member of a registered firm could apply for refund when the rate of tax applicable to his total income was either less than the rate at which the firm's income was assessed or below the minimum chargeable to tax. It applied to a person who had been assessed and did not apply to a person who was dead before the assessment on his income was made—*Zenab Kaderbhoy* v. *Secretary of State*, A. I. R. 1936 S. 137 : 165 I. C. 329.

But owing to the amendment, it would no longer apply to registered firms whose partners are to be assessed directly under section 23 (*5*).

Reference to High Court :

Where the order made by the Commissioner on revision under section 33 is not one enhancing an assessment or an order prejudicial to the petitioner within the meaning of section 66, no reference is permissible—*Vankatchalam Chattiar* v. *C. I. T.*, 156 I. C. 64, 1935 Madras 378.

48-A. Deleted.

49. (*1*) If any person who has paid by deduction under section 18 or otherwise Indian Income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid by deduction or otherwise United Kingdom income-tax for the corresponding year in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section :

Relief in respect of United Kingdom Income-tax

Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate

of tax appropriate to the income of the person entitled to relief.

(*2*) In sub-section (*1*)—

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

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

(*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.

Double Income-tax relief, Effect of Amendment :

Doubts have been expressed as to the force of the word "paid" in the first line of the section 49 (*1*) of the previous Act, that is to say whether a person receiving dividends from a company which has paid Indian income-tax should be regarded as having himself paid Indian Income-tax. It seems clear that the inten-

sion of the Legislature is to give relief to all persons who have suffered double taxation whether directly or indirectly and it is therefore that after the word "paid," whenever it occurs in the previous section 49(*1*), there is inserted the words "by deduction or otherwise." This is according to section 27 of the United Kingdom Finance Act of 1920, (quoted below).

Relief from double Taxation of incomes taxed in British India and the United Kingdom

Provision exists in the United Kingdom law (see item 2 of Part II of this Manual) for the granting of relief in respect of incomes which have been subjected to both United Kingdom and Indian Income-tax, and there is provision in section 49 of the Indian Income-tax Act, 1922 for the granting of further relief by the Indian Government. Briefly, the United Kingdom law gives relief at a rate up to either the Indian rate of tax or half the United Kingdom rate of tax whichever is the less, whilst the Indian law gives further relief so that in effect the assessee is left paying, in the aggregate, tax at either the United Kingdom rate of tax or the Indian rate whichever is the higher. The relief in India is also (since 1939) subject to a maximum of half the Indian rate of tax.

In order to obtain relief in India a claimant is required to supply the official receipt for the United Kingdom income-tax paid, the notice of assessment showing the basis on which the liability has been computed and a certificate of the Income-tax authorities showing what relief has actually been granted to him in the United Kingdom.

In order to assimilate the practice in India with that adopted in the United Kingdom, the following procedure will be applied to claims for relief in India :—

(*a*) Any Indian assessment on which relief is claimed will be compared with the United Kingdom assessment based on the same period of accounts ;

(*b*) The relief will be allowed by reference to the United Kingdom rate of tax charged on the United Kingdom assessment.

In order to determine the 'same part of income' which has suffered tax both in India and United Kingdom and on which relief is allowable, the sources of 'incoming profits' included in both the assessments will alone be compared. Income from any source included in the assessment by one country but not by the other will be excluded. No comparison will, however, be necessary between allowances or deduction permissible in one country and those in the other.

The amount of income eligible for relief will then be the amount of the Indian assessment as reduced by such deductions or the amount of the comparable United Kingdom assessment, *whichever is less.*

Note. In cases where the accounts on which the Indian assessment is based enter into United Kingdom assessments for two different years, the Indian assessment will, for the purposes of relief, be divided into two portions, relief on each being allowed by reference to the taxation of that particular portion in the United Kingdom.

It is necessary to emphasize the fact that the relief under section 49 proceeds and is based upon a comparison (1) of the assessments in both the countries based on the same period of accounts and (2) of the *rates* of tax employed in these assessments in the two countries and not upon a comparison of the *amounts* of tax paid in the two countries.

If a carry forward of loss is allowed in one country but not in the other, the income considered in the assessment of the country in which the loss is allowed, (besides being reduced according to the foregoing instruction) will be reduced by the loss allowed as a set off. The finally reduced income will be compared with the reduced income of the other country and relief will be allowed on the lower of the two amounts thus compared.

If the difference between the incomes charged in the two countries is due to the fact that remittances only are taxed in British India and the whole income in the United Kingdom the remittances alone should be regarded as having suffered double taxation.

Where a defined part of the income is exempted from tax or falls altogether outside the scope of the tax in either country for example, interest on tax-free securities in either country, or agricultural income in British India, relief will not be allowed in respect of the tax on such part of the income. It may be, however, that the exempted or untaxed part of the income is not defined or separable, but forms an element in the income doubly taxed. For example remittances may be made to the United Kingdom from British Indian income derived from both taxed and tax-free sources in British India, and it may not be possible to say how much is derived from each. In such circumstances relief will be allowed on that part of the remittances proportionate to the part of income in British India that is derived from sources, subject to tax. The statutory deduction from total income (*e.g.*, Rs. 25,000 in the case of an individual) allowed in super-tax assessments in British India will not be treated as exempt from super-tax for the purpose of computing the rate of tax suffered or for giving relief.

In considering claims for reifef under this section, in the case of companies which are assessed separately in India but jointly in the United Kingdom, and one of which makes a loss and the other a profit, it will be necessary for the Income-tax Officer to scrutinise the United Kingdom assessment to see how much of the income of the same accounting period from each source has been taxed. Since one company has made a loss which has been allowed in the United Kingdom assessment, it is clear that only part of the Indian profits of the other company which has made profit has paid tax in the United Kingdom. It is only on this part that relief is allowable since that part only has suffered double taxation.

The following are some examples illustrating the method to be adopted in calculating relief due under section 49 of the Act. The calculation of the United Kingdom relief is subject to changes which may be made in the rates of tax, personal allowances, etc., granted in that country.

Example 1.—A, a married man with one child, is resident in United Kingdom ; he has a fixed income of Rs. 10,500 from property in India and has no other income ; his liability to tax is :—

		In the United Kingdom.			In India.
		Rs.	A.	P.	
Assessable income		10,500	0	0	Income-tax on Rs. 10,500 at 11·29 pies in the rupee, equals Rs. 617-3-0.
	Rs.				
Less personal allowance ...	2,400				
Deduction for child ...	800				
		3,200	0	0	
Taxable income		7,300	0	0	
Tax on the 1st Rs. 1,800 at 16 pies in the rupee		150	0	0	
Tax on balance Rs. 5,500 at 4.4 annas in the rupee		1,512	8	0	
*Total tax (before relief in respect of Indian Income-tax)		1,662	8	0	

*For the purposes of calculating "the appropriate rate of United Kingdom tax" this amount is not to be reduced by any relief granted in respect of any life assurance premium.

The United Kingdom tax (Rs. 1,662-8-0), divided by the taxable income (Rs. 7,300) gives an "appropriate rate of United Kingdom tax" of 3 annas 8 pies. A has paid Indian income-tax in respect of the same income at a rate of 11.29 pies in the rupee, that is, a rate which is less than half the United Kingdom rate and the relief from United Kingdom tax will, therefore, be a sum equal to the Indian rate (11.29 pies) on Rs. 7,300. No further relief will be due in India.

Example 2.—B is a bachelor resident in the United Kingdom with no dependents and has an earned income of £1,000 assessable to United Kingdom income-tax. He has no other income and pays income-tax in India in respect of the income in question. His liability to tax is as follows :—

	United Kingdom.		
	£	*s.*	*d.*
Total income	1,000	0	0
Less earned income allowance one-fifth of £1,000 ...	200	0	0
Assessable income	800	0	0
Less personal allowance	100	0	0
Taxable income	700	0	0
Tax on 1st £315 at 1*s.* 8*d.*	11	5	0
Tax on balance @ 5*s.* 6*d.*	155	7	6
Total tax (before relief in respect of Indian income-tax)	166	12	6

The tax (£166-12-6) divided by the taxable income (£700) gives an "approprite rate of the United Kingdom tax" of 4*s.* 9*d.* or 3.8 annas in the rupee : Indian income-tax is payable on this income (@ exchannge 1*s.* 6*d.* = Rs. 13,333) at a rate of 13.99 pies in the rupee, so that B is entitled to get relief from the United Kingdom at the rate of 13.99 pies in the rupee (that is, 1*s.* 5*d.* in the pound) on £700 and there is no balance of relief to be given in India.

Example 3.—C is a company the whole profits of which are taxed both in the United Kingdom and in India. The Indian rate of tax (including company super-tax) paid by the company is 3 annas and 6 pies in the rupee while the "appropriate rate of

United Kingdom tax" for the company is 5*s*. 6*d*. in the pound. The company can get relief at the rate of 2/9 in the pound (or 2 annas 2.4 pies in the rupee) in the United Kingdom and, on proof of payment of United Kingdom tax and of the grant of United Kingdom relief, can claim from the income-tax authorities in India the balance of relief, namely, 1 anna 3.6 pies in the rupee. This makes the total rate of relief given in the two countries 3 annas 6 pies so that the aggregate rate of tax paid in the two countries is equal to the United Kingdom rate (5*s*. 6*d*. in the pound).

Postponement of collection of part of the tax where relief under Section 49 is being claimed.

When during an assessment it is known that an assessee will be entitled to relief on account of double taxation on any part of his income, the amount of the relief will if possible be calculated by the Income-tax Officer in advance and the assessee will normally be allowed to pay the demand in two instalments, the second of which will represent the amount of relief calculated to be due. The date of the first instalment will be that ordinarily fixed for the payment of a demand of income-tax while the second will be payable two or, if possible, three or four months from the date of the notice of demand. If the assessee produces the necessary British certificates and establishes his claim to relief under section 49 of the Indian Income-tax Act, 1922, the demand for the second instalment will be modified by cancellation or reduction or, if the relief is greater than the second instalment and the first instalment has been paid, a refund will be granted of the tax overpaid.

The above procedure will also be followed in granting relief from double taxation to incomes taxed in British India and Burma, Ceylon, Aden, Kenya or any Indian State (included in reciprocal relief arrangement).

Provisional claim—The time limit for making claim for refund is often very great delay in settling assessments and claims to relief in the United Kingdom, provisional claims for double income-tax relief unsupported by proof that relief has actually been obtained in the United Kingdom will be accepted if presented within the limitation period if the assessee definitely undertakes to produce such proof *as soon as* relief in the United Kingdom has been actually obtained. When this undertaking is punctually fulfilled the claim will be treated as one presented in due time.

A claim under section 49 for refund of tax paid prior to 1st April, 1939 may be admitted after the expiry of the prescribed period if the applicant satisfies the Commissioner or the Assistant

Commissioner specially empowered in this behalf, that he had sufficient cause for not making the claim within the period. A form of application for relief under section 49 is prescribed in rule 40. This application need not be presented in person, but may be sent by post or by an authorised agent. (*I. T. M.*)

Corresponding Year :

As a result of the decision in the case of *Assam Railways and Trading Co. Ltd.* v. *Commissioner of Inland Revenue*, 12 A. T. C. 123, it has been found necessary in the United Kingdom to treat the Dominion tax year corresponding to a year of assessment in the United Kingdom for the purpose of double taxation relief, as the year for which the assessment is made by reference to the same basic period of acounts as that of the United Kingdom assessment on which relief is claimed. It becomes necessary to bring the basis of computation of Indian relief into line with the new practice in the United Kingdom.

Proviso—Effect of :

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

Procedure :

(1) If a person has paid United Kingdom Income-tax in the corresponding year for which Indian Income-tax has been paid in the same year, and (2) if the United Kingdom rate at which he was entitled to and has obtained relief is less than the Indian rate of tax :

then he shall be entitled to a refund of sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom tax, whichever in less.

(3) An assessee must first get his relief in the United Kingdom and only then can he claim a refund or relief in India. He must prove that he has obtained relief in United Kingdom and the rate of relief on his producing a certificate as given below, relief in India will be granted.

Certificate under section 27 of Finance Act 1920 :

This is to certify that.....has been allowed relief from the United Kingdom Income-tax for the year ending .....in respect of British Indian Income-tax.

(*a*) Appropriate rate of United Kingdom income-tax for the year ending.....is Rs.....in the £.

(*b*) Extent of relief allowed in respect of British Indian Income-tax is 50% of the adjusted profits for the year.

(*c*) Description of the said income Profits from.....

(*d*) Rate of relief allowed.....

(*e*) Amount of relief allowed.....

Sd. H. M. Inspector of Taxes.

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

49A. (*1*) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion income-tax.

(*2*) For the purposes of this section 'Dominion income-tax' means any income-tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty's Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

Payment of Income-tax by company to be deemed payment by share-holder.

49B. Where a share-holder has received a dividend from a company which has paid income-tax imposed in British India or elsewhere, he shall be deemed in respect of such dividend, himself to have paid the income-tax (exclusive of super-tax) paid by the company on so much of the dividend as bears to the whole the same proportion as the amount of income of which the company has paid such income-tax bears to the whole income of the company.

Relief granted to a company to be deemed relief granted to shareholder.

49C. (*1*) Where a shareholder has received a dividend from a company which has obtained the relief referred to in section 49 or granted under section 49-A or under the India and Burma (Income-tax Relief) Order, 1936, he 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.

(*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.

Relief in respect of tax charged in country not providing for relief in respect of British Indian income-tax.

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.

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

49E. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, may, in lieu

of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

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

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

Scope :

Section 49-A(*1*) provides relief in respect of Indian State and Dominion income-tax.

Dominion Income-tax :

Dominion income-tax means any income-tax or supper-tax charged under any law in force in any Indian State or in any part of His Majesty's dominions (other than United Kingdom) where the laws of the State provide for relief in respect of tax charged. Under the United Kingdom Law, the position of those persons who are called upon to pay tax in two or more different countries on the same source of income, is one that gives rise to various complications. By section 18 of the Finance Act, 1923, and section 31 of the Finance Act, 1924, provision was made for relief to be given to shipping undertakings which were assessable to tax in respect of their profits both in the United Kingdom and in a foreign country or British Dominion where and so long, treaties are in force whereby similar legislation is passed in the country or dominion concerned.

In other cases where profits are taxed both in a foreign country and in the United Kingdom, the only relief given in respect of British tax is that which permits the amount of tax suffered in the other country to be deducted from the amount on which the British assessment is computed.

Share-holder receiving Dividend :

Where a share-holder receives dividend which has paid income-tax in British India or elsewhere, *e.g.* Indian State, Burma, Ceylon or in the United Kingdom, etc., he shall be deemed to have himself paid the income-tax (exclusive of super-tax) paid by the company.

Under section 48 any such share-holder receiving dividend from places other than British India, is also entitled to claim refund of the amount deducted at source.

Section 49-C :

Where a share-holder receives dividend from a company which has obtained relief under section 49 or under section 49-A or under the India Burma (Income-tax relief) Order, 1936, shall be deemed to have himself got the relief in respect of income-tax only.

Where it appears that the share-holder under section 49-C (*1*) has received greater relief than what he is entitled to, any excess is recoverable from him at the time of assessment under section 23 or by an action under section 34 or the excess relief may be set off against any outstanding relief due to him under section 48.

Income-tax paid in a Country which does not Provide Relief :

Where any person has been assessed to Indian Income-tax for any year in respect of any income arising outside British India in a country where no provision has been made for relief, if such a person can prove 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 less.

Set-off :

Under the previous Act, section 49-A provided set-off but now under section 40-E, provisions have been made authorising the Income-tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, in lieu of payment of the refund, to set off the amount to be refunded, or any part of that amount against tax, if any, remaining payable by the person to whom the refund is due. This is rather convenient.

Refund in Special Cases :

This is virtually the old section 49-B renumbered as 49 and owing to the deletion of old section 18-A, it is also omitted here.

Section 49A :

This new section has been inserted in consequence of the withdrawal of the power of the Central Government to make any further arrangements for double taxation relief under section 60 (*1*). At present there are the following arrangements for relief :—

1. *Between India and Burma*—under the India and Burma (Income-tax Relief) Order 1936—(*vide* Part II of this Manual). The form of application for this relief is prescribed in Rule 40A and the form of appeal against refusal of this relief is prescribed in Rule 40B.
2. *Between India and certain States*—under Notification under section 49A No. 69, dated the 16th September, 1939 (*vide* Part II of this Manual).
3. *Between India and Ceylon*—under Notification under section 60 (*1*) No, 14, dated the 2nd April 1932 (*vide* Part II of this Manual).
4. *Between India and Aden*—under Notification under section 60 (*1*) No. 21, dated the 5th June, 1937 (*vide* Part II of this Manual).
5. *Between India and Kenya Colony*—under Notification under section 49A No. 67, dated the 19th August, 1939 (*vide* Part II of this Manual).

Relief in British India in respect of income taxed in British India and Ceylon—The following points have to be borne in mind in regard to the grant of such relief :—

A.—Tax :

(1) Under section 42 (*4*) (*b*) (*1*) of the Ceylon Income-tax Ordinance, "Ceylon Tax" does not include, for purposes of relief either in India or Ceylon, the additional percentage charged on non-resident companies under section 20 (*6*) of the Ordinance.

(2) "Ceylon Tax" does not include, for purposes of relief either in British India or Ceylon, tax on interest or other charges on income included in the Ceylon assessment [Ordiance section 45 (*4*) (*b*) (*ii*)].

(3) "Indian Tax" includes personal super-tax, both in India and Ceylon.

(4) "Indian Tax" in India includes Company Super-tax as regards companies themselves, but not as regards shareholders.

(5) Relief is given in both countries of half the smaller tax. The amounts of tax and not the rates of tax are considered.

B.—"Part of his Income" (India). "His Income from any source" (Ceylon).

(1) As the British Indian Notification No. 14 (Finance Department—Central Revenues), dated the 2nd April, 1932, is drafted, relief will be allowed in British India "on that part of the income on which relief is admissible under the Ceylon Income-tax law". The practical result of this is that the expressions "part of his income" in the Indian Notification, and "his income from any source" in the Ceylon Ordinance, refer to the same thing, and the British Indian relief is automatically regulated by the Ceylon relief.

The British Indian and Ceylon authorities alike ignore in granting relief all differences between the computation of the income in the two countries due to—

(*a*) Certain expenses being allowed in one country and not in the other.

(*b*) The allowances for depreciation being higher in one country than in the other.

(*c*) Depreciation being carried forward in one country and not in the other.

(*d*) Losses being carried forward in one country and not in the other.

(*e*) The fact that assessment is made on the "income arising" in one country and on "remittances" in the other.

(*f*) The fact that the assessments are based on different accounting periods in the two countries.

(*g*) Where a Tea Estate is taxed on 40 per cent. of its profits in British India and on the whole profits in Ceylon, there will be only one source of income from the Ceylon point of view and the relief allowed in each country will be half the lower amount of tax ignoring this difference in the basis of assessment.

(2) No relief can be given unless tax is paid for the same year in each country on the source in question, *e g.*, in the first year of a business, tax will be levied on its profits on Ceylon but not in British India : in the year after a business ceases, its profits will be liable to tax in British India but not in Ceylon. No relief can be given in these cases.

C.—"Any Person".

(1) In Ceylon, the income of married women is treated as that of their husbands. If the wife is separately assessed in British India on the same income she will be entitled to relief in British India.

(2) *Partnership.*—Ceylon charges tax on individual partners and on partnerships at all. No difficulty will arise in British India in regard to registered firms. If partners of an unregistered firm are assessed in Ceylon and the firm is assessed in India, no relief will be due either to the partners or to the firm except to the extent that the partners pay super-tax in British India on their shares from the firm.

Shareholders :

(1) If a resident in India has dividends from a Company in Ceylon from which Ceylon tax is deducted at source and is assessed in India on those dividends, he will be entitled to relief in India.

(2) If a resident in Ceylon is a shareholder in an Indian Company and is taxed in Ceylon on dividends which he receives from the Company, Ceylon will regard him as having suffered Indian tax and he will be entitled to relief in India.

Relief in British India in respect of income taxed in British India and Aden.—The following procedure has been agreed upon between the Government of India and the Government of Aden and should be followed for the grant of relief in respect of double taxation in India and in Aden :—

(i) Any assessee who is liable to tax in both countries and *whose head office is in British India* may submit in British India with his British Indian return of income a copy of his Aden return of income, subject to his clearly distinguishing in the former any income which he claims to be taxable in British India only and in the latter any which he claims to be taxable in Aden only. The Income-tax authorities in Aden will then be informed that this has been done and will ordinarily postpone further assessment enquiry until a further reference is made by the Income-tax authorities in British India. The British Indian Income-tax Officer will examine the accounts relating to all the income and in his assessment order will distinguish between (i) what he holds to be income taxable only in British India and (ii) income taxable in both countries. He will then issue his British Indian demand and forward in the Government of Aden a copy of his assessment order, accompanied by

a note regarding his examination of the accounts relating to (iii) income taxable in Aden only, if any. The Aden Income-tax Officer then will, if satisfied, issue his assessment order and demand on the basis of (ii) and (iii) as reported ; if not satisfied he will make further enquiries. In each country the original demand will, for form's sake, be for the total tax payable in that country but with a note to the effect that the amount in excess of.....being the sum of the estimated share of that country in the tax at the higher rate on (ii) and of the tax on (i) or (iii) as the case may be, need not be paid pending the completion of discussions between the Income-tax departments of the two countries as to the final amount each is to receive after setting off double income-tax relief.

(*ii*) The above procedure will, it is understood, be adopted *mutatis mutandis* by the Aden Income-tax authorities in respect of assessees who are liable to tax in both countries and *whose head office is in Aden.*

Section 49B :

The following principle will be adopted in calculating the gross dividends and regulating refunds on dividends, paid from profits that are only partly taxed in the hands of the company.

If X per cent. of the profits pay tax in the hands of the company, the gross dividend is to be calculated (taking company rate of income-tax as 30 pies or 5/32 by applying to the net dividend the fraction $\frac{32}{32-\left(5\times\frac{X}{100}\right)}$. The generalised formula for any company rate of income-tax is $\frac{1}{1-\left(\frac{X}{100}\times\frac{R}{192}\right)}$ to be applied to net dividend,.....where R represents the full rate of company income-tax *in pies Rupee* and X represents the percentage of the company's profits which has borne income-tax.

Section 49C :

The combined effect of this section and of sections 16 (*2*) and 49-B is illustrated as below :—

Suppose 30 per cent. of the income of a company has been charged to *income-tax* (company super-tax has to be ignored for

this purpose) at 30 pies per rupee and 70 per cent. of its income is derived from tax-free securities, and suppose a shareholder of the company gets a dividend of Rs. 12,600 (net) from the company. If the company has not received, and is not entitled to receive, any double taxation relief, the amount of the dividend when grossed up according to the formula referred to in the notes on section 49B will be

$$\text{Rs. } 12\,000 \times \frac{32}{32 - \left(5 \times \frac{32}{100}\right)} = \text{Rs. } 12{,}590$$

of which Rs. 3,777 (representing 30 per cent.) has *suffered income-tax on behalf of the shareholder* at 30 pies per rupee, while the balance of Rs. 8,813 has not suffered any income-tax.

Supposing next that the company has obtained double taxation relief at 15 pies per rupee on the portion of the income charged to income-tax, the position of the shareholder (assuming he has no other income) will be as shown below :—

	Rs.	
Total income	12,590	
Income-tax suffered by the company in respect of the profits represented by this dividend .	590	(excluding fractions).
Double Income-tax Relief in respect of Income-tax (not Super-tax) obtained by the company .	295	" "
Net Income-tax suffered by the company .	295	" "
Income-tax payable by the shareholder at the average rate of 13·39 pies per rupee on 30 per cent. of Rs. 12,590, *i. e.*, on Rs. 3,777 .	263	
Double income-tax relief obtainable at half the effective rate of the shareholder . .	131	
Net tax payable by the shareholder . .	132	(in round figure).
Refund due to the shareholder 295—132 .	163	

This refund is thus made up of (*a*) Relief under section 48 in respect of the difference between the shareholder's rate and the company rate :—

	Rs.
590—263 =	327
(*b*) Deduct excessive double income-tax relief [See section 49C (2)] 295—131 =	164
Net refund due .	163

Section 49D :

This is a new section introduced by the Income-tax (Amendment) Act. 1939 and provides for relief *in respect of income*

arising without British India where such income is taxable both in British India and in the country in which the income arises but where there is no arrangement for reciprocal relief with British India. The relief is a simple one and is calculated at half of the Indian Income-tax on the income in question or half of the tax payable in the country on the same income in which the income arose, whichever is less. *I. T. M.*

Limitation of claims for refund.

50. No claim to any refund of income-tax or super-tax under this Chapter shall be allowed, unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into British India :

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 from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (*11*) of section 2 in which the income arose on which the tax was recovered, whichever period may expire latter :

Provided further that a claim to refund under section 49 of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.

50A. *Appeal against refusal of refund.—Omitted by S. 62 of the Indian Income-tax (Amendment) Act, 1930 (7 of 1939).*

Law of Limitation.

Section 50 lays down the rules of limitation applicable to a claim for refund of income-tax or super-tax. Under the previous Act, a claim for refund could be made within one year from the last day of the calender year in which tax was recovered or before the last day of the financial year commencing after the expiry of the "previous year" as defined in section 2 (*11*) of the Act in which the income arose on which the tax was recovered, whichever period may expire later. This limitation applied also to refunds of income-tax under section 49.

But under the Act of 1939, it is provided that no claim to any refund of income-tax and super-tax shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year. This applies to all refunds including refund of double income tax under section 49. The date of recovery in this case, of course, is the date of recovery of the tax in India.

Claim prior to the Commencement of the Amendment Act of 1939 :

The first proviso to section 50 prescribes the rule of limitation during the transition period, *e.g.*, where a claim to refund of income-tax or super-tax paid prior to the commencement of the Amendment Act of 1939, is made, the claim is to be made within one year from the last day of the year in which tax was recovered or before the last day of the previous year as defined in section 2 (*11*) in which income arose on which tax was recovered, whichever period may expire later.

Limitation of Claim to Double Income-tax Relief :

It has already been stated that the limitation applies to refunds of double income-tax under section 49. The date of recovery in this case is, of course, the date of recovery of the tax. Since however there is often very great delay in settling assessments and claims to relief in the United Kingdom, provisional claims for double income-tax relief unsupported by proof that relief has actually been claimed in the United Kingdom be accepted if presented within the limitation period, where the assessee definitely undertakes to produce such proof as soon as relief in the United Kingdom has actually been obtained, when the undertaking is punctually fulfilled the claim may be treated as one presented in due time. Claims to refund under section 49 of tax paid prior to the commencement of the Amendment Act of 1939 may be admitted after the prescribed period,

if the applicant can satisfy the Income-tax Officer, Assistant Commissioner or the Commissioner that he had suficient cause for not making the claim within such period.

Under the previous Act, any claim to refund under section 49 could be entertained after the period of limitation where the applicant could satisfy the taxing authorities that he had sufficient cause for not making the claim within time.

But as section 50 now provides four years in place of one year for the purpose of limitation, so the special privilege to refund under section 49 has been withdrawn ; but only in case of tax paid prior to the commencement of the Amendment Act of 1939, this special privilege of limitation on the ground of sufficient cause stands and it automatically follows that a claim to refund under section 49 of tax paid after the commencement of the Act, if presented after the period of limitation, shall not be allowed even if sufficient cause is shown for the delay.

Appeal :

Under the previous Act, section 50-A which then existed, provided that any person objecting to a refusal of Income-tax Officer to allow a claim to a refund under section 48 or section 49 or to the amount of the refund made in any such cases, might appeal to the Assistant Commissioner.

But the Amendment Act of 1939 has deleted section 50-A and necessarily section 30 which deals with appeal and appealable orders has been considerably widened. Sub-section (*2*) of section 30 now provides that an appeal shall ordinarily be presented within 30 days of receipt of the intimation of an order under sections 48 and 49, to the Appellate Assistant Commissioner.

Copy of Refund Order :

Under an executive fiat, it has been laid down that one copy of any order against which an appeal cannot be submitted in the prescribed form unless accompanied by such a copy (*i. e.* an order under one of the following sections *viz.*, 25-A, 26-A, 27, 48 and 49), should be supplied to the assessee, free of cost and without application, as soon as the order has been passed. One copy of any other order should be supplied to the assessee on application, free of cost. If additional copies are required, in either case, a charge should be made.

Grant of Refund :

The Taxation Enquiry Committee of 1936 observed : "the general attitude of officers of the department to refund claims

leaves much to be desired. Many Income-tax Officers regard refunds as the last matter to need attention and in many areas no attempt whatever is made to large accumulation and long delays. This is in marked contrast to the practice in the United Kingdom where refund claims receive preferential treatment, and appears to be due to slackness on the part of some officers and to insufficient direction from superior officers. In extreme cases, the Income-tax Officer has been found even to refrain from initiating assessment proceedings where the likely result appears to be the emergence of a refund."

As a result of the above observation, departmental instructions have been issued to expedite refund applications and other matters relating to refund.

Within Four Years :

Under the previous Act, a claim for refund of tax after one year was precluded—*Adamji Haji Dawood & Co. Ltd.* v. *C. I. T.*, 8 I. T. C. 387. The Income-tax Officer had no power to extend the date of limitation.

But as "one year" has been replaced by "four years" a claim for refund of tax after four years is precluded.

"Year"

The word "year" in section 50 means "financial year" as regards assessees who maintain their accounts according to financial year or those who do not maintain accounts—*Binny & Co. Ltd.* v. *C. I. T.*, 2 I. T. C. 466 , *Bai Chambai Kanga* v. *C. I. T., Bombay*, 3 I. T. C. 77.

Tax was recovered :

In *In the matter of Binny & Co.* v. *Commissioner of Income-tax*, 50 Mad. 92, it was held by the Madras High Court that the expression "tax was recovered" means tax was recovered by the Government and not tax was refunded to the assessee. Similarly in the case of *Amrita Lal Gandhi*, 2 I T. C. 48, the Judges were of opinion that the income-tax is "recovered when the dividend is paid." It had been pointed out that this interpretation may cause hardship in individual cases where there has been delay on the part of the Income-tax authorities in England in making the refund, such delay not being due to the default of the assessee , their Lordships observed that the hardship could only be obviated by an amendment of section 50 and were of opinion that this should be done by giving the Income-tax Commissioner power to extend time in suitable cases.

CHAPTER VIII

OFFENCES AND PENALTIES

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

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

(*a*) to deduct and pay any tax as required by section 18 or under sub-section (*5*) of section 46 ;

(*b*) to furnish a certificate required by sub-section (*9*) of section 18 or by section 20 to be furnished ;

(*c*) to furnish in due time any of the returns mentioned in section 19-A, section 20-A, section 21, sub-section (*2*) of section 22, or section 38 ;

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*4*) of section 22, such accounts and documents as are referred to in the notice ;

(*e*) to grant inspection or allow copies to be taken in accordance with provisions of section 39, he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

Offences and Penalties :

Under the previous Act, if a person failed without reasonable cause or excuse,

(*a*) to deduct and pay tax as required by section 18 or under sub-section *46*,

(*b*) to furnish a certificate required by sub-section (*9*) of section 18 or by section 20 to be furnished ;

(*c*) to furnish in due time any of the returns mentioned section 19-A, section 20-A, section 22, or section 38,

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*4*) of section 22, such accounts and documents as are referred to in the notice ;

(*e*) to grant inspection or allow copies to be taken in accordance with the provisions of section 39, he shall on conviction before a Magistrate, be punishable which may extend to ten rupees for every day during which the default continues.

But under the Amendment Act of 1939 only clause no. (*c*) has been altered as it is considered advisable not to penalise a person for failure to furnish under the public notice under section 22 (*1*). It has been amended as below :

(*c*) to furnish in due time any of the returns mentioned in section 19-A, section 20-A, section 21. or sub-section (*2*) of section 22 or section 38.

It will be seen that non-compliance of the notice under section 22 (*1*) is excluded from penalty. Neither there is mention of the notice under section 34 in any of the Acts.

Scope of section 51 :

Section 51 is applicable to cases where there is a failure without reasonable cause or excuse ; where this element is wanting, no prosecution can be made.

The Income-tax authorities should therefore be cautious not to haul up a person before the magistracy when they can decide their course of action by asking explanations from such person.

Section 51 does not authorise the Income-tax authorities to prosecute a person for an invalid return or declaration which is not *malafide* or wilful—*Attorney-General* v. *Till*, 7 T. C. 440.

It is for the magistracy to determine if the offence complained of, has been committed or not. The jurisdiction of the Magistrate is limited, as section 51 specially mentions of fine and not of imprisonment ; and in view of the fact, that Income-tax Act is a general Act, imprisonment is not contemplated in default of fine. Section 25 of the General Clauses Act provides realisation of fines in the manner provided by sections 63 to 70 of the Indian Penal Code and section 385 of the Criminal Procedure Code.

Income-tax Officer, before whom an offence under section 51 is committed, is not competent to proceed against such person, which is alone possible at the instance of the Assistant Commissioner.

Inaccurate or Invalid Return :

A return may be correct and complete, and the Income-tax Officer can make an assessment under section 23 (*1*). An incomplete return is nonetheless a return which may be accepted after scrutiny of accounts ; but an invalid return is no return and an assessee can be made liable under section 51. Being penalised for an incorrect return does not cast a stigma on the assessee—*Lord Advocate* v. *A. B.*, 3 I. T. C. 617. A return or statement which is incorrect or contains an innocent omission does not make one liable under section 51—*Attorney-General* v. *Till*, 7 T. C. 440.

Penalty under section 28—Prosecution :

Under section 28 where a penalty is imposed for a false return no prosecution should be launched against the assessee for the same offence. But this does not mean that where penalty has been imposed, prosecution under a different head is not permissible. Penalty under one head and prosecution under another can be safely started : *In the matter of Hussainally*, 43 Mad. 498.

Sections 51 and 52—Difference :

The offence in section 52 is not identical with the offence under section 51. An assessee cannot be convicted of any offence specified in section 51, when a charge under section 52 is found to be unsustainable—*Champalal Giridharilal* v. *King Emperor*, A. I. R. 1933 Nag. 358.

Penal Assessment under section 28 and Subsequent Prosecution :

Where penalty is levied under section 28 for non-compliance of a requisition under section 22 (*1*) or (*2*) or under section 34, where penalty is imposed for default of notice under section 23 (*2*) or 22 (*4*), or, where penalty is levied for concealment of income by submitting a false and inaccurate return of income, no prosecution for an offence can be instituted in respect of the same facts for which penalty has been levied. Section 28 (*4*) specifically lays down that 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. But this does not mean that a penalty for one offence and prosecution for another offence is not permissible. In *King Emperor* v. *Hussanally & Co.*, 43 M 498 : 1 I.T.C. 48 : 55 I. C. 1003, it was held that where action under section 28 was taken for a false return, a prosecution for non-compliance of a requisition to produce accounts is not barred.

False statement in declaration.

52. If a person makes a statement in a verification mentioned in section 19-A or section 20-A or section 21 or section 22 or sub-section (*2*) of section 26-A or sub-section (*3*) of section 30, or sub-section (*2*) of section 32, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

False Verification :

Under the previous Act, where a person made a statement in a verification mentioned in section 19-A or section 22 or section 26-A (*2*), or section 30 (*3*) or 32 (*2*), or 33-A (*3*) or 50-A (*2*), which is false and false to his knowledge and belief, he shall be deemed to have committed an offence under section 117 of the Indian Penal Code.

But the Amendment Act of 1939, has laid down that when a person makes a statement in a verification mentioned in 19-A or section 20-A or section 21 or section 22 (*2*) or section 26-A (*2*) or section 30 (*3*) or section 32 (*2*), which is false to his knowledge and belief, he shall be punishable on conviction before a Magistrate, with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or both.

As sections 33-A and 50-A have been deleted by the Amendment Act of 1939, reference to section, 33-A and 50-A have been omitted.

Scope :

Return filed by an assessee must be verified in the prescribed form and in the prescribed manner. But in case of false verification the assessee is punishable under section 177 of the Indian Penal Code. Similarly any false statement and verification in a form of appeal is also punishable. But offence under section 52, if any, is committed on the day the return is verified by the party Verification of untrue statement is the essence of the offence. A false declaration either in the return or in the appellate form under the verification clause is similarly punishable : *In the matter of Ganga Sagar*, A. I. R. 1929 All. 919 : 4 I.T.C. 97. It applies in terms to false verification made by a person or assessee

under certain specified sections. A mere false statement is not sufficient to bring an assessee to book under section 177 of the Indian Penal Code. It must be known to be false. The essence of the offence is his knowledge or belief of falsity. The onus is on the Crown to prove knowledge. A Magistrate who takes cognisance of an offence under section 52 must have jurisdiction over the place where the verification took place—*In re : Mahiudin Pakkiyar Marakayar*, 46 I. L. R. Mad. 839.

Where return is not complete, verification of such return dose not constitute an offence. By "not complete" is meant an invalid return—*In re : Ganga Sagar*, 4 I. T. C. 97 : A. I. R. 1929 All. 919.

An offence under section 52 is of a different nature to an offence under section 51 and an accused cannot be convicted of an offence under section 51, without calling upon him to meet that charge on his being found not guilty of offence under section 52 : *Champalal Giridharilal*, A. I. R. 1933, N. 358.

Section 52—Applicability :

Section 52 deals only with a false statement in the verification clause and does not cover the case of a false statement in the return of income to which the verification clause is attached. The proceedings before the Income-tax Officer cannot be said to start until there is some inquiry into the income of the assessee, and a statement made in the return of income-tax is not evidence given in a proceeding before the Income-tax Officer. Section 52 provides for the punishment of such an offence under section 177, Indian Penal Code, it cannot become punishable under section 193 of that Code.

Section 52 is without prejudice to the provisions of the section 476 Criminal Procedure Code. An Income-tax Officer being a Revenue Court can act under section 476 Criminal Procedure Code and make a complaint of an offence committed before him. If an assessee produces and relies on false account books to show that his return of income is true, while in fact it is false, he uses or attempts to use as genuine evidence, which he knows to be false or fabricated and can be convicted under sections 193 and 196 of the Indian Penal Code : *Hazarilal* v. *Emperor*, 20 N. L. W. 214 : 1937 I. T. R. 610.

Cases of wilfully false statements are covered by the section and not those of inadvertence, mistake or misunderstanding for which there are specific provision in the Act itself : (sections 22(*3*), 34 and 35).—*P. D Patel* v. *Emperor*, 1933 I.T.R. 363 : A. I. R. 1933 R. 292.

Reference to High Court :

Chapter VIII, which deals with offences and penalties, has been excluded from the operation of section 66 and consequently no reference lies to the High Court under section 66 of the Act. Necessarily any question arising out of an order under section 51 or 52 cannot be made a subject of reference under section 66.

Civil Suit :

When an assessment is made in respect of an item which is not chargeable at all, a Civil suit is not barred inasmuch as the assessing officer has no jurisdiction to make it ; when anything is done beyond the scope of the Act, a Civil suit is maintainable (*Vide* 1 I. T. C. 181 : 1 I. T. C. 284 : 2 I. T. C. 321 : and 2 I. T. C. 392).

But where through ignorance and inadvertence an amount is shown in the return which does not attract tax, and the Income-tax Officer makes an assessment and the tax is levied, the amount is not recoverable by a Civil suit ; where there is a voluntary payment and where there is no threat, coercion or duress, the alternative for him is to proceed legally but not by a civil suit : *Rajeswar Sethapathi* v. *Secretary of State*, 3 I. T. C. 263 : A. I. R. 1929 Mad. 179.

Prosecution to be at instance of Inspecting Assistant Commissioner.

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

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

Prosecution :

Income-tax Officer is a public servant and he is competent to prosecute a person who deliberately submits a false return : *P. D. Patel* (*Advocate*) v. *Crown*, 146 I. C. 653 : A. I. R. 1933 R. 292. Where one Income-tax Officer makes the assessment and another Income-tax Officer files a complaint, the succeeding Income-tax Officer is competent to prosecute as he is a public servant—(*Ibid*).

Scope :

Sanction of the Inspecting Assistant Commissioner is a condition precedent for launching a prosecution under either of the sections 51 and 52 of the Indian Income-tax Act : but prosecution for other offences does not require any sanction.

Compounding Offences :

Section 53 (*2*) provides that an Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any such offence.

Under the previous Act, the Assistant Commissioner might stay any such proceeding or compound any such offence.

Under the previous Act, where proceedings had been initiated, the power of composition come in and not before that, but under the Amendment Act, the Inspecting Assistant Commissioner may compound, any offence before or after the institution of any proceeding.

The Amendment Act takes away the right of staying any such proceeding, as the expression "may stay any such proceeding" has been omitted.

Section 53 specifically provides that an Inspecting Assistant Commissioner is alone competent to compound any offence before or after the initiation of any proceeding. The Income-tax Officer has no authority to initiate a proceeding without previous sanction and he has absolutely no power to compound any offence.

But the Inspecting Assistant Commissioner, while compounding an offence, must not extort a sum under coercion, threat or intimidation.—*In re* : *Ganga Sagar*, 4 I. T. C. 97.

Disclosure of information by a public servant.

54. (*1*) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and, notwithstanding anything contained in the

Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

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

(*3*) Nothing in this section shall apply to the disclosure—

(*a*) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(*b*) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(*c*) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(*d*) of any such particulars to a Civil Court in any suit to which Government is a party which relates to any matter arising out of any proceeding under this Act, or

(*e*) of any such particulars to the Auditor-General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1935, or

(*f*) of any such particulars to any officer appointed by the Auditor-General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(*g*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or

(*gg*) of any such particulars, relevant to an enquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority referred to in sub-section (*3*) of section 61, when exercising the functions referred to in that sub-section,

(*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

(*i*) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 of this Act to be given, or

(*j*) of such facts, to an officer of a Provincial Government, as may be necessary for the

purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*l*) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(*m*) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established.

(*4*) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 25A or section 26A, or to the giving of evidence by a public servant in respect thereof.

(*5*) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

Returns :

Returns being confidential under section 54, the disclosure of their contents is an offence punishable by law. Copies of such returns are admissible in evidence and do not come within the purview of sections 24, 65, 76 and 77 of the Indian Evidence Act : *In the matter of Anwarali* v. *Tofazal Ahamad*, 84 I. C. 487 : A. I. R. 1925 Rang. 64.

Disclosure :

Disclosure under the provisos are justified if there is sanction of law behind it ; but the sanction must be from the Commissioner.

Income-tax Records to be kept confidential :

While the Act of 1918 merely penalised the disclosure by a public servant of the particulars contained in any statement or return furnished under the Act, section 54 further penalises the disclosure of any particulars contained in any accounts or documents produced under the Act or in any evidence given or deposition made in the course of proceedings under the Act or in any record of an assessment proceeding or proceedings for recovery of a demand, and debars the Courts from requiring public servants to produce income-tax records or to give evidence respecting the same.

The proviso to sub-section (*2*) contains provisions stating in what particular cases information may be disclosed. The effect of the provisions is that information obtained in connection with the assessment of incomes and recovery of the tax may be disclosed by public servants to such persons only as act in the execution of the Act and where it may be necessary to disclose the same to them for the purposes of the Act, or in order to, or in the course of, a prosecution for perjury committed in connection with proceedings under the Act. Proviso (*c*) was inserted mainly for the purpose of extending the protection of every action of a public servant in pursuance of the provisions of the Act or the rules such as the service of a notice by affixture. Apart from the particular cases it is essential that all records should be kept strictly confidential, and, in particular, the practice in certain provinces of furnishing information to local authorities, who impose a tax on "circumstances and property" or a local income-tax, of the detail of assessment made by the Income-tax authorities must cease. This prohibition applies equally to furnishing such information to other Government departments. (*I. T. M.*)

Secondary Evidence :

Secondary evidence may be given by assessee of his income-tax return or of assessment order. No certified copies or inspection of income-tax return or of assessment order can be given—*Debidut* v. *Sharram*, A. I. R. 1932 Bom. 292.

In the case of *Noone Varadarajan Chetty* v. *Vutukuri Kanakiah*, 7 I. T. R. 331 : A. I. R. 1939 Mad. 546, it has been held that secondary evidence of the contents of an income-tax return

is admissible in evidence. The Income-tax Officer is subject to every process of the Court, but under section 54 of the Income-tax Act the Court cannot require him to produce before it any of the documents mentioned in that section. Section 54 of the Income-tax Act lays a prohibition on the Court ; it does not confer any exemption on the Income-tax Officer.

The Madras High Court in the case of *Pentapathi Venkatramana and others* v. *Pentapathi Varahalu and ors.*, 7 I. T. R. 561, made an elaborate discussion on the point and it lays down that a certified copy of a statement made on oath by an assessee before an Income-tax Officer is a public document and a certified copy of it granted by the Taxing authorities is admissible in evidence. Section 76 of the Evidence Act is not an exhaustive but merely an enabling provision as regards issue of certified copies of such statements to the assessees. Where such a statement is made by a partner of a firm the grant of copies of that statement to other members of the partnership is not illegal. In this connection, attention is invited to the following decisions :—*e.g.*, *Venkatchella Chettiar* v. *Sampathu Chettiar*, 32 Mad. 62 ; *Jalabrato De* v. *Balaram De*, 26 Cal. 281 ; *Devidut* v. *Shriram*, 34 B. L. R. 236 ; *Ma Hla Mra Khine* v. *Ma Hla Kra Pru*, A. I. R. 1938 Rang. 84 ; (*Anwar Ali* v. *Tofazal Ahamad*, A. I. R. 1925 Rang. 64, 2 Rang. 391, *doubted.*)

Though an assessment order is a public document within the meaning of section 74 of the Evidence Act, it does not fall within the ambit of section 76 of the said Act as no one has a right to inspect or to demand a certified copy of it. Consequently, copies of assessment orders though certified by the Taxing authorities, are not under section 77 of the Evidence Act, certified copies which may be produced in proof of the contents of the assessment order or any part thereof of which they purport to be copies.

Though it may be reasonably said that the provision that an assessment order shall be treated as confidential is a privilege which an assessee may waive if he thinks fit to do so, it would be a startling thing if a joint assessee were to be permitted to use the copy of such an order to the detriment of his co-assessee in contentious proceedings between them. The provision contained in the Income-tax Manual under which the assessee it entitled to a copy of the assessment order, does not give the assessee a right to inspect the original assessment order and compare it with the copy—*Pramatha Nath Pramanik* v. *Nirod Chandra Ghosh*, 7 I. T. R. 470 : 43 C. W. N. 1169 : 188 I. C. 37.

In *Ram Rao* v. *Vanakatramayya*, 8 I. T. R. 450, a Full Bench of the Madras High Court held that a profit and loss statement and a statement showing the details of net income, filed by an

assessee in support of his return of income furnished under section 22, are public documents within the meaning of section 74 of the Indian Evidence Act of which certified copies would be admissible under section 65 cl. (*e*) of the Evidence Act. Chief Justice Leach observed that section 54 does not make the issue of a certified copy of an Income-tax return to an assessee unlawful. The return is a confidential document and cannot be disclosed to a third party but there can be no objection to the maker of a return having a copy for his own purposes if he so desires. So far as the assessee is concerned he is not bound to treat the document as confidential. The cases of *Venakatramana* v. *Varahalu*, 7 I. T. R. 560 and *Devidutt* v. *Shriram Narayandas*, 56 Bom. 324, may be read with advantage.

It is the policy of the law that statements made in Income-tax returns shall not be brought up in Court against the person making them or for that matter against any one else. Under section 56 of the Evidence Act, Income-tax returns cannot be proved by secondary evidence. It is not a public document within the meaning of section 74 of the Evidence Act and so a certified copy of it cannot be admitted under section 65 cl. (*e*) of the Indian Evidence Act. Certified copies of an Income-tax return can be granted to the person who has made the return for his own private information since that would not come under the head of disclosure under section 54(*2*) of the Act. But that does not mean that a third party who has, in some way, come into possession of the certified copies can use them to his own advantage. —*Mythili Ammal* v. *Janaki Ammal and another*, 7 I. T. R. 657.

Where Disclosure is Permissible :

It is no doubt true that all matters relating to Income-tax are confidential and these are sealed books to outsiders. In the civil or criminal Courts, anybody and everybody can apply and get copies of any order, but this is not only not permissible under the Income-tax Act, but disclosure itself is criminal.

But sub-section (*3*) of section 54 (which has been inserted with slight modification in place of the proviso to sub-section (*2*) of section 54 of the previous Act) provides that nothing in section 54 shall apply to the disclosure :

(*i*) of any particulars for the purposes of a criminal prosecution under the Indian Penal Code in respect of any statement, return, accounts, documents, evidence, affidavit or deposition or for the purposes of any prosecution under the Act ;

(*ii*) of any such particulars to any person in execution of this Act, where it is necessary to disclose the same for the purposes of the Act ;

(*iii*) of any such particulars for lawful employment under this Act any process for the service of any notice or the recovery of any demand. (This provision has been inserted with a view to do away with any objection that may arise when the demand is recovered by certificate through the Collector, who is not an officer of the Income-tax department) ;

(*iv*) of any such particulars to a civil Court in any suit to which Government is a party, relating to any matter arising out of any proceeding under this Act ;

(*v*) of any such particulars to the Auditor-General of India for enabling him to discharge his functions under section 144 of the Government of India Act, 1935 ,

(*vi*) of any such particulars to any officer appointed by the Auditor-General or by the Central Board of Revenue to audit receipts or refunds of Income-tax ;

(*vii*) of any such particulars to persons appointed as Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or a Public Service Commission established under the Government of India Act, 1935, in respect to any matter arising out of any such enquiry ;

(*viii*) of any such particulars to a public servant under the Indian Stamp Act, 1899, to impound an insufficiently stamped document ;

(*ix*) of such facts to an authorised officer of the United Kingdom, or of any Indian State or any part of His Majesty's dominions for the purposes of double taxation relief ;

(*x*) of such facts to an officer of the Provincial Government to enable the Provincial Government to impose or levy any tax imposed by it on agricultural income ;

(*xi*) of such facts to any authority functioning under the Sea Customs Act, 1878, or any of the Central legislature imposing a duty of excise ;

(*xii*) of such facts to the returning officer for the purposes of seeing whether a person is or is not entitled to be entered on an electoral roll ,

(*xiii*) so much of such particulars to the appropriate authority to establish whether a person has or has not been assessed to tax in any particular year or years where such fact requires to be proved.

Where Disclosure is Forbidden :

Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration, or affidavit filed, or the record of any statement or deposition made in a proceeding under section 25-A or section 26-A or the giving of evidence by a public servant in respect thereof.

Prosecution :

Without the previous approval of the Commissioner no prosecution under this section shall be launched. It may be observed that a prosecution under section 51 is possible with the previous approval of the Inspecting Assistant Commissioner, but so far as the prosecution under section 54 is concerned, his jurisdiction is ousted.

Income-tax Returns and Privilege from Disclosure :

In a recent case at the Central Criminal Court (See *The Times*, Sept. 19) the interesting question was raised as to the extent of the privilege, if any, from production in evidence which covered income-tax returns. It was stated on behalf of the Solicitor for the Inland Revenue that at the preliminary hearing at the police court the local inspector of taxes was subpœnaed by the prosecution to produce certain accounts relating to the defendant's affairs, and also a return of his employees. The local Magistrate disallowed the claim of privilege that was made for the protection of these documents. Judge Whitely remarked that if the evidence was admissible it could be called in any number of cases dealt within that Court. "It is not admissible in civil cases, and clearly it is inadmissible in criminal cases," said his Lordship.

The rule that State documents are exempt from production in evidence, should privilege be claimed by the proper person, is usually understood to include communications between Public servants in the course of their official duties. Such documents as contain communications between the Governor of a colony and a Secretary of State (*Wright* v. *Mills*, 62 L. T. Rep. 558), reports by an inspector to the old Local Government Board as to a Public hospital (*Attorney-General* v. *Nottingham*, 20 Times L. Rep. 257, 258), reports as to a sea collision by a captain in the navy to the Admiralty (*The Bellerophon*, 31 L. T. Rep. 756 : 44 S. Jour. Adm. 5), or an official report made to the Board of Inland Revenue (*Hughes* v. *Vargas*, 9 Times L. Rep. 471), are clearly protected, should the privilege be claimed. Whether, however, private communications to Public Officials are so protected does not seem to be so clear on the authorities.

In 'Taylor on Evidence' (12th edit., at p. 947), the unreported case of *Latter v. Gooden* (10th Nov. 1894, which was specially printed for the Home Office, is cited. According to that work, the Court of Appeal there held that a communication which it could see was to be one to a Government department was protected from production as being a State secret "if a Minister or the head of a department sees fit to claim such protection for it and this even though he gives reasons for the claim which are founded on grounds of convenience rather than State policy." In *Williams v. Star Newspaper Company*, (1908) 24 Times L. Rep. 297) Mr. Bowlatt as he then was, quoted Lord Esher in *Latter v. Golden*, as stating: 'The cases cited seem to me clearly to show that when the head of a public department says it would be contrary to the Public interest to produce a document which is in his possession by virtue of his position as head of the department, it is for him to say so.' In *Williams v. Star Newspaper Company (sup.)* Mr. Bowlatt appeared on behalf of the Home Office to object to the production in evidence of a report by Sir Thomas Stevenson to the Home Office as to an exhumation, and Mr. Justice Darling (as he then was) said (at p. 298): "These rules were made in the Public interest with regard to documents and reports made to Public Officers and kept by them in the Public interest. It has been laid down that if the Public Officer states that in his opinion the publication would be injurious to the Public interest the Judge ought not to allow the publication.'

The only English case rising the question of the admissability in evidence of income-tax returns is *Re Joseph Hargreaves Limited*, [82 L. T. Rep. 132; (1900) 1 Ch. 347]. In that case the liquidator of a company, in order to obtain evidence in support of a misfeasance summons which he had issued against the directors of the company and the auditors, applied under section 115 of the Companies Act, 1862 for an order that the surveyor of taxes should attend for examination and produce some balance-sheets of the company which had been delivered to him for the purpose of assessment of income-tax. By that section it was provided that the Court after an order has been made for winding-up, may summon before it any person whom the Court may deem capable of giving information concerning the trade dealings, estate, or effects of the company, and the Court may require any such person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company. The surveyor declined to produce the balance-sheets on the ground that to do so would be a violation of the oath which he had taken as required by sections 38 and 189 of the Income-tax Act of 1842, and that the production would be contrary to Public policy and an affidavit was made by the Secretary to the Commissioners

of Indian Revenue stating that the Commissioners, sitting as a board, had passed the following resolution: "In the opinion of the Board of Inland Revenue, who have duly considered the question, the production of the documents, referred to in the summons would be prejudicial and injurious to the Public interest and service."

Mr. Justice Wright [p. 353 of (1900) 1 Ch.] stated: "Inland Revenue Returns, assuming these documents to be so—and they are not shown to be anything else—may contain confidential matters. It may be of the utmost importance to the Public service that persons should be able to be certain that returns made by them for those purposes should in no case be disclosed. It seems to me that it must be a matter of Public concern that persons should have confidence in the secrecy of that procedure. If it were shown that the documents were not confidential returns or returns made for the purpose of income-tax, but were merely documents belonging to the company which, by some accident, had got into the hands of the Inland Revenue Officers, the case might be different. I do not say that it would, the certificate might still, be enough to protect them. But that is not the case here."

The Court of Appeal refused to interfere with the discretion exercised by Mr. Justice Wright, Lindley, M. R., declining to say "what is the limit of the Court (if there is a limit) to order the production of such documents as these." And Lord Justice Romer saying: "The question now before us is not necessarily the same as that which may possibly arise upon the hearing of the misfeasance summons if the judge has to consider the question of a subpœna for the production of the documents." Lord Justice Vaugham Williams, however, said: "It is not, as I understand, denied that communications made to the Board of Inland Revenue are documents which come within the rule which enables the heads of Government departments to object on their own responsibility to their production. At all events, if this were disputed, it seems to me that there is ample authority that such a contention would be ill-founded."

The Scottish law on this is somewhat different from that prevailing in England. In *Shaw* v. *Kay*, (1904, 12 S. L. T. 495) Lord Pearson, after hearing the income-tax authorities, refused to admit the documents. He said "Private inconvenience must give way to public interest; and the Courts have been accustomed to give almost conclusive effects to a report by a Department of State in such a matter. They have, it is true, usually qualified their decision by intimating that a case might occur in which they might exercise their discretionary power to compel discovery. It is difficult to figure such an exceptional case beforehand, but

all events I do not think we have it here." Such an exceptional case occurred 12 years later. In *Andrew M'Gown* v. *Inland Revenue Commissioners*, (1916, S. C. 521) the Inland Revenue Commissioners objected to produce income-tax returns on the ground that they were confidential and their production was contrary to public policy. The Lord President held that the Court has an inherent power to order the production of any document at its discretion even when a Government department pleads public interest. Lord Johnston quoted Lord Dunedin in *Admiralty* v. *Aberdeen Steam Trawling and Fishing Company*, (1909 S. C. 335) as saying It seems to me that if a public department comes forward and says that the production of a document is detrimental to the public service, it is a very strong step indeed for the Court to overrule that statement. That is not to say that the Court never can and never will overrule such a statement."

With regard to the person who is entitled to make the objection, Mr. Justice Wright in *re Joseph Hargreaves Ltd.* (82 T.L.R. 132) after reviewing the authorities, stated that "the practice has been, except in exceptional cases, to receive a certificate properly verified, stating the opinion of the Government authority.....The members of the Board cannot very well come and claim the privilege for themselves, and it would be mere pedantry to bring the secretary who simply registers their decisions." The objection may also be taken by a representative. instructed by the head of the department to object—*Attorney-General* v. *Nottingham*, (20 T. L. R. 257)—and it may even be taken by the Judge himself—*Hughes* v. *Varyas*, (9 T. L R. 471). It appears that the privilege can even be claimed by Counsel for a party to the suit. In *Anderson* v. *Bingham* (2 Bro & Bing. 156*n*) an action was brought for false imprisonment against the Governor of Heligoland Counsel for the plaintiff called an Under Secretary for the Colonial Department to produce a letter of complaint that the plaintiff had sent to the Secretary of the Colonial Department and the reply written by the latter. On the objection of Counsel for the defendant, Lord Ellenborough said : "I do not like breaking in on this correspondence. It might be pregnant with a thousand facts of the utmost consequence respecting the state of the Government, the connection of parties, the state of politics and the suspicion of foreign powers with whom we may be in alliance." This authority only goes so far as to say that when a Government official produces correspondence between a private citizen and a public official, a party to the suit may take an objection. It does not go so far as to exempt from production in evidence all documents sent to public officials, by whomsoever produced in evidence. It is therefore extremely doubtful whether a witness could refuse on these grounds to produce copies of his own income-tax returns.

It seems strange that so little provision for the secrecy of income-tax returns is made in the Income-tax Act, 1918, or in any Finance Act. The only section which might be said to bear on the subject is section 156, which deals with the collection of assessments by number or letter where a person charged under Schedule D has declared his intention to pay the tax in this way. This provision also occurred in sections 137, 139, and 140 of the Income-tax Act, 1842, but it has never been very generally used owing, no doubt, to distrust of this method as a complete safeguard of secrecy. There does not seem to be any clear decision on the question whether the production of such documents in Court is privileged, but the tendency of the law, as gathered from the authorities cited above, seems to be that a public official may claim privilege for income-tax returns if he is called to produce them in evidence. The Judge, and even a party to the suit, may also set up the privilege if the person producing them is a public official, but it is to say the least extremely doubtful whether any person who is asked to produce in Court copies of his income-tax returns can properly refuse to do so.—*The Law Times.*

CHAPTER IX

SUPER-TAX

Charge of super-tax.

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

Provided that where under the provisions of clause (*b*) of sub-section (*5*) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself ;

Provided further that, where the profits and gains of an unregistered firm or other association of persons not being a company have been assessed to super-tax, super-tax shall not be payable by a partner of the firm, or a member of the association, as the case may be, in respect of the amount of such profits and gains which is proportionate to his share.

Super-tax

Section 55 is the super-tax charging section. Under the previous Act, in the addition to income-tax, super-tax could be charged on the total income of

(a) Individual,

(b) Hindu undivided family.

(c) Company,

(d) Unregistered firm,

(e) Other association of individuals (not being a registered firm).

and the proviso laid down that where an unregistered firm was charged with super-tax, individual partners were not liable to super-tax for their shares.

The Amendment Act of 1939 has enacted that in addition to income-tax charged for any year, super-tax shall be charged in respect of the total income of the previous year of any,

(a) Individual, (b) Hindu undivided family, (c) company, (d) local authority, (e) unregistered firm, (f) other association of persons (not being registered firm, or the partners of the firm or members of association individually).

It is apparent, therefore, that while provision has been made wider by bringing "local authority" within the mischief clause, exemption has also been widened by not only excluding registered firm, but partners of the firm or members of the association individually.

The exemption to the partners of the firm is necessary for the new procedure of assessment as laid down in section 23 (*5*). Although provision has been made to assess an unregistered firm in the manner of a registered firm under clause (*d*) of sub-section (*5*) of section 23, still super-tax shall be payable by each partner on his share and not by the firm itself.

But where an unregistered firm or an association of persons has been charged with super-tax, super-tax shall not be payable by a partner of a firm or by a member of an association.

Scope—extended :

Under the previous Act, any person responsible for paying income chargeable under the head "salaries" could deduct income-tax thereon under section 18 (*2*), but under the Amendment Act, section 18 (*2*) provides deduction of income-tax and super-tax at source.

Section 18 (*2-B*) which has been inserted for the first time in the Amendment Act of 1939, allows deduction of income-tax and super-tax on "salaries" to any person not resident in British India. Section 18 (*3-B*) of the previous Act which allowed deduction of super-tax on interest not being "interest on securities" has been replaced by a new sub-section (*3-B*) with a large scope providing deduction of super-tax from interest (other than interest on securities) or any other sum chargeable under this Act, to any person residing out of British India. Similarly provision has been made for deduction at source of super-tax in section 18 (*3-C*)

and under section 18 (*3-D*) from the non-resident share-holder in a company, while sub-section (*3-E*) permits deduction of super-tax from dividends.

Under the previous Act, section 28 (*1*) allowed imposition of penalty on the amount of income-tax only, but under the new amendment of section 28, penalty now can be levied both on income-tax and super-tax and the decisions that penalty is not imposable on the super-tax amount are no longer good law. Super-tax is nothing but an additional duty of income-tax—*C.I.T.* v. *D. R. Naik*, 7 I. T. R. 363.

Demand Notice :

As a matter of practice, super-tax payable is shown in the same demand notice, where income-tax payable is shown. A single demand notice is sufficient both for income-tax and super-tax demand.

Hindu Undivided Family—meaning of :

The phrase "Hindu undivided family" is used in the statute with reference not to one school of Hindu law, but to all schools, and it is a mistake in method to begin by pasting over the wider phrase of the Act, the words "Hindu coparcenary." All the more it is not possible to say on the face of the Act that no female can be a member. Where therefore, the income belongs not to the assessee himself but to the assessee, his wife and daughter jointly, the association of such individuals can be described as "Hindu undivided family" *C. I. T.* v. *Gomedali Laxminarayan*, A. I. R. 1935 Bom. 412.

In an extra-legal sense and even for some purpose of legal theory, ancestral property may perhaps be described and usefully described as family property, but it does not follow that in the eye of the Hindu law it belongs, save in certain circumstances, to the family as distinct from the individual. By reason of its origin, a man's property may be liable to be divested wholly or in part on the happening of a particular event or may be answerable for particular obligations, or may pass at his death in a particular way, but if, in spite of all such facts, his personal law regards him as the owner, the property as his property, and the income therefrom as his income, it is chargeable to income-tax as his, that is, as the income of the individual. It would not be inconsonant with ordinary notions or with a correct interpretation of the law of the Mitakshara, to hold that property which a man has obtained from his father belongs to a Hindu undivided family by reason of his having a wife and daughters—*Kalyanji Vitaldas and others* v. *C. I. T., Bengal*, A. I. R. 1936 P. C. 36 : 166 I. C. 445.

In *C. I. T.* v. *A. P. Swamy Gomedali*, 169 I. C. 7 : A. I. R. 1937 P. C. 239, it had been laid down that the income received by right of survivorship by the sole surviving male member of a Hindu undivied family could be taxed in the hands of such male member as his own individual income for the purposes of assessment to super-tax under section 55 of the Indian Income-tax Act.

Individual, meaning of :

The word "individual" in the proviso is used in a slightly wider sense than the same word occurring in the section itself. It includes a Hindu undivided family. Hence a joint Hindu family which is a partner in another firm on which super-tax has been assessed is not liable to pay super-tax on that part of its income which represents profits received by it from the firm in which it is a partner : *In re Madan Gopal*, A. I. R. 1935 All. 444.

Ordinarily when the same word occurs in two different parts of the same section the same meaning should be assigned to it, but if there is anything in the context to indicate a different meaning, or the principle underlying the section makes it more logical to assign a different but legitimate meaning, it is permissible to construe the same word occurring in two parts of the same section differently.

Section 55 lays down generally that every individual, joint Hindu family, company, unregistered firm (registered firm is separately provided for) or other association of individuals is liable to pay super-tax in addition to the income-tax payable under the Act.

The use of the word "individual" in the proviso was *not* intended to exclude from its benefit a Hindu undivided family. It cannot be denied that the word is wide enough to include a group of persons forming a unit.

It follows, therefore, that the word "individual" in the proviso to section 55 includes a Hindu undivided family and the difficulty in adopting that construction is due to somewhat inartistic drafting of it—*Ram Ratan Das Madan Gopal Lakhi* v. *Commissioner of I. Tax*, (1935) 8 I. T. C. 69 : 3 I. T. R. 163.

The income received by right of survivorship by the sole surviving male member of a Hindu undivided family for the purpose of assessments to super-tax under section 55 of the Indian Income-tax Act, 1922 : *C. I. T., Bombay* v. *Heirs of late Mr. Gomedali Laxminarayan*, 8 I. T. C. 239. (*Vedathanni* v. *C. I. T., Madras*, (1932) I. L. R. 56, Mad. *approved* ; *Moolji Sicca & Co. of Calcutta*, (1934) 3 I. T. R. 123 *dissented from.*)

Association of Persons :

Where persons have joined themselves together and remained so for the purpose of buying, holding and using certain house property in order to make gain by it, it was held that in so doing they had become an association of individuals within the meaning of sections 3 and 55 of the Indian Income-tax Act : *In re B. N. Elias*, 63 I. L. R. Cal. 533. (*Smith* v. *Anderson*, 15 Ch. D. 247 *referred to*). See also *Mianchannu Factories Union* v. *C. I. T.*, A. I. R. 1936 Lah. 548.

It must be understood that owing to the amendment of section 3 of the Act, the expression "association of individuals" has been changed into "association of persons", but there is practically no difference between the two.

Super-tax in relation to Provident Fund Contribution and Life Insurance Premium :

An assessee who is an individual having income from salaries, gets Rs. 40,000/ annually by way of salary. His provident fund contribution and life-insurance premiums are 8,000/ annually. He is to pay income-tax on Rs. 40,000 less life insurance and provident fund contributions, which are restricted to 1/6th but not exceeding Rs. 6,000/.

But no deduction of super-tax is to be allowed in respect to provident fund contributions or life insurance premiums.

Income-Tax Act is a Machinery One :

The Act is a machinery one in view of the fact that the rate is determined by the Finance Act.

In the case of *Phillip Seddon Mellor* v. *Commissioner of Income-tax*, A. I. R. 1924 Bom. 361 : 81 I. C. 489, it was held by Chief Justice Macleod that "the actual share which Mr. Mellor held in the firm in 1922-23 has nothing whatever to do with the assessment for super-tax for the particular year, since it could only be based on his total income for the previous year, which would only include the profits which are actually received for the year ending on September 30, 1921, according to the share he had then in the firm."

Super-tax—Patnership with Wife :

In *In the matter of Ambalal Sarabhai*, A. I. R. 1924 Bom. 82 : 77 I. C. 699, the Chief Revenue Authority made a reference to the High Court under section 51 of the Act of 1918 to the following effect : "Whether the agreement dated June 26, 1916,

between Ambalal and his wife Sarala Devi made the business of Koromchand Premchand & Co., a partnership firm and whether it constituted the said Sarala Devi a partner of her husband Mr. Ambalal so as to render the business liable to be assessed separately to super-tax as an unregistered firm as required by sections 3 and 4 of the Super-tax Act, 1920, as read with section 12(*1*) of the Income-tax Act, 1918 "

It was held by the Bombay High Court that "the real reason of the reference seems to be that this is an unusual document between husband and wife and that it is difficult to accept the idea that they have become partners in law. In my opinion, they have become partners by this document within the meaning of the Indian Contract Act, and that the business of Koromchand Premchand constituted a firm. As it is an unregistered firm my answer to the question referred to us is in the affirmative."

Super-tax whether Payable on Dividend when already paid by the Company :

In *In the matter of Maharaja of Darbhanga*, 78 I. C. 783 : A. I. R. 1924 Pat. 474 Chief Justice Dawson Miller observes : "It is clear, therefore, that the intention of the Legislature was to charge super-tax upon the income of companies as well as upon the income of individual share-holders including in the income of the latter, the dividends received from the company although they had been charged to super-tax at the flat rate of one anna.....It follows that no exemption can be claimed by the assessee from the payment of super-tax in respect to the dividends received by him."

Super-tax—Accumulated Profits distributed in the form of Bonus-Share :

It has been held that distribution in the form of bonus-share of accumulated profits is not income, profits or gains and is, therefore, not chargeable to super-tax. In *In the matter of Steel Brothers & Co., Ltd.*, A. I. R. 1924 Rag. 327 : 82 Indian Cases 665, the Commissioner, while making the reference remarks "my opinion is that the decision in *Blott's case*, (1921) 2 A. C. 171, does not apply, the furthermore, if the reasoning of the majority of Lords in Blott's case be analysed it will be found to be fallacious ; and that the present case is governed by the Privy Council ruling in *Swan Brewery Co.* v. *The King*, (1914) A. C. 231, and that Messrs. Steel Brothers are liable to pay super-tax on the sum of rupees 28¼ lacs, being the value of the bonus-share received from the Indo-Burma Petroleum Co., Ltd."

The judgment of Chief Justice Robinson is as follows: "I have given the matter my careful consideration and in my opinion the Swan Brewery case need not be taken to be a binding authority on us for the purpose of deciding the present reference, because it was a decision based on the special provisions of a particular Act of Western Australia, an opinion in which I am supported by a large number of authorities. The question before us, therefore, has been decided twice by the House of Lords and in each case it has been held, that bonus-shares, such as were distributed in this case, are not income, profits or gains, and are not, therefore, liable to super-tax..... In my opinion the transaction must be regarded as a whole, and obvious intention of the Company must be taken into account. There never was and was never intendend to be, any payment at all to the share-holders. No amount whatever was taken from the Company or received by the share-holder."

Similarly in the case of *Binny & Co., Ltd., Mad.*, 82 I. C. 17, it was held that where surplus accumulated profits are capitalized without distribution to the share-holders, and new shares were issued to share-holders in the shape of their shares in accumulated profits, such new shares are not taxable and share-holders cannot be charged with super-tax on the value of the new share issued to them. This was in conformity with the decision in Blott's case, distinguishing the case of Swan Brewery Co., Ltd. But no exemption could be claimed by an assessee from payment of super-tax in respect of dividends received by him though the Company has paid the tax. (*Maharaja of Darbhanga*, 71 I. C. 783.)

Dividends, Bonus-Shares and Debentures, etc. :

When a company virtually makes a distribution to share-holders, under the guise of a loan or similar pretence, it may be held to be income for super-tax purposes in the hands of the recipient—*Jacobs* v. *Samson*, 8 T. C. 20 and *vide* also the case of *Hall* v. *Commissioner of Inland Revenue*, 5 A. T. C. 154.

The trend of modern decisions lends colour to the view that where the bonus is in some form other than cash, *e.g.*, shares, debentures etc., and there is no option to take it in cash, or when payment is out of capital or accumulated profits, even if there is an option to take in cash, whether exercised or not, the amounts in question will not be liable to assessment to super-tax—*vide*, *Commissioner of Inland Revenue* v. *Blott*, 8 T C. 101; *Commissioner of Inland Revenue* v, *Fisher's Executors*, 42 T. L. R. 340; *Whitmore* v. *Commissioner of Inland Revenue*, 5 A. T. C. 1; *Commissioner of Inland Revenue* v. *Wright*, 5 A. T. C. 525 and *In re Bates*, Ch. (1928) L. J. N. 456.

The Calcutta High Court decision in the case of *Trustees of Late Sir David Yule*, is on the same line with the decision of *Fisher's Executors*, 10 T. C. 302. *Vide* (1934) 7 I. T. C. 221 : 3 I. T. R. 163.

The above decisions do not apply when the bonus takes the form of the distribution of stock, etc., in another Company—*Pool* v. *Guardian Investment Trust*, 8 T. C. 167 ; or when a dividend is returned to a company in payment for shares—*Roe* v. *C. I. R.*, 8 T. C. 613.

A surplus on liquidation, even when consisting largely of accumulated profits is not income for the purposes of super-tax in the hands of the share-holders—*C. I. R.* v. *Burrel*, 9 T.C. 27.

A dividend paid without deduction of tax out of funds which are not liable to assessment to income-tax will not be liable to super-tax in the hands of the recipients—*Gimson* v. *C. I. R.*, 9 A. T. C. 170.

Dividends generally will be receivable on the day on which they are declared, in the absence of special circumstances—*Mark Hurll* v. *C. I. R.*, 8 T. C. 293 ; and *Duncan* v. *C. I. R.*, 8 T. C. 433.

The Finance Act of 1922, which for the purpose of assessing super-tax, allows a larger deduction from income in the case of Hindu joint family than in the case of an individual, contemplates that the larger deduction shall be made only in a case of the income of an undivided family in which all the coparceners are interested and not in the case of an impartible estate when the income is the sole property of the holder for the time being : *In the matter of Shiva Prosad Singha*, 4 Pat. 73 : 82 I. C. 653. In the case of *Kishen Kishore* v. *Commissioner of Income-tax, Lahore*, 141 I. C. 415, the Lahore High Court has held that the rule as to allowances payable to a junior member of a Hindu family does not apply to the case of an impartible estate, which is still a Hindu undivided family and the holder of such estate is to be assessed as the head of the Hindu undivided family and not as an individual for the purposes of super-tax. It seems that the latter view is more sound.

Successor is not bound to pay what cannot be Lawfully Recovered from his Predecessor :

In the case of *Begg Sutherland & Co., Ltd.*, 82 I. C. 239 : 23 A. L. J. 685, it was held that there is no provision in the Act of 1922 which made a new company liable to super-tax for a year for which its predecessor was not liable for super-tax. (Attention is invited to the decision in the case of *Western India Turf Club*,

106 I. C. 642, where rate of super-tax relating to successor has been discussed). But where an assessee controls and receives income from family companies he is liable to super-tax : *In the matter of Maneckjee Petit*, 102 I. C. 49 : 51 Bom. 372.

For the purposes of super-tax the income which an assessee receives from shares in a company in any year is the sum actually paid to him by the company added to the amount deducted for income-tax at the standard rate for the time being. The income should not be calculated by adding to the sum actually paid to him a sum calculated from that actually paid by the company as income-tax during the same year and proportionate to the assessee's interest in the company, inasmuch as the company is entitled under the rules to deduct from the dividends the tax appropriate thereto and the expression "tax appropriate thereto" means the tax calculated at the rate prevailing at the date of the payment of the dividend that is appropriate to the dividend—*Hamilton* v. *Commr. of Inland Revenue*, (1931) 16 T. C. 28 : 10 A. T. C. 133.

One-man Company :

In *In the matter of Sir Dinshaw Maneckjee Petit*, 102 I. C. 49, it has been held that "the Court can go into the question as to whether the so-called one-man company is really a business carried on by the assessee himself for the purposes of avoiding payment of tax. The company was not a genuine company at all but merely the assessee himself, disguised under the legal entity of a limited liability company. The company was formed by the assessee purely and simply as means of avoiding super-tax and that the company was nothing more than the assessee himself. It did no business but was created purely and simply as legal entity to ostensibly receive the dividends and interest and hand them over to the assessee as pretended loans."

When in a meeting, share-holders of company desire to capitalise a part of the amount standing to the credit of the Reserve Fund by declaring a special bonus by issue of debentures, *held* that the point submitted before the High Court is completely covered by the decision in the *Commissioner of Inland Revenue* v. *Fisher's Executors*, [(1926) A. C. 395 : 10 T. C. 302,] and that the issue of debentures by way of bonus does not constitute income in the hands for the purposes of super-tax. (*Commissioner of the Inland Revenue* v. *Blott*, (1921) 2 A. C. 171 ; *Commissioner of I. Tax* v. *Binny & Co.*, I. L. R. 47 Mad. 837 ; *Commissioner of I. Tax* v. *Shaw Wallace & Co.*, 35 C. W. N. 361 *relied on*, *Swan Brewerg Co.* v. *Rex*, (1914) A.C. 231, *distinguished*]

Super-tax—The provisions of the Act regarding income-tax other than those specially excepted in section 58 apply also to

super-tax which is merely, as stated in section 55, "an additional duty of income-tax". Super-tax is levied at the rates specified in the Finance Act passed annually.

The super-tax on companies and on local authorities is levied at a flat rate on their entire income and no refund on account of company super-tax is allowable to share-holders.

Apart from the tax on companies and local authorities which stands in a class by itself, super-tax is levied on a scale of graduated rates just as in the case of income-tax.

Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assessees.

Unregistered firms and other associations of persons are also treated as separate assessees. Where, however, an unregistered firm itself is not assessed to super-tax (*e.g.*, if its assessable profits are less than Rs. 25,000) or where under section 23 (*b*) (*5*) an unregistered firm has been assessed as a registered firm, super-tax is 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. Similarly members of an association of persons will be liable to super-tax on the portions of income which they are entitled to receive from such an association if not charged to super-tax.

Registered firms are not assessed to super-tax but the partners are assessed to super-tax on their partnership profits.

As regards provisions for deduction of super-tax at source, *see* sub-sections (*2*), (*2B*), (*3C*), (*3D*) and (*3E*) of section 18 and also section 58H. (*I. T. M.*)

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

Total income for purposes of super-tax.

Estate of a Deceased Person :

There is no provision for the assessment of income-tax in the estate of a deceased person : *In re* : *Mitchel* v. *Macneil*, 103 I. C.

120 : 31 C. W. N. 630. *Vide* also the case of *Mr. Ellis C. Reid* (A. I. R. 1931 Bom. 333).

Super-tax paid by the Surviving Partners :

Where the assessee dies before crediting the tax in the treasury and the amount of tax is paid by the surviving partner, he is not entitled to claim any refund of the tax deposited : *In the matter of Mitchel* v. *Macneil*, 31 C. W. N. 630.

Total Income :

Total income of an assessee, *e. g.*, individual, Hindu undivided families, company, local authority, unregistered firm or other association of persons is the "total income" for the purposes of income-tax and where an assessment of total income has become final and conclusive for the income-tax purposes the assessment shall be final and conclusive for super-tax purposes as well.

57. Deleted.

(Section 57 of the previous Act, made the resident partners of a firm responsible for the super-tax on a non-resident's share of profits. Owing to the insertion of clause (*a*) of sub-section (*5*) of section 23, retention of section 57 becomes superfluous and hence it is omitted).

Application of Act to super-tax.

58. (*1*) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, the second proviso to sub-section (*1*) of section 7, the second and third provisos to section 8, sub-section (*2*) of section 14, and sections 15, 19 and 20 and the first proviso to sub-section (*1*) of section 41 and section 58-F and sub-section (*2*) of section 58-G shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

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

Applicability :

All the provisions of this Act relating to charge, assessment, collection and recovery of income-tax, shall apply so far as may be, to the charge, assessment, collection and recovery of super-tax. The exceptions are specifically mentioned in the section itself. Owing to the deletion of certain sections and consequent insertions the exceptions in the previous Act are not the same.

Sub-section (2) refers to payment of super-tax direct by the assessee except in circumstances enumerated in the sub-section itself. Under the previous Act, penalty under section 28 could not be levied on the super-tax amount, but as by the amendment of section 28, the law has undergone a considerable change, penalty under section 28 is now leviable on the super-tax amount as well.

In the previous Act it was noticeable that there was no mention whatever in section 28 in regard to super-tax. But the Legislature in the Amendment Act has removed the lacuna by inserting both income-tax and super-tax in section 28 and the result is that penalty is now imposable on the super-tax amount as well.

Sub-section (2) :

Sub-section (2) of section 58 specifically enumerates that super-tax shall be payable by the assessee direct, except as provided in sub-sections (2), (2-A), (2-B), (3-B), (3-C), & (3-E), of section 18 and section 58-H.

CHAPTER IX-A

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

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

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter ;

(*b*) an "employer" means—

(*i*) a Hindu undivided family, compay, firm or other association of persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10, maintaining a provident fund for the benefit of his or its employees ;

(*c*) an "employee"means an employee participating in a provident fund, but does not include a personal or domestic servant ;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own moneys, to the individual account of an employee, but does not include any sum credited as interest ;

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time ;

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest ;

(*g*) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund ; and

(*h*) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

The according and withdrawal of recognition.

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

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

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

(*3A*) An order according recognition to a provident fund shall not, unless the Commissioners otherwise direct, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds

are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first mentioned fund.

(*4*) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund, may appeal, within sixty days of such order, to the Central Board of Revenue. The appeal shall be in the form and shall be verified in the manner prescribed by the Central Roard of Revenue.

Conditions to be satisfied by a recognised provident fund.

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

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

Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in British India notwithstanding that a proportion not exceeding ten per cent. of the employees is employed outside India.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the

employee's individual account in the fund :

Provided that an employee who retains his employment while serving in His Majesty's Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or 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 58-D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified 'and of donations, if any, received from the trustees', of accumulations thereof, and of interest (simple and compound), credit in respect of such contributions, 'donations' and accumulations, and of securities purchased therewith, and of no other sums.

(*e*) The fund shall be vested in two or more trustees or in the Official Trustee, under

a trust which shall not be revocable save with the consent of all the beneficiaries.

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

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

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

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

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

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

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

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

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem, and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

Annual accretion deemed to be income received.

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

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

Exemption of annual accretion from income-tax.

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

exceed one-sixth of his salary in that year or six thousand rupees, whichever is less.

(2) Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and in so for as it is allowed at a rate not exceeding such rate as the Central Government may, by notification in the Official Gazette, fix in this behalf.

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

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

(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 incom-tax and shall be excluded from the computation of his total income :

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

(*3*) Where any exemption from payment of income-tax is not allowed under the provision of sub-section (*2*), the income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund have 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.

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

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

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 the 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 thereinafter called his transferred balance shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect and sub-sections (*3*) and (*4*) shall apply thereto.

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

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

shall be granted in respect of any sum comprised in such transferred balance :

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

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

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

Treatment of fund transferred by employer to trustee.

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

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

if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of clause (*xii*) of sub-section (*2*) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

Provisions relating to rules.

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

(*2*) In addition to any power conferred by this Chapter, the Governor-General in Council may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition ;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company ;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and

(*e*) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident

funds and the administration of recognised provident funds as he may deem requisite.

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

Application of this Chapter.

SECTIONS 58A to 58M

Exemption of "recognised" Provident Funds.—Besides the Provident Funds to which the Provident Funds Act, 1925, applies, Provident Funds maintained by employers [section 58-A (*b*)] which conform to the conditions laid down in section 58-C of the Act, enjoy certain privileges in respect of income-tax. The main conditions to which such Provident Funds must conform in order to secure these concessions are :—

(1) that the funds shall be vested in two or more trustees or in the Official Trustee under an irrevocable trust ;

(2) that the employer shall not be entitled to recover any sum whatsoever from the Fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons ;

(3) that in any case such recoveries shall be limited to the contributions made by the employer himself ;

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

(5) that the employer's contributions shall not exceed the employee's subscription as a rule, and

(6) that the employee shall be employed in India or the principal place of business of the employer shall be in British India.

The income-tax concessions are :—

Contributions to a recognised Provident Fund both by the employee and the employer taken together shall be exempt from income-tax (but not super-tax) up to 1/6th of the employee's annual salary or Rs. 6,000 whichever in less. In addition, an employee can obtain under section 15 (*1*) rebate of income-tax on insurance premiums subject to the limit laid down in section 15 (*3*). If in any Fund the contributions made by an employee and the employer exceed the 1/6th limit or Rs. 6,000 whichever

is lower, the excess contributions will be liable to tax. Interest credited on the accumulated balance of any employee shall be exempt from income-tax (*a*) to the extent that it does not exceed one-third of his salary and (*b*) to the extent that it is allowed at a rate not exceeding that prescribed (at present 6 per cent).

Income on the investments held by the Fund is also exempt from income-tax.

The accumulated balance due to an employee which includes interest on contributions—is also exempt from income-tax and super-tax and is not to be included in computation of the total income, provided the employee has rendered continuous service with his employer for not less than five years. The Commissioner has also power in certain circumstances to allow the exemption even when the service rendered is less than the period.

The contributions made by an employer to the individual accounts of his employee in a recognised Fund, less recoveries, if any, under the provisions of section 58-C (*1*) (*f*), are to be allowed as an item of expenditure under section 10 (*2*) (*xii*) of the Act, as the Fund is an irrevocable trust.

Recognition of Provident Funds and withdrawal of recognition (section 58-B).—The Commissioner of Income-tax may accord recognition to any Provident Fund which, in his opinion satisfies the conditions prescribed in section 58-C and the Indian Income-tax (Provident Funds Relief) Rules—*vide* Part II of this Manual. An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a Provident Fund may appeal, within 60 days of such order, to the Central Board of Revenue in the form prescribed in the Indian Income-tax (Provident Funds Relief) Rules.

Conditions to be satisfied by recognised Provident Funds (sections 58-C *and* 58-D)—Investment of funds.—(*a*) A recognised provident fund consists of contributions by employers and employees, accumulations, interest thereon and securities purchased therewith, and no other sums. So long as the "transferred balance", [section 58-J (*2*)] and the employer's contributions, interest thereon, etc., are not invested, the fund will consist solely of subscriptions, accumulations and interest thereon. If any part of the fund is deposited in the employer's own concern, and the employer gives the Trustees a promissory note therefor, the note may be considered to be a "security" within the meaning of section 58-C (*1*) (*d*). So far as the transferred balance of a fund is concerned, there is no restriction as to the manner in which it should be held or invested. It may be utilised in the employer's own business, or deposited in a Bank or invested in "securities" in the widest sense of the term. The same is true

of the employer's contributions subsequent to recognition and the interest thereon and on the accumulations of such interest. The employee's contributions subsequent to recognition and the interest thereon and on accumulations of such interest must be invested in the securities of the nature prescribed in section 20 (*a*), (*b*), (*c*), (*d*) or (*e*) of the Indian Trusts Act, 1882, and payable in respect of both capital and interest in British India, or in a Post Office Savings account in British India.

A reasonable interval will be allowed to the trustees to accumulate the contributions collected before requiring their investment as above.

A fund is not rendered ineligible for recognition by the fact that it can be closed or wound up at will by the employer or the Trustees, provided that it is not revocable otherwise than in accordance with section 58-C (*1*) (*e*).

The fact that a fund receives donations, for example, from retiring partners, will not render it ineligible for recognition.

Appreciation and depreciation in securities belonging to recognised Provident Funds.—(*a*) In certain Provident Funds it is the practice to revalue the securities held at the end of each financial year and to take the appreciation and depreciation thus ascertained into consideration before allocating to the members their share of the annual profit. This practice does not render the fund ineligible for recognition. Plus and minus entries relating to such appreciation or depreciation should be made in the remarks column of the Form of account prescribed in rule 6 of the Indian Income-tax (Provident Funds Relief) Rules (Part II of the Manual). Such appreciation or depreciation need not be taken into account in determining the rate of interest under section 58-F (*2*).

(*b*) The appreciation of securities itself cannot directly come into the computation of the employee's total income or be liable to tax at any time. Though it is a form of accumulation of contributions, it is also not income but an increase of capital.

Forfeitures to recognised Provident Funds.—[Section 58-C (*1*) (*f*)]. The only amounts that an employer is allowed by the Act to recover from a recognised Provident Fund are his own contributions to the account of a dismissed employee or an employee voluntarily leaving his employment as stated in section 58-C (*1*) (*f*) and the interest on such contributions. If the rules of any fund provide for forfeitures *to the employer* of any other moneys for example, of a dismissed employee's own contributions and the interest thereon, this provision is repugnant to section 58-C (*1*) (*f*) and renders the fund ineligible for recognition.

A provision for the forfeiture *to the fund* in certain circumstances (*e.g.*, assignment of employee's interest, an employee leaving service to take employment under a rival) of so much of the amount standing to the credit of an individual employee as is in no circumstances recoverable by the employer, under clause (*f*) of sub-section (*1*) of section 58-C of the Act, does not render the fund ineligible for recognition under that sub-section.

Such amounts represent accumulations of sums credited out of the employee's salary with interest thereon, and it is clear that these amounts are within the language used in clause (*d*) of sub-section (*1*) of section 58-C, read with the definition of "contribution" in clause (*d*) of section 58-A. The effect of clause (*g*) of sub-section (*1*) of section 58-C is not to require that so much of the balance at the credit of an individual employee as is not recoverable by the employer under clause (*f*) should be payable to the employee. It requires the accumulated balance due to the employee to be payable to the employee, and the definition of "accumulated balance due" in clause (*g*) of section 58-A expressly recognises the possibility that by the regulations of a fund any part of the balance to the credit of an employee may be excluded from the amount claimable by him and therefore from the accumulated balance due for the purposes of clause (*g*) of sub-section (*1*) of section 58-C.

While therefore recoveries by the employer are governed by clause (*f*) of sub-section (*1*) of section 58-C, forfeitures to the fund are left by the Act to be governed by the regulations of the fund, so that no provision in the regulations of the funds for the forfeiture to the fund of any part of the balance to the credit of the individual employee will render the fund ineligible for recognition.

The inclusion in the rules of a provident fund of a provision for the payment of forfeited amounts of an individual member to his wife and family does not render the fund ineligible for recognition. The definition of the expression "accumulated balance due" to an employee which is set out in section 58-A makes it plain that the amount which is payable to the employee, is not necessarily the equivalent of the total of his contributions, the employer's contributions and the interest which has accumulated thereon ; and the provisions of clause (*g*) of sub-section (*1*) of section 58-C, read with this definition of the "accumulated balance due" are not inconsistent with the payment to a third party of forfeited amounts, although the circumstances in which the employer can himself take these amounts are limited by clause (*b*) of section 58-C.

The inclusion in the regulations of a provident fund of a provision for the forfeiture to the fund of the accumulated balance due

to an employee who dies without heirs also does not make the fund ineligible for recognition. Such forfeiture to the fund does not put anything into the fund, because what is forfeited to the fund is already in the fund. As the act of forfeiture does not put any sum at all into the fund, it cannot be held to put into the fund any sum other than the contributions, etc., specified in section 58-C (*1*) (*d*). The question of the validity of a regulation forfeiting to the fund the accumulated balance due to an employee who dies intestate and without heirs does not arise, as the existence of such a regulation, whatever it may be worth, does not affect the composition of the fund for purposes of clause (*d*) of sub-section (*1*) of the same section.

Payment of accumulated balances of recognised Provident Funds to employees discontinuing participation.—[Section 58-C (*1*) (*g*) and (*h*)]. If an employee who is a subscriber to a recognised provident fund, the membership of which is optional, decides to discontinue his membership of the fund while not resigning his employment, he is entitled to claim repayment of the accumulated balance at his credit under section 58-C (*1*) (*g*), of the Act. Under section 58-A (*c*) of the Act, an "employee" means an employee participating in a provident fund. Thus a person who discontinues his participation in a fund "ceases to be an employee" within the meaning of section 58-C (*1*) (*g*) and is, therefore, entitled to claim payment of the accumulated balance due to him.

A private provident fund, participation in which is optional, is not qualified for recognition unless the rules confer on the participants the right to receive payment of the accumulated balance whenever participation is discontinued.

Recognised Provident Funds of business with principal place out of India. [Section 58-C (*1*) (*a*)].—If a concern has its principal place outside British India, the Provident Fund of the employees of its British Indian business, if it is to be "recognised", should be kept separate and must conform to the conditions imposed by the Act and the Rules thereunder. The expression "all employees" occurring in section 58-C (*1*) (*a*) refers to "all employees subscribing to the Fund" and not to all employees of the particular employer. If a concern has its principal place of business in British India, there is no objection to the foreign staff—that is the staff outside British India—subscribing to the Provident Fund.

Interest on accumulated balance in recognised Provident Funds, (Section 58-F).—Interest on accumulations in recognised provident funds is exempt from income-tax but not from super-tax up to a rate to be fixed by Government (which is 6 per cent. at present) provided such interest is less than one-third of the salary of the

employee for the year. In some funds a provisional rate of interest is allowed to the employees in the first instance and the difference between the interest actually earned by the fund and the provisional rate so allowed is distributed between the employees on a basis which has some regard to the length of service of the employees. In such cases, the interest credited to the individual accounts should be exempted in so far as the average rate of interest earned by the fund as a whole does not exceed the prescribed rate, and the amount of interest does not exceed one-third of the employee's salary for the year.

An important change has been made by the Income-tax (Amendment) Act, 1939, in sub-section (*2*) of section 58-F and the appropriate form has been amended accordingly. In future, where only part of the contributions and interest are allowable under the Act, it is not necessary for separate accounts to be kept and the *full* interest, *whether it is computed upon allowable contributions or not*, is to be allowed in so far as it does not exceed one-third of the salary for the year and in so far as it is allowed at a rate not exceeding the rate fixed by the Central Government.

Interest on sums which have been credited to an employee's account in a recognised Provident Fund, as representing his share of the appreciation in the value of the securities held by the Fund, is to be regarded as interest within the meaning of section 58-A (*f*) and 58-C (*1*) (*d*).

Interpretation of "salary" in relation to recognised Provident Funds. [Section 58-F (*1*)].—The expression "salary" as used in Chapter IX-A of the Act does not embrace everything taxable under the head "salaries" in accordance with sub-section (*1*) of section 7, but includes so much only of an employee's remuneration as is of a specific monetary amount and is payable periodically. It includes "salary" (in the more general sense in which that expression embraces "wages)" which is received by any category of employees other than those excluded in caluse (*c*) of section 58-A.

Accounts of recognised Provident Funds. (Sections 58-I and 58-J).—The accounts of recognised provident funds are to be maintained in the form prescribed in the Indian Income-tax (Provident Funds Relief) Rules. If a concern has several branches, the annual abstracts of the provident funds accounts should be sent by the employer to all Income-tax Officers who are responsible for assessing the employees.

The accounts to be made under the provisions of section 58-J must show in respect of every employee the particulars given in rule 8 of the Indian Income-tax (Provident Fund Relief) Rules.

Treatment of a fund transferred by the employer to trustees. (Section 58-K).—Any sum which was transferred by an employer before the coming into force of the Indian Income-tax (Provident Funds Relief) Act, 1929, to a Provident Fund which has been converted into an irrevocable trust was a permissible deduction in assessing the profits of the employer. Sub-section (*1*) of section 58-K operates with reference to any assessment made after the coming into force of the Provident Funds ReliefAct (XII of 1929).

It must not be overlooked that while an employer who has effected a transfer before the coming into force of the Indian Income-tax (Provident Funds Relief) Act, 1929, will not suffer the loss resulting from the operation of sub-section (*1*) of section 58-K he will not enjoy the benefit resulting from the operation of sub-section (2) of that section.

Following the decision in the case of the Central India Spinning, Weaving aed Manufacturing Co., Ltd. (Empress Mills, Nagpur) where there is an informal fund belonging to the employer which is subsequently converted into a properly constituted fund under trustees, the interest which the employer has credited to the employee's accounts in the past should be treated in the same way as contributions by the employer, and on payment out to an employee, the full amount (including interest) paid out of the fund should be allowed as a deduction in the employer's assessment. The same principle will be followed even where there is no properly constituted trust set up, but both the contributions and the interest credited to the fund will be disallowed in the employee's accounts and only payments out of the fund (contributions and interest) will be allowed. (*I. T. M.*)

Objects and Reasons :

The amendments deal with recognised provident funds and are designed to make the provisions governing these funds more liberal and elastic.

The amendment of clause (*b*) of sub-section (*1*) shall be deemed to have been made and to have taken effect on the 3rd day of September, 1939.

Meaning of the words 'his share' in section 58-K (*2*) :—The scheme of the Act is that the employer is to have the advantage of deductions in respect of money which he has contributed to the Provident Fund together with the increase to the fund which his money has earned prior to the time of the transfer of the fund to the trustees. He is not to have any benefit in respect of employee's contributions or interest thereon up to that time and he is not to have the benefit in respect of any interest that is earned

by the fund after transfer. The words "his share" therefore mean the employer's contributions and interest thereon up to the date of transfer. In other words the principle enunciated by the House of Lords in *British Insulated and Helsby Cables* v. *Atherton*, 10 T. C. 155, was given statutory effect to in India : *C. I. T.* v. *Central India Spinning, Weaving and Manufacturing Co., Ltd*, A. I. R. 1939 Nag. 89.

CHAPTER IX-B

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS.

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

(*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 58-A in relation to provident funds ;

(*c*) 'ordinary annual contribution' means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

58O. (*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 58-P, 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.

Conditions for approval.

58P. In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied namely :—

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in British India.

(*b*) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons ; and

(*c*) the employer in the trade or undertaking shall be a contributor to the fund :

Provided that the Central Board of Revenue may, if it thinks fit, and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

(*i*) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(*ii*) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

(*iii*) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in British India.

58Q. (*1*) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

Application for approval.

(*2*) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

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

Exemption of superannuation fund from Income-tax

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 provision of section 15 apply :

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution :

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper.

Treatment of repaid contributions.

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 and super-tax to be income of the employee for that year.

(*2*) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax and super-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Goverment within the prescribed time and in such manner as the Central Board of Revenue may direct.

58T. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

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

58U. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

Liabilities of trustees on cessation of approval of fund.

(*a*) on account of returned contributions (including interest on contributions, if any), and

(*b*) in commutation or in lieu of annuities, in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

58V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

Particulars to be furnished in respect of superannuation funds.

(*a*) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require ;

(*b*) prepare and deliver to the Income-tax Officer a return containing—

(*i*) the name and place of residence of every person in receipt of any 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.

Superannuation Funds :

In the case of "provident fund" the expression recognised provident fund occurs ; whereas in the case of superannuation fund, it is styled as "approved superannuation funds" by the Central Board of Revenue. The words "employee", "employer" and "contribution", bear the same restricted meanings as given in section 58-A. Ordinary annual contribution means a fixed annual sum of or contribution fixed on some definite basis, regard being had to the earning, contributions or the number of members of the fund.

Who can approve :

The Central Board of Revenue alone has the authority to accord approval to superannuation fund if it complies with the condition laid down in section 58-P. The Central Board has also the right of withdrawing approval when the circumstances of the fund or part of the fund do not warrant such continuance of the approval.

In according approval, the Central Board shall communicate to the Trustees of the fund the approval with the date on which the approval is to take effect and when conditional approval is given, the conditions are also to be intimated.

In withdrawing any approval, reasons for such withdrawal shall also be communicated. The Central Board of Revenue

shall not refuse, neither shall withdraw, approval without giving the trustees a reasonable opportunity of being heard.

Conditions for approved Superannuation Funds :

(*1*) The fund shall be one established under an irrevocable trust in connection with the trade or undertaking carried on in British India.

(*2*) The sole and primary object of the fund shall be the provision of annuities for employees in the trade or undertaking, on their retirement at a specified age, on their being incapacitated before retirement, or for the widows, children or dependents of persons on their death.

(*3*) There must be contribution by the employer to the fund.

Notwithstanding the fact that the rules of the fund provide for the return in certain contingencies of contribution paid to the fund, or notwithstanding the fact that the sole purpose of the fund is not to provide annuities, and notwithstanding further that the trade or undertaking is carried on only partly in India, the Central Board of Revenue may approve a fund or any part of the fund with such condition, if any, as it thinks proper.

Application for Approval of Superannuation Funds :

Sub-section (*1*) of section 58-Q lays down that 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 accompanied by copy of the instrument under which the fund is established together with two copies of rules and of the accounts of the funds for the last year for which such accounts have been made up. The conditions for getting approval are as below :

(*a*) the application shall be made by the trustees of the fund in writing before the end of the year of assessment ;

(*b*) the application shall be accompanied by an instrument under which the fund is established ;

(*c*) two copies of the rules of the fund together with accounts of the fund for the last year for which such accounts have been made up shall accompany the application.

Besides the above conditions, the Central Board of Revenue may require further information.

United Kingdom Law :

Contributions by employers and employees to approved superannuation funds are allowable deductions in computing the statutory profits or gains under the Schedules D and E respectively. Exemptions from tax is also given in respect of the income of such funds (Finance Act, 1921, section 32 : Finance Act 1930, section 19).

In order that exemption may be available it is essential to show that :

(1) the fund is *bona fide* established under an irrevocable trust in connection with some trade or undertaking carried on in the United Kingdom by a resident therein ;

(2) the fund is established for the sole purpose of granting annuities on retirement at specified age or previous incapacity, or to widows, orphans or dependants on the death of the employees ;

(3) the fund is contributed to by the employer or undertaking concerned ;

(4) it is recognised both by the employer and employed.

It is in the power of the Commissioner of Inland Revenue to approve funds which do not comply with the above requirements in cases where the following modifications occur in the rules or portion of the funds in question :—

(*a*) Provision is made for the return of contribution in certain cotingencies, or

(*b*) the provision of annuities is not the sole, although the main, purpose of the funds, or,

(*c*) the trade or undertaking is only partly carried on in the United Kingdom and/or by a person not resident therein.

In these cases the Commissioner of Inland Revenue may attach special conditions to their approval. They are also empowered to make rules generally with regard to the manner of claiming and granting approval and reliefs, (*vide* Statutory Rules and Orders No. 1699 of 1921).

Repayment of Superannuation Contribution :

Where an employee has made contributions to an approved superannuation fund, and any such contributions are returned, with or without interest, or a lump sum is paid in lieu of or in

commutation of an annuity during the life time of the person concerned, the trustees of the fund must pay tax on such payments at one third the standard rate, except in the case of payments to person whose employment was carried on abroad. Where repayment of contributions is made to an employer, the trustees must deduct and pay tax at the standard rate on the full amount repaid, which will be regarded as income of the employer for the year in question (*vide* Statutory Rules and Orders, No. 1699 of 1921).

Where contributions to any superannuation funds are deducted from the salaries or wages of any individual under any Public General Act of Parliament, and any such contributions are repaid to any contributor, there must be deducted the amounts so repaid, the amount of tax which would have been paid in the year in which the contributions were levied, if they had not been deducted from the contributor's salary, etc. for tax purposes.

Where such contributions carry interest, any interest repaid will be subject to deduction of tax of an amount equal to that which would have been deducted had the interest been paid in various years in respect of which it has been credited (Finance Act, 1922, section 31).

Without Interest :

The words "without interest" means without taking into account the interest earned on the fund after it had been transferred to the trustees.

Accumulated Balance :

The accumulated balance due to an employee consists of the following items :—

(*a*) Employer's contribution.

(*b*) Interest on the above.

(*c*) Employee's contribution.

(*d*) Interest on the same.

(*e*) Interest earned on the transferred fund.

Scheme of the Act :

It seems to be the scheme of the Act that the employer is to have the advantage of deductions in respect of money which he has contributed to the fund together with the increase to the fund which his money has earned prior to the time of the transfer of the fund to the trustees. He is not to have any benefit in

respect of employee's contributions or interst thereon up to that time and he is not to have the benefit in respect of any interest that is earned by the fund after transfer. The words "his share" cannot be given the meaning "his contributions" without doing violence to the language of the sub-section.

Sections 58N to 58V

Superannuation Funds.—Provision is now made for the approval of Superannuation Funds on lines similar to those for the recognition of Provident Funds. Any application by the trustees of a Superannuation Fund for approval has to be made to the Income-tax Officer under section 58-Q, and on receipt of the application, together with the required documents, the Income-tax Officer will forward the whole papers to the Central Board of Revenue.

The payments to approved Superannuation Funds are treated in the same way as payments of life insurance premiums under section 15, but the relief granted by Chapter IX-B of the Act in respect of approved superannuation funds extends to income-tax only and no relief from super-tax is due in respect of such contributions by an employee.

Notwithstanding the use of the words "and super-tax' in section 58-S, as contributions to recognised superannuation funds will have been exempted from income-tax only (see sections 15, 58 and 58-R), no super-tax will be charged when the contributions are refunded to the employee.—(*I. T. M.*).

CHAPTER X

MISCELLANEOUS

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

Power to make rules.

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

(*a*) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(*i*) incomes derived in part from agriculture and in part from business ;

(*ii*) persons residing out of British India ;

(*b*) prescribe the procedure to be followed on applications for refunds ;

(*c*) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act ;

(*d*) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920 ; and

(*e*) provide for any matter which by this Act is to be prescribed.

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

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

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

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

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

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

Scope :

In *Lakshmi Insurance Co.* v. *C. I. T.*, 5 I. T. C. 24, the question arose, and it was decided that once a rule was made under section 59, the rule must prevail, though it may be in conflict with the provisions of the Act. The rules certainly cannot override the Act, but in case of conflict with the rules the latter shall prevail, section 59 being an enabling section and rules being made under it.

Any class of Income :

Rules can be made for all classes of income. The word "any" includes all. It refers to any class of taxable income.

Power to make exemptions, etc.

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

(*2*) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, or a payment which is under the provisions of sub-section (*1*) of section 7 a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant the appropriate relief.

(*3*) After the commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section (*1*) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made.

Exemption :

In addition to exemptions mentioned in section 4 (*3*), the following further exemptions have been made by the Governor-General in Council in exercise of the powers conferred by section 60 of the Act.

The following classes of income shall be exempted from the tax payable under the said Act and they shall not be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State ; and the official salaries and fees which a Consul-General, Consul, Vice-Consul or Consular Agent of a Foreign State, whether *de carrier* or not, and whether a British or a foreign subject, or a representative or consular employee of Foreign State, not being a British subject, receives in India from such Foreign State in his capacity of Consul.

EXEMPTIONS NOTIFIED UNDER SECTION 60 OF THE INDIAN INCOME-TAX ACT, 1922, BY THE CENTRAL GOVERNMENT.

INCOMES EXCLUDED FROM TOTAL INCOME ALTOGETHER.

I

[*Finance Department Notification No. 878-F. (Income-tax), dated 21st March, 1922, as amended or added to from time to time.*]

"The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income or salary of an assessee for the purposes of the said Act except, for the purposes of sub-section (*4*) of section 48 :—

(1) The official allowance with an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State ; and the official salaries and fees which a Consul-General, Consul, Vice-Consul or Consular Agent of a foreign State, whether '*de carrier*' or not, and whether a British or a foreign subject, or a representative or consular employee of a foreign State, not being a British subject, receives in India from such Foreign State in his capacity of Consul-General, Consul, Vice-Consul or Consular Agent, representative or consular employee.

(2) Sums paid in pursuance of Article 3 of the agreement, dated the 17th August, 1825 between the British Government and the King of Oudh.

(3) Income derived from the *Bua* tax defined in clause (*c*) of section 2 of the Teri Dues Regulation, 1902.

(4) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.

(5) Scholarships granted to meet the cost of education.

(6) Such portion of the income of a member of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as is compulsorily payable by him under the orders, or with the approval of Government to a mess, wine or band fund.

(7) The allowances attached to—

The Victoria Cross.

The Military Cross.

The Order of British India.

The Indian Order of Merit.

The King's Police Medal.

The Indian Police Medal.

(8) The interest on Government securities held by, or on behalf of, Ruling Chiefs and Princes of India as their private property.

(9) 'Jangi Inams' awarded to Indian officers, Indian other ranks and followers in respect of services in the Great War.

(10) The yield of Post Office cash certificates.

(11) The interest on deposits in the Post Office Savings Bank.

(12) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.

(13) The income of "Thana Funds" administered by Political Agents in Kathiawar and of the "Secunderabad Local (Abkari, etc.), Fund" administered by the Resident at Hyderabad.

(13-A.) The income of the Rewa Kantha Mewas Administrations Fund, and of the Sankheda Mewas Road Fund administered by the Political Agent, Rewa Kantha.

(13-B.) The income of—

(*a*) the following funds controlled by the Resident for the States of Western India, namely :—

The Kathiawar Consolidated Local Fund ; the Rajkot Civil Station Land Improvement Fund ; the Rajkot Civil Station Fund ; the Kathiawar Mounted Police Fund ; the Consolidated Local Fund, Mahi Kantha ; the Consolidated Local Fund, Banas Kantha, including the Palanpur Agency Educational, Sihori, Deodar, Varahi, Santalpur Dispensaries, and Survey Funds ; and the Sadar Bazar Fund ;

(*b*) the village Police Funds, Kankrej, Deodar, Suigam, Varchi, Santalpur, controlled by the Political Agent, Sabar Kantha Agency ; and

(*c*) the Wadhwan Civil Station Fund controlled by the Political Agent, Eastern Kathiawar Agency.

(13-C.) Deleted. (*Vide* Board's Notification No. 13 Income-tax : dated the 24th December, 1938.)

(13-D.) The income of Regimental Institutes derived from rebates payable by Institute Contractors.

(13-E.) The interest on securities held by the Kathiawar Education Provident Fund.

(13-F.) The income of recognised Regimental Thrift and Savings Funds, the assets of which consist solely of deposits made by members and the profits earned by the investment thereof.

(13-G.) The income of the Kolhapur Residency Area Fund.

(14) The salary of His Majesty's Trade Commissioners in India.

(15) The salary of the Canadian Trade Commissioner in India at Calcutta.

(16) The salary of the Trade Commissioner in India of the United States of America, and of any members of his staff who are citizens of the U. S. A. and have been detailed for duty with the said Trade Commissioner by the Government of the said States.

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

(16-B.) The salary of the Trade Commissioner for Ceylon in India and of any members of his staff who are citizens of Ceylon and have been detailed for duty with the said Trade Commissioner by the Ceylon Government.

(17) The salaries of the correspondent of the International Labour Office, New Delhi, and his staff.

(18) The salaries of the Organiser and Manager of the Branch Office of the League of Nations, Bombay, and his staff.

(19) The salaries of Khasadars, Levies and Badraggas employed in the tribal territory on the North-West Frontier and of all persons employed in the tribal levy service in Baluchistan.

(20) Deleted.
(21) Deleted.
(22) Deleted.
(23) Deleted.

(*Vide* Board's Notification No. 5-Income-tax, dated the 18th March, 1939.)

(24) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.

(25) The salaries of the light-house keepers of light-houses in the Red Sea.

(26) The pensions paid in the United Kingdom or in a Colony to officers of local authorities or employees of companies or of private employers, such officers or employees being resident out of India.

(27) The interest on Mysore Durbar Securities.

(28) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine in respect of wounds or injuries received in action or in the performance of their duties as members of such forces otherwise than in action.

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

(29) Pensions granted to members of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine, who have been invalided from service with such on account of bodily disability attributable to, or aggravated by, such service.

(30) Value of rations issued in kind or money allowances paid in lieu thereof, to any officer or other rank in His Majesty's Naval, Military or Air Forces, British or Indian, or in the Auxiliary Force, India, or in the Indian Territorial Force, or in the Royal Indian Marine.

(31) Value of rent-free quarters occupied by or money allowance paid in lieu thereof to, Indian officers, British Warrant and non-commissioned officers and men of His Majesty's Military or Air Forces, and British and Indian Warrant officers of His Majesty's Naval and Marine Forces ; in all cases irrespective of whether the individual concerned is married or single.

(32) Conservancy allowance granted in lieu of free conservancy to non-departmental Warrant and non-commissioned officers of the India Unattached List, departmental non-commissioned officers of the India Unattached List not in receipt of consolidated rates of pay and Warrant and non-commissioned officers of the permanent staff of the Auxiliary and Territorial Forces.

(33) The value of the free education provided for the children of British Warrant and non-commissioned officers and any grants-in-aid made to British Warrant and non-commissioned officers in lieu of the provision of free education for their children.

(34) The income of persons, other than persons in the service of the Government, residing in the district of Angul.

(35) Deferred pay within the meaning of paragraph 254, Pay and Allowance Regulations for the Army in India, Part II paid to soldiers or non-commissioned officers of the Indian Army.

(35-A.) Shore allowance granted to Warrant Officers of the Royal Indian Navy when employed on Marine Survey duties under paragraph 89 (*c*) of the Regulations for the Royal Indian Navy, Volume I.

(36) The income of indigenous hillmen, other than persons in the service of Government residing in the following areas of Assam :—

The Naga Hills District,

The Lushai Hills District,

The Sadia Frontier Tract,

The Balipara Frontier Tract,

The Lakhimpur Frontier Tract,

The Garo Hills,

The Jowai sub-division of the Khasi and Jaintia Hills District, and

The North Cachar Hills in the district of Cachar.

(37) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by the Central Government, the Crown Representative or the Provincial Government as the case may be.

List of officers :

The Governor-General.

The Commander-in-Chief.

The Governor of a Governor's Province.

The Chief Commissioner of any of the following Provinces, namely :—

British Baluchistan,

Delhi,

Ajmer-Merwara,

Coorg,

The Andaman and Nicobar Islands, and

any first class Resident of the Indian Political Department Service.

(38) Such part of income in respect of which the said tax is payable under the head "property" as is equal to the amount of rent payable for a year but not paid by a tenant of the assessee and so proved to be lost and irrecoverable, where—

(*a*) the tenancy is *bona fide* ;

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

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

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

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

(39) The lump grants made by Government to the Indian Church—

(1) for the provision of episcopal supervision and ministrations;

(2) for the payment of allowances to clergymen entertained in lieu of Chaplaincies reduced ; and

(3) in lieu of the grants-in-aid at present given for the entertainment of clergymen of the Additional Clergy Society under Articles 602 and 603 of the Civil Service Regulations.

(40) When in any year an assessee has ceased to be an employee participating in a recognised Provident Fund and has been declared by the employer maintaining the Fund not to be eligible to receive the whole of the accumulated balance due to him, so much of his income as is assessable for that year shall be exempted from income-tax and shall be excluded from the computation of his total income for the purposes of the said Act as is equivalent to so much of the accumulated balance due to him as has not been paid or is not payable to him, and if such

amount exceeds the amount of his income in that year, so much of his income in the following year or years as is equal to the amount of such excess shall be so exempted and excluded in such year or years.

(41) Income of a Service Fund derived from interest on Government securities or interest on funds deposited with the Central or any Provincial Government.

For the purpose of this exemption, a Service Fund means a fund established under the authority of, or with the permission of, the Central or any Provincial Government for the purpose of securing deferred annuities to the subscribers, or payments to them in the event of their resignation or dismissal from the service in which they are employed, or provision for their wives or children after their death, or payments to their estate or their nominees upon their death, to which servants of the Crown are alone admissible as subscribers or members and the funds of which are either deposited with the Central or any Provincial Government or invested in Government Securities.

II

INCOMES INCLUDED IN TOTAL INCOME BUT EXEMPT FROM BOTH INCOME-TAX AND SUPER-TAX

The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, provided that the exemption shall apply only to interest on securities so held on account of any one assessee up to a face value of Rs. 22,500. (Finance Department Notification No. 871. F., dated the 21st March 1922.) [This shall cease to have effect in respect of interest paid after the 31st March, 1939, —*vide* Central Board of Revenue notification (Income-tax) No. 6, dated 18th March 1929.]

(2) The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1922), the Bombay

Co-operative Societies Act, 1925 (Bombay Act VII of 1925), The Burma Co-operative Societies Act, 1927. (Burma Act VI of 1927) or the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), or the dividends or other payments received by the members of any such Society out of such profits.

Explanation.—For this purpose the profits of a Co-operative Society shall not be deemed to include any income, profits or gains from—

(1) investments in (*a*) securities of the nature referred to in section 8 of the Indian Income-tax Act, or (*b*) property of the nature referred to in section 9 of that Act,

(2) dividends, or

(3) the 'other sources' referred to in section 12 of the Indian Income-tax Act.

(F. D. C. R. Notification R. Dis. No. 291-I. T./25, dated the 25th August, 1925, as amended by Notification No. 26, dated the 25th June, 1927, and by Notification No. 35, dated the 20th October, 1934.)

III

INCOMES INCLUDED IN TOTAL INCOME, BUT EXEMPT FROM INCOME-TAX AND NOT FROM SUPER-TAX.

The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) Sums received by an assessee on account of salary, bonus, commission, or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business,

where such sums have been paid out of, or determined with reference to, the profits of such business,

and by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head "business".

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax. (Finance Department Notification No. 878-F., dated the 21st March, 1922, as amended by Notification No. 8, dated the 24th March, 1928.)

(2) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if income-tax has at any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub-section (*1*) of section 25 of the Indian Income-tax Act, 1922 (XI of 1922). (F. D. C. R., Notification No. 21, dated the 12th October, 1929).

IV

INCOMES EXEMPT FROM SUPER-TAX, BUT NOT FROM INCOME-TAX.

(*Notification No. 47, dated the 9th December, 1933.*)

The Governor-General in Council is pleased to exempt from super-tax—

(i) so much of the income of any Investment Trust Company as is derived from dividends paid by any other Company which has paid or will pay super-tax in respect of the profits out of which such dividends are paid.

Explanation.—For this purpose an Investment Trust Company means a company in respect of which the Governor-General in Council is satisfied that .—

(i) it is a company having for its principal business the acquisition and holding of investments in the stocks, shares, bonds, debentures or debenture stocks of other companies or in securities issued by public authorities,

(ii) it is not a company formed for the purpose of, or engaged in, acquiring or exercising control over any other company or group of companies or enabling any other persons to acquire or exercise such control,

(iii) it is a company deemed under clause (*b*) of the Explanation to sub-section (*1*) of section 23-A, of the said Act, to be a company in which the public are substantially interested.

I

MODIFICATIONS UNDER SECTION 60 OF THE INDIAN INCOME-TAX ACT, 1922.

(*Notification No. 23, dated the 11th June, 1927.*)

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to make the modification hereinafter defined in respect of income-tax in favour of the following class of income, namely, income derived from a railway or tramway business.

Modification.

An assessee deriving income from a railway or tramway business may at his option require that in computing the profits or gains of such business the followlng allowance shall be made in lieu of the allowances specified in clause (*v*), clause (*vi*) and clause (*vii*) of sub-section (*2*) of section 10 of the said Act, namely, tha actual expenditure incurred by the assessee during the previous year on repairs, replacements and renewals of plant, machinery, buildings and furniture which are the property of the assessee.

Provided that an assessee who in any year has exercised the option hereinbefore conferred shall not be entitled save with the consent of the Commissioner of Income-tax to withdraw that option in any subsequent year :

Provided further that nothing in this notification shall apply to an electric tramway.

II

(*Notification No. 12, dated the 4th April, 1931.*)

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to direct as follows :—

Where owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-

tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely :—

(*a*) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limit, and

(*b*) the amount by which his total income exceeds that sum.

NOTIFICATIONS REGARDING SPECIAL OFFICERS.

I

(*Notification No. 19, dated the 1st April, 1939.*)

In exercise of the powers conferred by sub-section (*6*) of section 5 of the Indian Income-tax Act, 1922 (XI of 1922), and in supersessioin of all its previous notifications relating to the items specified in the Schedule annexed hereto, the Central Board of Revenue appoints the Officers specified in the 3rd, 4th, 5th and 6th columns of the said Schedule to perform all the functions of an Income-tax Officer, Inspecting Assistant Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax and the Commissioner of Income-tax, respectively in respect of the persons specified in the corresponding entry in the 2nd column thereof.

SCHEDULE

Serial No.	Personal	Officer appointed to perform the functions of			
		Income-tax Officer.	Inspecting Assistant Commissioner of Income-tax.	Appellate Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5	6
1	Employees of the Madras and Southern Mahratta Railway except those under the audit of the Audit Officer, Railway Collieries, Calcutta.	Income-tax Officer, 4th Circle, Madras.	Inspecting Assistant Commissioner of Income-tax, Central Range, Madras.	Appellate Assistant Commissioner of Income-tax, Central Range, Coimbatore.	Commissioner of Income-tax, Madras.
2	All Government servants under the audit of the Accountant General, Madras.	Income tax Officer, 5th Circle, Madras.	Do.	Do.	Do.
3	All Government servants who are under the audit of the Deputy Accountant General, Posts and Telegraphs, Madras, but do not reside in the Andaman Islands.	Income-tax Officer, 6th Circle, Madras.	Do.	Do.	Do.
4	Indian employees in Sind, Punjab and Delhi of Messrs. Ralli Brothers.	Income-tax Officer, B. Division, Karachi.	Inspecting Assistant Commissioner of Income-tax, Northern Division, Sind and Baluchistan, Ahmedabad.	Appellate Assistant Commissioner of Income-tax, Sind and Baluchistan, Karachi.	Commissioner of Income-tax, Bombay, Sind and British Baluchistan
5	European Staff of Messrs. Volkart Brothers, working in the Punjab and Sind.	Do.	Do.	Do.	Do.

Co-operative Society :

In *In the matter of Madras Central Urban Bank Limited*, 118 I. C. 107 : 52 Mad. 640, it was held that where a co-operative society invests money under Government order, interest received therefrom is liable to tax in view of the fact that the said investment is no part of its business.

But in the *English and Scottish Co-operative Society*, 1929 M. W. N. 534, it was held that the society was a mutual co-operative society and earning no profit and was, therefore, not chargeable to income-tax.

Notification No. 11, Dated 4th April, 1931 :

(*a*) For the purposes of any assessment to be made for the year ending the 21st March, 1932, the rate of income-tax applicable to such part of the total income of an assessee as is derived from salaries or from interest on securities shall be the rate specified in the Indian Income-tax Act, 1931 (XV of 1931), as applicable to a total income equal to that of the assessee.

(*b*) For the purposes of refunds under sub-section (*1*) or sub-section (*3*) of section 48 of the said Act in respect of dividends declared during the year ending the 31st March, 1931, or of payments made during the said year of interest on securities or salary, the rate applicable to the total income of the person claiming refund shall be the rate specified in the Indian Finance Act, 1930 (XV of 1930), as applicable to a total income of the same amount.

For exemptions under Indian Finance (Supplementary and Extending) Act, 1931, *vide* the Finance Act, dealt hereafter.

Notifications withdrawing Certain Exemptions (Notifications dated 18th March, 1939) :

No. 5. In exercise of the powers conferred by sub-section (*1*) of section 60 of the Indian Income-tax Act, 1932, the Central Government is pleased to direct that the exemptions granted by clauses (*14*), (*15*), (*15-A*), and (*16-B*) of paragraph (*a*) of the notification of the Government of India in the Finance Department, No. 878-E, dated the 21st March, 1922, shall cease to have effect in respect of allowances and salaries paid or drawn after 31st March, 1939.

No. 6. In exercise of the powers conferred by sub-section (*1*) of section 60 of the Indian Income-tax Act, 1922, the Central Government is pleased to direct that the exemption conferred by

clause (*1*) of paragraph (*b*) of the notification of the Government of India in the Finance Department No. 878-F, dated the 21st March, 1922, shall cease to have effect in respect of interest paid after the 31st March, 1939.

Co-operative Society :

Section 28 of the Co-operative Societies Act provides :—

The Governor-General in Council may in the case of any registered society or class of registered societies remit income-tax payable in respect of the profits of the societies or of the dividends or other payments received by the members of the society on account of profits.

Onus :

In *Commissioner of Income-tax* v. *Bengal Urban Co-operative Society*, 7 I. T. C. 61, it has been laid down that where a person claims exemption, the onus is on the person who claims such exemption.

Profits :

The term "profits" connotes the surplus by which the receipts from business or trade exceed the expenditure for the purpose of earning profits. It is patent therefore that interest derived from securities or income derived from property are profits within the meaning of Government of India Notification of 25th August, 1925—*C. I. T.* v. *Bengal Urban Society, Ltd.*, (1934) 7 I. T. C. 61.

Appropriate Relief :

In the Amendment Act of 1939, the expression "appropriate relief" has been substituted in place of "such relief as it may think fit" occurring in the previous Act, inasmuch as it was very wide.

In calculating relief to be given to an assessee in respect of any year under section 60 (*2*), any advantage gained by him in a previous year in which part of his salary was short paid will be taken into account.

The Central Government may grant appropriate relief when the income of an assessee is assessed at higher rate by reason of arrear salary being paid or by reason of receipt of salary for more than 12 months or a payment which under section 7 (*1*) is a profit in lieu of salary.

It may be stated here that Explanation 2 in section 7 read with the definition of income, nullifies for the future in respect of the payments with which it deals the effect of the Privy Council decision in *Shaw Wallace's* Case (6 I. C. 178). To mitigate the hardship that would be caused by assessing accumulated payments of this kind at the rate applicable to the total income of the year in receipt, previous section 60 (*2*) has been amended for granting appropriate relief.

Sub-section (*3*)—Scope of :

Sub-section (*3*) of section 60 abolishes for the future the power to make any exemption, reduction or modification under sub-section (*1*) of section 60. The power to rescind any exemption may be made when necessary under the implied power imported into the sub-section by section 21 of the General Clauses Act, 1897.

61. (*1*) Any assessee, who is entitled or required to attend before *the Appellate Tribunal* or* any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (*3*).

(*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 ;

*The words in italics have been added and come into force with the setting up of the Appellate Tribunal.

(*iii*) 'accountant' means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditors' Certificate Rules, 1932, or a holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue ;

(*iv*) 'Income-tax practitioner' means—

(*a*) any person who, before the 1st day of April, 1938, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee ;

(*b*) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue ; or

(*c*) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(*3*) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (*1*) ; and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (*1*) :

Provided that—

(*a*) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(*b*) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and

(*c*) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal.

Effect of Amendment :

Section 61 as it stood in the previous Act has been amended to a considerable degree and it gives a wide field to an assessee from which to choose his representatives.

Under the previous Act, any assessee or any person authorised by such assessee in writing was entitled to appear. The Amendment Act of 1939 throws it open to the assessee, his representative, if authorised in writing, being a relative or a regular employee, or a lawyer or accountant or Income-tax practitioners, who are not disqualified under sub-section (*3*) of section 51. This sub-section states that a Government servant dismissed after 1st day of April, 1938, lawyer or accountant against whom disciplinary action has been taken for misconduct or other person found guilty of misconduct are disqualified to represent an assessee under sub-section (*1*) of section 61.

Meaning of "Person Regularly Employed" :

The word "person regularly employed by the assessee" shall include an officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings. Apparently such an officer will come in the category of a regular employee, and an assessee can have his case represented by by such an officer.

Lawyer :

The word "Lawyer" means a Barister-at-law or Solicitor or any other person entitled to plead in any Court of law in British

India. It includes any person who is entitled to appear and plead before any Court of law and necessarily all pleaders, muktears and revenue agents are entitled as of right to appear before Income-tax authorities, on behalf of any assessee.

A lawyer from Bengal is entitled to appear at Bombay and *vice versa* by virtue of this amendment.

Accountant :

The word "Accountant" means a registered accountant whose registers are maintained by the Central Government under the Auditor's Certificate Rules, 1932, or a holder of a restricted certificate under Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue.

Income-tax Practitioner :

The term "Income-tax practitioner" covers a wide field. Any person who attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of the assessee, shall be deemed to be an "Income-tax Practitioner".

Any person who has passed accountancy examination recognised by the Central Board of Revenue or any person who has got such educational qualifications as the Central Board of Revenue may prescribe for the purpose.

Disciplinary Action :

It has already been stated that persons guilty of misconduct are disqualified to represent an assessee under sub-section (*1*) of section 61. But disciplinary action shall not be taken in respect of any person unless he is given a resonable opportunity of being heard.

Where such a direction is made, he may within one month of making the direction, appeal to the Central Board of Revenue to have the direction cancelled.

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.

Power of Representative to Apply for Copy :

Where an application for copy is made by a representative, it can be granted provided express power or authority is given

by the assessee to the representative in question to obtain copies of orders etc.—*Basanti Lal Ramjidas* v. *C. I. T.*, 5 I. T. C. 383.

Authorised in Writing :

Persons who are entitled to attend or required to attend must have their authority in writing from the assessee, otherwise they are not entitled to represent the assessee.

When such persons appear by "power of attorney" it shall be chargeable to stamp duty. "Power of attorney" is defined in section 2 (*21*) of the Indian Stamp Act II of 1899. "Power of attorney" includes any instrument not chargeable with a fee under the law not relating to court-fee for the time being in force empowering a specified person to act in the name of the person executing it." A power of attorney requires non-judicial stamp under Article 48, Schedule I of the Stamp Act.

But it seems that, there is a gulf of difference between a "power of attorney" and a "Letter of Authority". In income-tax proceedings what the representatives do is to produce books of accounts and explain the entries and nothing more. The Indian Stamp Act does not mention it as chargeable to stamp duty.

By analogy it can be pointed out that under the Court-Fees Act, the power to obtain copies is a document falling under Article 11, Schedule II, so it does not require to be stamped as a power of attorney under Article 48 (*c*), Schedule 1 of the Indian Stamp Act II of 1899.

Stamp Duty :

Vakalatnama or Muktearnama requires a court-fee of one rupee no doubt. But it is preposterous to levy stamp duty on bare letter of authorisation from a relative or from a regular employee.

Form I. T. 103, that is the form authorising an agent to appear in income-tax proceedings, has been held to be a power of attorney, liable to stamp duty. If it is a power of attorney, certainly it is chargeable to stamp duty ; but if, on the other hand, the assessee simply authorises an employee or a relative to produce books of accounts as called for, without giving such an employee or relative any other power, *e g.* that to sign the name of the assessee, it cannot be assumed that such a letter of authority is a "power of attorney" chargeable to stamp duty.

There is nothing in the Act which compels an assessee to file a letter of authority in form I. T. 103. Apparently it authorises

any "agent" to appear for the purpose of representation, while section 61, as amended, authorises limited persons for the purpose of representation.

To charge a simple letter of authority with stamp duty will be doing violence to the definition of "power of attorney."

Form authorising an Agent to appear in Income-tax Proceedings :

To

The Income-tax Officer.

Sir,

I authorise Mr. to represent me in connection with my income-tax proceedings for the year 19-19 , and produce the accounts mentioned below. His explanation and statement will be binding on me.

1.
2.
3.
4.
5.

Dated *Assessee.*

Representation of Assessees :

Section 61 (*1*) lays down that any assessee may attend through a person authorised by him in writing in this behalf. This is in relation to notices where he is called upon to attend or send a duly authorised agent, but sections 22 (*4*) and 23 (*2*) he may only be required to cause to be produced his accounts or evidence in support of his return. In my opinion in such cases it is not at all necessary for the assessee to authorise any person in writing ; there is no bar even for an unauthorised person to represent him. But the statement of such unauthorised agent should be taken with caution.

As a matter of fact this practice is being followed in the Income-tax Office.

Receipts to be given.

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

Service of notices.

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

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

Method of serving Notices or requisitions :

Under section 63 of the Act a notice or requisition may be served either by post or in any manner provided for the service of summons under the Code of Civil Procedure. The words "by post" under section 27 of the General Clauses Act, X of 1897, mean "by registered post."

Section 63 (*2*) specially provides that in the case of firms or Hindu undivided families a notice or requisition may be addressed to any member of the firm or to manager or any other adult member of the family. (Para 104 of the I. T. M.)

Procedure for Service :

Section 33 (*1*) provides that a notice or requisition may be served either by post or as if it were a summons issued by a Court, under the Civil Procedure Code.

Section 27 of the General Clauses Act (Act X of 1897) lays down that "by post" means by registered post. It may not be out of place to quote section 27 of the General Clauses Act. It runs thus :—

"Where any Act of the Governor-General in Council or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Besides service by post, notices or requisitions may be served in accordance with the provisions laid down in the Civil Procedure Code for service of summons. Order 5 of the Civil Procedure Code, rules 10 to 25, prescribe the procedure to be followed therein.

The mode of service mentioned in section 63, is permissive and not exhaustive and as such it is open to the Income-tax Officer to adopt any method of service that is effective, so long as the assessee is not prejudiced thereby. Thus a signature on the margin of an order-sheet would be equivalent to due service of notice—*Ram Khelwan Ugamlal* v. *Commissioner of Income-tax*, 7 Pat. 852.

Section 63 (*2*) provides that any such requisition may be served on any member of the Firm or to its Manager or on any adult male member of the Hindu undivided family and in the case of other Association of Individuals, on the Principal Officer.

Service on Firm and Family :

Section 63 (*2*) prescribes the procedure to be followed in effecting services of notices or requisitions on a firm or a Hindu undivided family.

There is no provision, express or implied, by which notice or requisition may be served on the firm itself or on the Hindu undivided family.

In order to make the service of a notice or a requisition valid, it must be served on any of the partners of a firm, or to any other adult male member of a Hindu undivided family. A notice or requisition, issued in the name of a firm or a Hindu undivided family cannot be regarded as a proper notice and service of such notice is an illegality.

In the case of *Thillai Chidambaran Nadar*, A. I. R. 1925, Mad. 149, Justice Coutts Trotter has laid down the principle of service on unregistered firms. It is said that by the ordinary law and by virtue of section 63 (*2*) of the Act, each partner is an agent for all the others in the firm and a requisition under section 23 (*2*) need not be made on the identical partner who made the Return under section 22 (*2*).

It therefore follows that in the case of a firm, notice may be served on any one of the partners and at the same time compliance of any requisition can be legally made by any other member and not necessarily by the partner on whom the notice was served.

Section 46 of the Indian Income-tax Act of 1918 does not require that service must be on the person named in the notice.

It may be served in any other way as laid down in Order 5 of the Civil Procedure Code—*In re : Ismile Bhai*, 68 I. C. 623.

Similarly, service on any adult male member of a Hindu undivided family is a good service. But when a joint family carries on business through an "Agent" service on the said "Agent" is good service. The use of the word "may" in section 63 (*2*) confirms the view that section 63 (*2*) is not exhaustive—*Rama Nath Chettyar*, 2 I. T. C. 474.

A notice under section 22 (*2*) served on the adult son of an assessee is good service within the meaning of section 63 of the Act. Order 5, rule 15 of the Civil Procedure Code directs that where the defendant is absent or cannot be personally served, service may be made on any adult male member of the family of the defendant who is residing with him—*Mohon Lal* v. *C. I. T.*, 6 I. T. C. 104.

An objection that all notices, even the demand notice, were issued in the name of persons who are dead, is untenable. The family, in its trading capacity, is known as Gajoram Basantaram and the notices can be addressed to the family in the name by which it chooses to be known. It is a sufficient compliance with the requirements of section 63, if the notices are addressed to an adult member of the family. but if they are addressed to the family itself and they are accepted by the Karta of the family, who files a return of the income, there cannot be any defect in procedure—*Sanulal* v. *C. I. T.*, 10 I. R. Pat. 497.

Service on Agent :

That section 63 (*2*) provides alternative method of service is manifest also in the case of *Commissioner of Income-tax* v. *A. A. N. Chettiar Firm*, 110 I. C. 29 where service on the agent of a Hindu undivided family was considered a valid service.

Order 3, rule 2, Civil Procedure Code defines "recognised agent" and rule 3 provides that processes served on the recognised agent of a party shall be as effectual as if the same had been served on the party in person. Order 5, rule 12 provides that service shall, wherever it is practicable, be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on the agent shall be sufficient. Order 3, rule 6 provides that, besides the recognised agents described in rule 2, any person may be appointed as agent to accept service of process, but such appointment must be made by an instrument in writing signed by the principal—*Commissioner of Income-tax* v. *Baxiram Rodmal*, A. I. R. 1934 Nag. 175.

Thus service of notice on the agent is a good service, if authority to receive it can be implied from the nature of the works

carried on by the agent on behalf of the principal ; and in the case of a recognised agent carrying on business in the name of the principal, that would imply authority to accept such notices, because the acceptance of notice is a matter which is connected with such trade or business. A notice under section 22 (*2*) need not therefore be served personally on the assessee and service of notice on the recognised agent is good service—*In re Sundar Lal*, A. I. R. 1931 Pat. 282.

A notice under section 22 (*2*) need not be served personally on the assessee and service at assessee's business premises, on an agent exercising authority, although not authorised in writing is valid service.

In the case of *Dey Brothers* v. *C. I. T., Burma*, 8 I. T. C. 186 : 1935 I. T. R. 213, it was enunciated by the Rangoon High Court that the mere fact that a particular servant did usually receive notices on behalf of his master, was held to be insufficient for the purposes of making the servant, the agent of the principal.

Section 63 :—Amendment of :

The only change in section 63 is substitution of the expression "Association of persons" in place of "Association of Individuals" in sub-section (*2*).

Guiding Principle of Service :

Under the Indian Income-tax Act, we find that each assessee has got a status of his own, *e.g.*, Individual, Hindu undivided family and so on. The first essential in the Act is to effect service. It is advisable to mention specifically the status in the notice, *e.g.*, when a notice is served on the member of a Hindu undivided family specific mention has got to be made in the notice that it relates to the Hindu undivided family otherwise the assessee may comply with the requisition by stating that he has got no individual income or that his individual income is below the taxable minimum.

But so far as firm or Hindu undivided family is concerned, section 63 (*2*) does not authorise any service on the firm or on the family itself ; the proper course is to address a member as a partner of a firm or to address an adult male member as a coparcener of a Hindu undivided family.

Under section 63 of the Indian Income-tax Act, the Income-tax Officer has the option to serve a notice either by post, which under section 27 of the General Clauses Act X of 1897, means "by registered post" or as if it were a summons issued under the Civil Procedure Code.

Service upon agent shall be deemed to be valid notice. *Himat Ram Pali Ram* v. *Commissioner of Income-tax, B. & O.* 5 I. T. C. 134.

Adjournment :

There is no provision in the Act to inform the assessee of dates by registered post. Section 63 (*1*) speaks of "a notice or requisition" and unmistakably it refers to notices under sections 22 (*2*), 23 (*2*), 22 (*4*), 29, 34, 37 and 43 and to no other notice or requisition.

When a case is adjourned to some other date, it is for the assessee to get the extended date and the assessee cannot question the authority of the Income-tax Officer if the date is communicated by ordinary post.

In the case of *Periamma Pillai*, 122 I. C. 949, it has been held that when a prayer for extension of time is made by post or by telegram, intimation of adjournment by ordinary post is valid and failure to comply with the requisition makes the assessee liable to be assessed summarily.

Ordinarily it may be the duty of the assessee who applies for an adjournment to find out the date fixed, but when the Income-tax Officer tells the assessee that an adjournment will be allowed and that the adjourned date will be intimated to him, it is not incumbent on the assessee to find out that date and he is entitled to await the promised information—*Commissioner of Income-tax* v. *Baxiram Rodmal*, A. I. R. 1934 N. 175.

The General Clauses Act says : 'The service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document." As soon as the act of posting is completed, service is deemed to be effected and nothing that subsequently happens can alter the position. But if the presumption is conclusive or in other words if the evidence afforded by "properly addressing, prepaying or posting by registered post" be conclusive evidence of service of notice, the fact that notice has been returned unserved will not be admissible as evidence of the fact of non-service. This can hardly be considered a right rule and hence the presumption raised is rebutable—*De Souza* v. *Commissioner of Income-tax, U. P.*, 6 I. T. C. 134.

Service on Minor :

When a notice purported to have been issued under section 22 (*2*) is served on the assessee's minor son who is found to be possessed of ordinary intelligence and is living with his father,

and is found to be regularly receiving his father's notices, it is legal to construe the minor son as agent of his father and service on such minor is valid in law—*In re* : *L. C. De Souza*, A. I. R. 1932 All. 374.

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

Place of assessment.

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

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

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

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 a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (*2*) of section 22 or under section 34 for the making of a return :

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of

the claim, refer the matter for determination under this sub-section before assessment is made.

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

(5) The provisions of sub-section (1) and sub-section (2) shall not apply and shall be deemed never at any time to have applied to any assessee—

(a) on whom an assessment or re-assessment for the purposes of this Act has been, is being or is to be made in the course of any case in respect of which a Commissioner of Income-tax appointed without reference to area under sub-section (2) of section 5 is exercising the functions of a Commissioner of Income-tax, or

*(b) where by *any direction given or* any distribution or allocation of work made by the Commissioner of Income-tax under sub-section (5) of section 5 *or in consequence of any transfer made 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 words in italics have been introduced with the setting up of the Appellate Tribunal.

the function of making such assessment by the Central Board of Revenue or by the Commissioner of Income-tax to whom he is subordinate, as the case may be.

Effect of the Amendment :

The proviso to sub-section (*3*) of section 64 makes an important change in the Amendment Act of 1939. The effect of the amendment of section 64 (*3*) is to debar the assessee from questioning the place of assessment after the time allowed by notice under section 22 (*1*) or 22 (*2*) or under section 34 for submitting a return of income.

The amendment is designed to check the frequent obstruction of Income-tax proceedings by raising questions of jurisdiction at any time before the assessments.

Jurisdiction, when can be challenged :

It is obvious that an assessee is to submit a return of his income in conformity with sub-section (*5*) of section 22. An assessee shall furnish particulars of the location and style of the principal place where he carries on the business, profession and vocation.

Thus where jurisdiction is to be challenged, proviso to section 64 (*3*) categorically lays down that the place of assessment shall not be called in question after a return is submitted in response to notice under section 22 (*1*) giving the principal place of business, profession or vocation.

In case when return under section 22 (*2*) or section 34 is not furnished within the date or extended date, the assessee is debarred to call in question, after the expiry of the time allowed by the notice under section 22, the place of assessment.

There is a further amendment which makes it clear that the Income-tax Officer is not satisfied with the correctness of the claim regarding the place of assessment he shall refer the matter to the Commissioner before assessment.

Under the previous Act it was imperative on the Income-tax Officer to refer the question to the Commissioner whether the Income-tax Officer was satisfied or not with the claim of the assessee.

It may not be out of place to mention that an assessee cannot raise any question in appeal, if it was not raised before the original Court. Section 21 of Civil Procedure Code runs as below :

"No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

It is therefore clear that an assessee cannot call in question the place of assessment for the first time in appeal. He is also not entitled to challenge the jurisdiction or call in question the place of assessment before the Income-tax Officer after the date or extended date for submitting a return under section 22.

Reference to High Court, if lies against an Order under Section 64 :

In the matter of *Kanhaiyalal*, 9 I. T. C. 368, no question of jurisdiction arose at the time of assessment. The provisions of clause (*3*) of section 64 are not intended to apply at any stage after the making of the assessment order.

The assessee has no right to object in the matter of jurisdiction after the assessment order is made. If in an appeal the assessee takes the plea of jurisdiction and the Appellate Assistant Commissioner decides it against him, can he ask the Commissioner to state a case under section 66 (*2*) ?

There is, of course, nothing to prevent an assessee from putting any plea he may choose into his memorandum of appeal and in that way it can be said that a decision of any such point will create a "Question arising out of the appeal," but what is to be seen is whether the question is one that properly arises out of the appeal. In other words, is the assessee entitled to raise this question in appeal. Section 30 does not help the assessee, as no appeal has been provided against jurisdiction, neither section 21 of the Civil Procedure Code helps him.

In the case of *Dinonath Hemraj*, A. I. R. 1927 All. 299 : 25 A. L. T. 225 : 100 I. C. 756 : 49 All. 616, a reference to the High Court was allowed because the Income-tax Officer made an illegal assumption of jurisdiction and as there was consequent failure of justice.

Duty of Income-tax Officer When Jurisdiction is Challenged :

Whenever the jurisdiction of the Income-tax Officer is challenged by an assessee regarding the principal place of business, no matter whether the Income-tax Officer of the principal place of business is in agreement or not with the Income-tax Officer of

the area outside his jurisdiction, it is incumbent on the Income-tax Officer to report the matter at an early date to the Commissioner.

The decision for or against the assessee by the Income-tax Officer is not binding on the assessee, for the Income-tax Officer is not the final authority in the matter, but if the assessee acquiesces in the decision, the Income-tax Officer is competent to decide the matter himself.

Sub-section (*3*) of section 64 provides that where any question arises as to the place of assessment, such question shall be determined by the Commissioner of the Province, but where principal place of business is in several provinces, the Provincial Commissioners concerned are to arrive at an adjudication and in case of difference, the Central Board of Revenue shall decide the issue.

It is not necessary for an assessee who disputes the jurisdiction of the Income-tax Officer to move the Commissioner himself or to request the Income-tax Officer to do so. Whatever the assessee does or proposes to do, therefore, the Income-tax Officer should take the Commissioner's orders at once, whenever his jurisdiction is challenged.

Section 64(*3*), therefore, does not give the Income-tax Officer any authority to dispose of the question. All that the law enjoins on the Income-tax Officer is to refer the matter at once to his Commissioner. The assessee may or may not move the Commissioner but the Income-tax Officer shall. If he proceeds to decide the question himself and then makes an assessment, and the question has been determined finally, the assessment is illegal and *ultra vires*.

As the Income-tax Officer is privy to the question which has arisen, it is reasonable that he should immediately communicate with the Commissioner. The power of the Income-tax Officer is limited, he cannot decide the question himself neither he can make an assessment prejudging the issue.

Place of Assessment—Tests :

Section 60 (*1*) provides that where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which he carries on his business. But when the business is in more places than one, before the Income-tax Officer of the area where the principal place of business is situate. In all other cases, an assessee is to be assessed by the Income-tax Officer of the area in which he resides.

Jurisdiction, Concurrent or not :

Under section 5 of the Act, the Income-tax Officer derives his power and jurisdiction to make assessments. Section 64 deals merely with the place of assessment and lays down the procedure, when his jurisdiction is challenged.

As a matter of fact, Income-tax Officers can have concurrent jurisdiction, provided it does not create anomalous results.

Section 64 provides that where an assessee carries on his business, he shall be assessed by the Income-tax Officer of the area in which that place is situate.

It further provides that in other cases, an assessee shall be assessed by the Income-tax Officer of the area where he resides.

But where an assessee has business in more places than one, he shall be assessed by the Income-tax Officer of the principal place of business. Apparently, therefore, the Income-tax Officer of the principal place of business is the assessing authority of an assessee who has business in more places than one, no matter if some of the places are outside his jurisdiction. But sub-section (*4*) of section 64 provides : "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."

Consequently, where an assessee has some place of business, outside the jurisdiction of the Income-tax Officer of the principal place of business, the Income-tax Officer of the branch business, by virtue of section 64 (*4*) has authority to assess the income within his area and a clash of jurisdiction is inevitable, simply because the Income-tax Officer of the principal place of business shall make an assessment of an assessee of all income, including the income derived from his business outside the jurisdiction of the Income-tax Officer of the principal place of business.

It may therefore be pertinently inquired if the jurisdiction of the Income-tax Officer of the principal place of business is ousted by virtue of sub-section (*4*) of section 64.

The power of the Income-tax Officer of the principal place of business is not ousted under section 64 (*4*) to assess the income of any business outside his area. The powers are concurrent and if the assessee fails to comply with the notice under sections 23 (*2*) and 22 (*4*), an assessment under section 23 (*4*) is not bad in law.

In *Lachman Prasad Baluram*, 47 All. 631, the Allahabad High Court has held that the jurisdiction is concurrent :

"In our opinion the jurisdiction of the Income-tax Officer of the area in which the principal place of business is situated, is not ousted. The jurisdiction is concurrent. Under section 64 the Income-tax Officer of the principal place of business has the duty of assessing the whole of the income derived from the principal place of business as well as the various branches. By sub-section (*4*) every Income-tax Officer has also jurisdiction to exercise the powers of an Income-tax Officer with regard to the profits arising in that area.

It is of course understood and ought to be understood by the authorities that the Income-tax Officer of the principal place of business cannot exercise his powers oppressively so that persons willing to submit to the requirements of the Income-tax Officer of the particular area in which the branch is situated shall not be deprived of an opportunity of supplying him with all proper materials, but exceptional cases may require exceptional remedy."

It must be understood that the Income-tax Officer of the principal place of business is the assessing authority including the income of the branch, whereas the Income-tax Officer of the branch area is merely the reporting officer. Although no simultaneous assessments should be made at different places on the same person, there is nothing illegal in an Income-tax Officer of one place giving an estimate of profits made by the assessee at that place and forwarding that estimate to the Income-tax Officer of another place—*In re* : *Ram Khelwan Ugamlal* v. *Commissioner of Income-tax*, 7 Pat. 852 : 39 I. T. C. 225.

Duty of the Assessee :

Whenever the jurisdiction of Income-tax Officer is challenged by an assessee, the duty of the assessee is simply to raise that question before the Income-tax Officer. There is nothing in the Act that an application is necessary to raise the question—such a question therefore can be raised orally, but it is always safe to put it in writing as it is the duty of the Income-tax Officer to set the Commissioner in motion by referring the question *suo motu*. The duty is thrown upon the Income-tax Officer of securing the determination of the question and before any adjudication, he has every right to refuse to comply with any requisition.

Can the finding of the Income-tax Officer or the Commissioner be overruled by the High Court under section 66 ?

In one sense of that embarassing question, the answer is a definite "no". The High Court has indeed no power to overrule anything done by the Income-tax Officer or the Commissioner.

Under section 66 (*2*) when a question of law arises in an order under sections 31, 32 or under section 33 the assessee may require the Commissioner to state a case or in case of refusal by the Commissioner, the High Court may be approached to require the Commissioner to state a case for reference to the High Court.

In *Dinanath Hemraj*, 49 All. 616 : 25 A. L. J. 255 : A. I. R. 1927 All. 299 : 100 J. C. 758, the question put by the Commissioner appears to be misleading because it assumes that the High Court was asked to overrule a decision which in the face of section 64 he had no power to make and it assumes that special procedure etc. under section 64 had been adopted, when it is admitted that it had not.

Their Lordships of the High Court held : "We are compelled to hold in this case that there being a total failure on the part of the Income-tax authorities to apply to the plain provision of section 64, on the other hand an illegal assumption of authority in Cawnpur, the existence of an alternative remedy under section 64 (*3*) does not affect this case, and cannot be held to be a bar to the rights of the appellant to have a case stated and the jurisdiction of the High Court to answer those questions in the way it holds that they ought to be answered."

Power and Jurisdiction of the Income-tax Officer :

The Income-tax Officer of the principal place of business has the duty of assessing the whole income, including income of the branch business outside his territorial jurisdiction. He can call for the accounts and evidence of the branch business, outside his area, but it is not necessary to serve separate notice under section 22 on the branch area.

Whenever a return under section 22 is submitted, the return in question must show the total income from all business and failure to include the branch income may result in treating the so-called return as "No return" and an assessment under section 23 (*4*) for that defect alone is justified.

Similarly, where an assessee does not comply with a requisition under section 22 (*4*) by not producing his branch accounts, specifically called for by the Income-tax Officer of the principal place of business, the Income-tax Officer may assess him under section 23 (*4*)—*In re Lachman Prasad Baburam*, A. I. R. 1925 All. 385.

The Income-tax Officer has jurisdiction to call for return of income of the branch business of other places. This point is

really covered by a decision of the Allahabad High Court, *in the matter of Lachman Prasad Baburam*, A. I. R. 1925 All. 385 —that an Income-tax Officer of the principal place of business has jurisdiction over the branch accounts ; section 64 (*4*) does not militate against this view. It has been enacted only to safeguard the powers of the Local Officer, in case it might be contended that sub-section (*1*) of section 64 took away that power—*In re Abheyram Chunilal*, A. I. R. 1937, All. 197 (*vide* 7 I. T. C. 74 the case of *Biseswar Prasad Pursottamdas of Pitrakunda, Benares*).

Generally the Income-tax Officer of the area where the branch business is situate, issues a notice under section 22 (*4*) for production before him of any branch account. After scrutiny he sends his report to the Income-tax Officer of the principal place of business, who may either accept it or reject it. He is not bound to accept the report, but in that case he shall have to examine the accounts, if produced.

But what would be the position when the Income-tax Officer of the branch area submits a highly estimated report for non-compliance as to production of books of accounts ; is the Income-tax Officer of the principal place of business bound to examine the accounts or to make an estimated assessment under-section 23 (*4*) ?

The reasonable view seems to be that in all cases of this nature, the Income-tax Officer is bound to examine branch accounts outside his jurisdiction, as the return submitted by the assessee is for the total income of all business including the branch, and as the Income-tax Officer has issued notices under sections 23 (*2*) and 22 (*4*), the Income-tax Officer shall have to examine the accounts produced and to record the evidence adduced by the assessee.

Effect of Assessment before Reference to the Commissioner :

Where an assessment is made, when the question under section 64 is *sub judice*, any such assessment without determination of the question is tantamount to doing something not authorised by the Act, in other words, an illegality.

The Allahabad High Court in the case of *Dinanath Hemraj* v. *Commr. of Income-tax*, 25 A. L. J. 225 : A. I. R. 1927 All. 299 : 100 I. C. 756 : 49 All. 616 came to the conclusion that an assessment by the Income-tax Officer pending reference to the Commissioner under the provision of section 64 is unwarranted. It has been held :

"It is quite clear, therefore, that in October, 1924, a question had arisen within the meaning of the section. It is equally clear that both parties are either unaware of or ignored section 64(*3*). The question having arisen, the Income-tax Officer, subject to a proviso hereafter to be mentioned, had no jurisdiction to decide the question of the principal place of business, and certainly no jurisdiction to assume it, and no right to assess the firm on the profits of the whole business, as though its principal business were in Cawnpore, a question which was still undecided. The Act provides that where the question about the principal place of business is between places in more provinces than one, it shall be determined by Commissioners concerned, and if they are not in agreement, by the Central Board of Revenue, and that the assessee shall have an opportunity of representing his views. The Act does not go to say who shall set the Commissioner in motion, but the reasonable inference to be drawn from the language used is that this is the duty of the Income-tax Officer. The sub-section itself contains a direct reference to the assessee and provides that the assessee shall have an opportunity of representing his views before the question is determined. An express provision of that kind seems to exclude an implied provision that the duty is thrown upon him of securing the determination of the question. On the other hand the Income-tax Officer is the person who first becomes aware of the question which has arisen and it seems reasonable to hold, and it certainly simplifies the working of the section, that he should immediately communicate the fact of such question having arisen to his own Commissioner with whom he is in constant touch and who is then in a position to exercise the function imposed upon him, as the case may be, given the assessee an opportunity of representing his views. *What is quite clear is that the Income-tax Officer cannot himself decide that question or act as though it had been determined in accordance with the provisions of this section, and that if, he proceeds to prejudge the issue and act as though it had been determined and assess the firm as though their principal place of business was in his own jurisdiction, in spite of the dispute being still undetermined, he is doing something not authorised by the Act, in other words, an illegality.* It is quite true that the following sub-section, namely sub-section (*4*), provides that notwithstanding anything contained in this section, every Income-tax Officer shall have all powers conferred by or under the Act on him in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed."

Principal place of Business :

The term "place of business" is a mixed question of law and fact. Primarily it is a question of fact as the Income-tax

authorities are to determine where the books of accounts are adjusted, contracts are made and loans incurred. This practically means what is the controlling centre. Where the Income-tax authorities ignore to examine all the relevant facts, question of law arises and a reference to the High Court becomes permissible. It is a known fact that big firms have branches elsewhere and the principal place of business is very often to be determined on the scrutiny of books. The origin of business is an important factor in determining the principal place of business. In the case of *Dinonath Hemraj*, 100 I. C. 756 · 25 A. L. J. 225 : A. I. R. 1925 All. 299 : 49 All. 616, it was held that the fact that the goods are manufactured in one place does not make that place the principal place of business ; nor is the fact that the bulk of the practical business is conducted at a particular place is conclusive as to its being the principal place of business.

Ordinarily the principal place of business of a firm or company is the place at which the persons directing the company or firm do their business. The fact that goods are manufactured in one place does not make the place necessarily the principal place of business. Where business is carried on in many places or at different branches, it may be said that the business is carried on in each of those places, though neither of them may be the principal place of business : *In the matter of Dinonath Hemraj*, 49 All. 616 : 25 A. L. J. 225 : A. I. R. 1927 All. 299 : 100 I. C. 756.

Thus the Income-tax authorities shall have to enquire which is the head office or if there is any registered head office. Mere residence does not make a place the principal place of business. There may be cases where assessee wants to declare certain branch office as his principal place of business for the sake of convenience and better controlling and management ; in such cases the Income-tax authorities with due regard to the circumstances can grant the prayer ; the question of the parent business cannot be a bar to such a decision. The assessee must point out his principal place of business in the return under the new amendment.

Residence :

The word "residence" means the place where the assessee resides, but mere residence alone cannot be a safe guide for determining the principal place of business. An assessee may be assessed in the area where he resides but that area may not be his principal place of business. So far as Government salaried officers are concerned in Bengal, they are assessed at Calcutta by the Income-tax Officer of Central Salaries Circle although majority of the assessees reside outside his jurisdiction. Such

an assessment is permissive only because an Income-tax Officer has got jurisdiction over a class of persons or a class of area as sanctioned by the Commissioner.

Final Assessment without the Report of Branch Income :

Although the Income-tax Officer of the principal place of business is within his rights to call for accounts of an assessee of his branch business outside his jurisdiction, the Income-tax Officer within whose jurisdiction the branch business lies is competent to examine the branch account and to send the report of such examination to the Income-cax Officer of the principal place of business.

Failure to comply with the requisition of either of the two officers will result in a summary assessment under section 23 (*4*) : *In the matter of Lachman Prosad Baburam*, 88 I. C. 216 · A. I. R. 1925 All. 385 : and also in A. I. R. 1930 All. 49 it was held that failure to comply with the requisition makes the defaulting assessees liable to an assessment under section 23 clause (*4*).

But where branch accounts have not been requisitioned from the assessee by the Income-tax Officer of the principal place of business, and where the branch report is also not forthcoming, any assessment made by the Income-tax Officer is clearly illegal and irregular.

Appeal :

When an assessee does not challenge the jurisdiction of the Income-tax Officer at the time of assessment, he is debarred from agitating that before the Appellate Assistant Commissioner in appeal or before the Commissioner. The second proviso of sub-section (*3*) of section 64 is a specific bar.

Section 64 :—Read with section 5 of the Act :

The right to transfer cases or classes of cases under section 5 (*2*) covers pending assessments, but does not cover a case in which an assessment has been completed. An order directing the Income-tax Officer or the Commissioner of Income-tax to forbear from doing something, which he believes wrongly to be his statutory duty cannot fall within section 226 of the Government of India Act, 1935, and the Court had, therefore, jurisdiction to entertain the matter.

The right to be assessed by a particular officer is a personal right within the meaning of section 45 of the Specific Relief Act.

Section 64 of the Act was intended to ensure that as far as practicable an assesse should be assessed locally, and the area to which an Income-tax Officer is appointed must, so far as the exigencies of tax collection allow, bear some reasonable relation to the place where the assessee carries on business or resides—*Dayaldas Kushiram* v. *C. I. T., Central and another*, 8 I. T. R. 139. It may be noted here that this difficulty has been removed by the passing of the Income-tax (Removal of difficulties and validating) Ordinance, 1939 (IX of 1939).

In re Seth Kanhiya Lal Goenka, 9 I. T. R. 25, it has been held that where the place of Assessment has been decided under the provisions of section 64 (*3*) of the Income-tax Act and an Income-tax Officer accepting the final order of the Commissioner or Commissioners, or the Central Board of Revenue, proceeds to make an assessment, the plea of jurisdiction cannot be raised before the Assistant Commissioner on appeal and the High Court cannot deal with the question under section 66 of the Act. An assessee must be deemed to have had an opportunity of representing his views within the meaning of the proviso to section 64 of the Act, if he had stated the objections in an affidavit called by the Commissioner. The words occurring in the proviso are that the assessee should have had an opportunity of representing his views and not that the assessee should have been formally heard on his objection. This very Act draws a distinction between the two expressions.

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.

Scope :

Section 65 which deals with "indemnity" becomes necessary in the Act as there is a provision of duduction of tax at source.

Statement of case by Appellate Tribunal to High Court.

66. "(*1*) Within sixty days of the date upon which he is served with notice of an order under sub-section (*4*) of section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied, where application is made by 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 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 gound that it is time-barred, the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (*1*).

(*4*) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the

Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment".

(6) Where a reference is made to the High Court.....the costs shall be on the discretion of the Court.

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

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.

(7A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (2) or sub-section (3).

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

(a) in relation to British Baluchistan, the High Court of Judicature at Lahore ;

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

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

* Has come into force on the 25th January, 1941.

Statement of case by Commissioner to High Court.

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

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

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

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

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

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

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

Scope of Section 66 and 66-A, before the setting up of the Appellate Tribunal :

So long as the Appellate Tribunal does not commence to function, an application for a reference to the High Court can only be made after an appeal to the Appellate Assistant Commissioner under section 31 or an appeal under section 32 to the Commissioner has been disposed of. After the Appellate Tribunal commences to function such an application can be made only after the said Tribunal has passed orders under section 33 (*4*). An assessee must therefore exhaust his remedies of appeal to the income-tax authorities or to the Appellate Tribunal (as the case may be) before requiring a reference to the High Court. The proviso to the present sub-section (*2*) provides that if on receipt of such an application the Commissioner is himself prepared to give a ruling in favour of the assessee on the point of law raised, the applicant may withdraw his application for a reference to the High Court in which event the fee paid shall be refunded.

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

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

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

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.

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

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

(*a*) in relation to British Baluchistan, the High Court of Judicature at Lahore ;

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

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

*No longer in force from 25th January, 1941.

Similar proviso to sub-section (*1*) (as it will be after the Appellate Tribunal comes into being) is given to provide for similar action and consequent refund of fee after the Appellate Tribunal begins to function.

Until the Appellate Tribunal commences its functions an assessee may also ask for a reference to the High Court on a question of law arising out of an order of the Commissioner of Income-tax under section 33 of the Act. A reference in respect of such an order can be asked for only where the order enhances an assessment or otherwise prejudices the assessee and in no other case. Further a reference can be made *only on a point of law arising out of the order under section 33 itself* and not on a question of law arising out of a previous order under section 33.

No reference may be made to the High Court on a question of fact. The Commissioner or the Appellate Tribunal may therefore only withhold an application for a reference to the High Court if he or it considers that a point of law is not involved. If a reference is withheld on that ground, the applicant, may apply to the High Court within six months from the date on which he is served with notice of the refusal to make a reference for a *mandamus* requiring the Commissioner or the Appellate Tribunal to state a case and if the High Court issues such a requisition, the Commissioner or the Appellate Tribunal must state a case.

Until the Appellate Tribunal comes into existence the Commissioner retains the power to state a case to the High Court on his own motion or on a reference from any income-tax authority subordinate to him.

The application for a reference must be made by the assessee, according to the present section 66, within sixty days of the date on which he is served with notice of an order by an Assistant Commissioner under section 31 or by a Commissioner under section 32. After the Tribunal comes into existence the same time limit will operate in respect of an application for reference, whether made by the Commissioner or by the assessee, but it will be counted from the date on which the Commissioner or the assessee is served with notice of an order under section 33 (*4*) passed by the Tribunal.

Scope of sub-section (1) of Section 66 :

Part II of the Schedule as inserted in the Amendment Act of 1939 has come into operation on the 25th January, 1941 and consequently the old sub-section (*1*) of section 66 stands deleted. Sub-section (*1*) lays down that an assessee can require the Appellate Tribunal by an application in the prescribed form, accompanied by a fee of Rs. 100, within 60 days of the date upon

which he is served with a notice of an order under sub-section (*4*) of section 33, to refer to the High Court any question of law arising out of such order, but in the case of the Crown no fee is payable.

On receipt of such application the Appellate Tribunal shall draw up a statement and refer it to the High Court within 90 days. It may be observed that in the old section the Commissioner had to refer with his opinion, but for the present, the expression "with his own opinion" has been dropped.

The proviso lays down the procedure for withdrawing application in case of refusal by the Appellate Tribunal to refer a case within 30 days from the date on which he receives notice and if he does so, the fee paid shall be refunded.

Scope of sub-section (2) :

Where an application under sub-section (*1*) of section 66 is being refused by the Appellate Tribunal 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 to require the Appellate Tribunal to state the case and to refer it and where such requisition is made, the Appellate Tribunal shall state the case and refer it accordingly.

Sub-section (3) :

Where an application under section 66 (*1*) is rejected by the Appellate Tribunal as time-barred, the assessee or the Commissioner, may within 2 months apply to the High Court and the High Court if it is not satisfied with the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal *to treat the application made within the time allowed under* sub-section (*1*).

Sub-section (4) :

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

Sub-section (5) :

The High Court on hearing of any such case shall decide the question of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded

and shall send a copy of judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal for action in conformity with the judgment.

Power of the Appellate Tribunal to condone Limitation :

Sub-section (*1*) of section 66 provides 60 days' limitation from the date of service of order under section 33 (*4*). The expression "served with notice of an order" is not used in its restricted sense, because an announcement of an order to an assessee or to his representative, is sufficient service. For the purpose of computing the period of limitation, the Appellate Tribunal is to act strictly according to law. The following cases under the old section may be read with advantage.....*Merchant's Mohini Floor Mills* v. *C. I. T.*, A. I. R. 1937 Lah. 876 ; *in re Bhanjilal*, 90 I. C. 1018 : 6 Lah. 373 ; *in re Ratanchand Khemchand Motishaw*, 98 I. C. 299, *Hukamchand Hardatrai*, 2 I. T. C. 140 ; *in re Raghunath Das Sheolal*, A. I. R. 1932 Cal. 411 ; *Trustees Corporation Ltd.*, 34 C. W. N. 711 ; *in re Ramanath Reddiar*, 110 I. C. 601 ; *Mohonlal Hardeodas*, A. I. R. 1930 Pat. 14 : 122 I. C. 810. The object is a statutory one and it is mandatory to observe the preliminary statutory conditions. The law of limitation must be scrupulously observed and there is nothing in the Act which authorises the authority to condone delay. *Vide* the decisions of *C. Lakshmi Sevak Sahi* v. *C. I. T.*, 6 I. T. C. 142 ; *Ratanchand Khemchand*, 2 I. T. C. 225, *Ratanchand* v. *C. I. T.*, 9 Lah. 188, *Sanat Kumar Ray* v. *C. I. T.*, 2 I. T. C. 279.

Appellate Tribunal has no power to ask advice of the High Court as to the legality of any proceeding he intends to take (see the case of *Madan Mohanlal* v. *C. I. T.*, A. I. R. 1935 L. 742. There is no necessity for the Appellate Tribunal to refer questions of facts, his power of reference is limited to question of law only... In re *Keshordia Chamaria*, 63 I. L. R. Cal. 401 : 3 I. T. R. 418 and *B. K. Pal & Co.* v. *C. I. T.*, 7 I. T. C. 20.

It may be noted that supplementary question of law even submitted after the period of limitation cannot be referred..... *Raghunath Das* v. *C. I. T.*, 4 I. T. C. 468.

Duty of Assessee or Commissioner in making reference :

The party may ask the Appellate Tribunal to refer on a specific question of law. Justice Walsh observes : "It must also be clearly understood that this Court cannot listen to suggested points of law, which were not taken in the original proceedings before the Income-tax Officer and also not submitted clearly and definitely to...by way of appeal."...In re *Makhanlal Ramswarup* 86 I. C. 27. Thus points of law not raised at the first instance

cannot be raised subsequently...In re *Thiruvengada Mudaliar*, A. I. R. 1928 Mad. 889 ; *in re Raibahadur Karamchand*, 131 I. C. 639. But as the High Court does not express its opinion on a hypothetical question, the party must avoid it altogether ..*In re Babu Moolji Sicka*, 7 I. T. C. 190. The parties requiring decision on questions of law should formulate these questions in a proper form. They have no right to expect the Court itself to deduce from an application what the questions in the minds of the applicants may have been : *Debidas Madanlal* v. *C. I. T.*, A. I. R. 1934 N. 183 : 7 I. T. C. 132. The party is not required to formulate the precise question of law : *Vadilal Lalubhai Mehta* v. *C. I. T.*, 3 I. T. R. 152 and 9 I. T. C. 90. Question of jurisdiction not raised at the time of the assessment but at the time of appeal, cannot be a subject matter of a reference unless the question arises out of an order under section 33 (*4*) : *In re Seth Kanhaiya Lal of Khurja*, 9 I. T. C. 368.

Before the party can put an application to the High Court, it is incumbent on him to apply to the Appellate Tribunal under sub-section (*1*) of section 66. No authority is needed for this obvious proposition of law but a reference may be made to 4 I. T. C. 324 : 2 I. T. C. 430 and 2 I. T. R. 339. In this connection the following decisions may be noted : *Md. Aminoff* v. *C. I. T.*, A. I. R. 1938 Lah. 864 ; *Some Chand Muluk Chand* v. *C.I.T.*, A. I. R. 1938 Lah. 545 : 43 P. L. R. 193 and *Abba Dada* v. *C. I. T.*, A. I. R. 1938 R. 435. As no reference is permissible on facts, parties cannot ask the Court to investigate matters of fact. : *C. I. T.* v. *B. B. Jubb*, A. I. R. 1938 R. 315.

Passing of the Order :

There is nothing in the language of section 66 (*2*) to hold that the expression "passing of the order" should be interpreted as the communication of the order to the party and it would be straining the law to hold that an order passed by an Income-tax Commissioner can be ignored for the purpose of limitation until it has been duly communicated to the assessee. Similarly on general principles and in view of section 29 of the Limitation Act, the period required for obtaining copies of the order under section 31 or 32 of the Act shall be excluded in computing the period of limitation for an application for reference by assessee : *Mohon Lal Hardeodas, in re* A. I. R. 1930 Pat. 14 : A. I. R. 1928 Rang. 152 : A. I. R. 1929 Lah. 170 and 34 All. 496 *referred to* : A. I. R. 1926 Bom. 556 : A. I. R. 1927 Mad. 545 *not approved.*

Question of Law :

A reference can only be made to the High Court only on a question of law. The express mention of one necessarily ex-

cludes the other, and consequently a reference is incompetent on question of facts.

It is incumbent on the Commissioner to refer any case to the High Court under section 66 (2) where there is a question of law involved. But the Commissioner is not the sole judge or arbiter to determine whether there is a question of law. If he refuses to refer the case to the High Court on the ground that no question of law arises, sub-section (3) of section 66 authorises an assessee to apply direct to the High Court within 6 months from the date on which he is served with a notice of refusal by the Commissioner and the High Court, if not satisfied with the correctness of the Commissioner's order, may require the Commissioner to state a case to the High Court

Wherever any real question of law is involved, the High Court is competent to require the Commissioner to state a case.

(1) It has been held in the case of *Pandurang Ramchandra*, 91 I. C. 980, that the question as to what constitutes receipt is a question of law. It has been held by their Lordships of the Privy Council that "the proper legal effect of a proved fact is a question of law" *In re: Nafarchandra Pal v. Sutar*, 48 Cal. 189. In *In the matter of Ramgopal*, 20 Cal., 93 Sir Richard Couch remarks: "The fact found need not be disputed. It is the soundness of the conclusions from them that is in question and this a matter of law".

(2) The proper legal effect of proved fact is a question of law: *Pandurang Ramchandra Panda*, 91 I. C. 980. *Jambhudas*, 104 I. C. 336.

(3) The legal effect of a disruption of a Hindu undivided family is a question of law: *In the matter of Nathumal*, 9 Lah. 201. Whether an assessee is to be treated as a joint family, *i.e.*, as a Hindu undivided family or as an unregistered firm is a question of law: *In the matter of Gangasagar Ananda Mohan Saha*, 55 Cal. 953: A. I. R. 1928. Cal. 836.

(4) It has been held in the case of *Satchitananda Singha*. 84 I. C. 792, that whether income derived by an assessee as a member of a joint family, can be assessed jointly with his personal income is a question of law.

(5) Whether a return filed by an assessee showing blank in prescribed form is to be treated as no return is question of law. *In the matter of Ratanchand Dunichand*, 9 Lah. 188.

(6) In *In the matter of Pannalal*, 29 P. L. R. 204, it was held that where accounts of several years are mixed up, and an assessment is made at a flat rate, question of law arises.

(7) The question whether a pendency of an application under section 66(2) is a bar to proceeding under section 30 is a question of law : *In the matter of Chetyar Firm*, A. I. R. 1925 Rang. 245.

(8) Where an assessee disputes the authority of the Income-tax Officer to adopt a flat rate, question of law arises : *In the matter of Joyram Motiram*, A. I. R. 1929 Nag. 243.

(9) Correction of a supposed mistake without issuing a notice to the assessee under section 35 raises a question of law : *In the matter of Delhi Cloth and General Mills, Ltd.*, A. I. R. 1929 Lah. 326.

(10) Where the Income-tax authorities improperly exercise their discretion, the question whether the discretion has been judicially exercised by them or not is a question of law : *In the matter of P. K. N. P. R. Chetyar Firm*, 1 Rang. 203.

(11) Whether reasonable opportunity was given to the assessee under section 33 is a question of law : *In the matter of Satchitananda Singha*, A. I. R. 1925 Pat. 155.

(12) Where the Income-tax authorities failed to apply the plain provisions of law and where there has been an illegal assumption of authority under section 64, question of law arises : *In the matter of Dinanath Hemraj*, 49 All. 616.

(13) The question whether the authorities made an assessment legally or not under section 23 (4), is a question of law : *In the matter of Kusiram Koromchand*, A. I. R. 1925, Lah. 288, 14.

(14) In *In the matter of Bishnupriya Chaudhurani*, 50 Cal. 907 : A. I. R. 1924 Cal. 387, it has been held that "if an assessee states that he has no income from a certain source and the officer of the department disbelieved him, a question of law arises."

(15) Whether total destruction of a car or machine comes within the expression "obsolete" raises an important question of general interest and the Commissioner was asked to state a case : *In the matter of Ratan Singh*, 85 I. C. 478.

(16) In *In the matter of Bhola Saha Narasingh Das*, 116 I. C. 454, it was held that where a partner as partner invests money beyond his initial capital to the firm at an agreed rate of interest and the money is used for capital expenditure, the question whether the interest paid should form a deductable expenditure is a question of law. *Under this present Act the question does not arise.*

(17) In *In the matter of Jambudas Debidas* (unreported) where on the evidence only one legal inference is possible and that has not been drawn, a question of law arises.

But in respect of an order passed by the Commissioner under section 33 of the Income-tax Act, the Rangoon High Court has no jurisdiction either under section 66 or under section 45 of the Specific Relief Act to direct the Commissioner to state a case: *In the matter of V. E. A. Chatyyar Firm*, A. I. R. 1930 Rang. 37.

(18) The inference to be drawn from the fact as found by the Taxing authorities as to whether a person can be treated as "successor" of a former company and assessed on its profits prior to the conveyance of its business to the person, is a question of law: *Narayan Das* v. *C. I. T.*, A. I. R. 1937 S. 47 : 9 R. S. 147.

(19) Whatever conclusions are arrived at by the taxing authorities, they must have some material to support them, and in case it is contended that there is no material for those conclusion, the question does resolve itself into one of law—*Sardar Kripal Singh* v. *C. I. T.*, A. I. R. 1937 L. 305.

(20) A question of law for reference under section 66 can arise out of the decision of an Assistant Commissioner dismissing an appeal against an order of the Income-tax Officer under section 27 of the Act—*In re : Rajmoni Devi*, A. I. R. 1937 All. 770.

(21) Question of sufficiency of cause does not involve a question of law—*P. K. N. P. R. Firm* v. *C. I. T.*, 4 I. T. C. 87.

(22) Whether there was sufficient cause for not filing a return, is a mixed question of law and fact—*Kajari Mal Kalyan Mal* v. *C. I. T.*, 3 I. T. C. 451.

(23) The question whether a person is to be deemed as a "successor" within the meaning of section 26 (2) of the Act is primarily a question of fact. The facts may be such that the case presents no difficulty. But whenever the facts found to be proved give rise to a consequential question whether there is or is not a succession within the meaning of section 26 (2), question of law is involved because the proper legal effect of proved fact is essentially a question of law—*C. I. T.* v. *Manswaklal Zavery*, 1937 R. L. R. 26 : 168 I. C. 209 : A. I. R. 1937 R. 102.

(24) The origin and source of property, or income are matters of fact, whether property or income is self acquired or separate or ancestral or joint, is a question of law, or of mixed law and fact: *In the matter of Mooljı Sicca and five other Assessees*, 3 I. T. R. 123.

(25) Whether the pool is an assessee within the meaning of section 3 of the Act is clearly a question of law—*Lahore Ice Factories Association* v. *C. I. T., Lahore*, 2 I. T. R. 362.

(26) Where an assessment is made under section 23 (*4*) for failure to comply with the requisition under section 22 (*4*) and the assessee's plea of non-existence of accounts, is negatived; the only question of law that can arise is not whether the assessment under section 23 (*4*) is legal, but it would be a legitimate question of law to ask whether there is any evidence to justify the presumption of the Income-tax Officer as to the existence of books of accounts of the assessee—*Kritanlal Rasiklal* v. *C. I. T., Bombay*, 7 I. T. C. 209.

(27) Where it is admitted that a debt is irrecoverable and the assessee has abandoned his title to recover it, whether that irrecoverable debt represents loss of capital or loss of revenue, is a question of law—*Tahila Ram Amirchand* v. *C. I. T., Punjab*, (1935) 8 I. T. C. 345.

(28) The question as to whether in the case of a printing press "Type" is part of the machinery is a question of law. (*Corporation of Calcutta* v. *Cossipur Municipality*, 1922 P. C. referred to)—*Amar Singh* v. *C. I. T., Punjab*, 1935 I. T. R. 171.

(29) In *Hukumchand Jagadhar Mal*, 3 I. T. R. 211, it is said that *prima facie* the question as to whether a debt is bad is a question of fact to be determined by the Tribunal, still the question whether there is such evidence to support the conclusions arrived at by the Taxing authorities, will still remain a question of law.

Right of Hearing:

An assessee should normally be heard first—*C. I. T.* v. *Visalakshi Achi*, A. I. R. 1937 R. 238 : 170 I. C. 127.

Appearance of Advocate General for the Commissioner is not always necessary because most of these applications plainly do not raise any question of law and they can be dismissed *in limine* without hearing the Advocate General. When question of law arises, it may be adjourned for the appearance of the Advocate General—*C. I. T.* v. *Kokina Dairy*, A. I. R. 1938 R. 260.

In the earlier cases, decisions are also not wanting. Counsel for the assessee applicant has the right to reply and has necessarily the right to begin. *In the matter of Killing Valley Tea Co.*, 48 Cal. 161, it was held "when the reference was taken up for consideration, a question of procedure was raised as to who should begin. We ruled that the counsel for the company was entitled to begin. This is in conformity with the decision of *Marquis of Chandos* v. *Inland Revenue Commissioner*, 20 L. R. Ex. 269. The view that the objector who questions the assessment should begin and should have the right of reply is well

founded on principle and is supported by the decision of the House of Lords in *Drake* v. *Attorney-General*, 52 R. R. 122.

In *Ramanath Chettiar*, 53 I. C. 976, it was held "we think that on this reference made under section 51 of the Indian Income-tax Act, 1918, the assessee on whose application the reference was made by the Board of Revenue is entitled to be heard first".

Jurisdiction of High Court :

As under the old section so also under the new section, the power of the High Court stands where it was and consequently the old decisions stand binding with reference to the assessee and the Appellate Tribunal which will now function in place of the Commissioner. The old decisions are therefore shewn below. The High Court may refer any case back to the Appellate Tribunal and direct any condition or alteration in the statement. The Court is entitled to look at the documents and proceedings annexed with the statement of the case : In the matter of *G.I.M. Gregory*, 41 C. W. N. 132. High Court has got no unlimited power and it cannot examine books of accounts : *Binjraj Hukumchand* v. *C. I. T.*, 58 Cal. 1446.

The High Court has jurisdiction under section 66 to require the Commissioner to state a case where any application for reference has been refused by the Commissioner under section 66 (*2*). Where there is a question of law, the High Court is competent to interfere. In the case of *Gokulchand Jagannath*, 76 I. C. 139, it was held that the Commissioner has no power under the law to refuse to pass any order on an application or to delegate his authority to any subordinate officer, that the procedure adopted by the learned Commissioner in this case was quite illegal and that he himself ought to have passed definite orders accepting or rejecting the application, and the refusal by the Commissioner to state the case, whatever may be the grounds of his refusal, is tantamount to a refusal on the ground that there is no question of law involved and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, has power to require the Commissioner to state the case and to make a reference to the High Court. Justice Motisaghar remarks : "In the present case, however, the learned Commissioner has not passed any orders on the petitioner's application. Neither he accepted the application nor rejected it as required by clause (*2*) of the section. This procedure on his part is not warranted by any provision of law, and I am, therefore, of opinion, that the case must be referred back to the Commissioner with a direction that he should either draw up a statement of the case for

reference to the High Court or reject petitioner's application on the ground that there is no question of law involved therein."

But where findings essential for a decision of a case do not appear in the statement of the case, the Court is competent to ask the Commissioner for proper finding again : *In the matter of Martin & Co.*, A. I. R. 1929 Cal. 753.

Thus it is quite clear that section 66 (*3*) is confined only to cases of refusal by the Commissioner on the ground that no question of law is involved therein but not to refusal on any other ground : *In the matter of Madhavdas Jethabhai*, A. I. R. 1928 Bombay 434. The provisions of section 66(*3*) of the Act are not applicable to a case of refusal by the Commissioner to state a case on the ground that the application was made beyond the period of limitation.

When the question is ultimately one of facts to be decided on the findings of the Commissioner, the assessee has to establish either that the Commissioner had misdirected himself on some question of law or that there was no sufficient evidence to justify his finding : *Punjab Co-operative Bank* v. *C. I. T.*, 191 I. C. 548 (P. C.) : A. I. R. 1940 P. C. 230.

It is not open to the High Court to order the Commissioner to state a case and to refer a question of law which the assessee has not duly required the Commissioner to refer under section 66(*2*) ; (*C. I. T.* v. *C. P. L. R. Chettiar Concern*, A. I. R. 1934 R. 132 relied on) *Abba Dada & Co.* v. *C. I. T.*, 180 I. C. 675. But in *C. I. T.* v. *Maharajadhiraj Kumar Visheswar Singh*, A. I. R. 1940 Pat. 24, it has been held that the Commissioner is in duty bound to carry out the order of the High Court.

Where an appeal stands rejected on the ground that no appeal lies, a reference under sections 66 (*2*) and (*3*) was incompetent .. *Maharani of Jaypur* v. *C. I. T.*, 8 I. T. R. 489 ; but this is no longer a good law in view of the amendment allowing appeal even where assessment is made under section 23 (*4*) of the Act. (*Vide Haji Ali Mohammad* v. *C. I. T.*, 8 I. T. R. 243—this was a decision under the old Act).

So far as orders under section 33 are concerned, different High Courts have held different views. The Calcutta High Court in the case of *Kumar Sanat Kumar Roy*, 30 C. W. N. 131, has held that the High Court has no power under the section to order the Commissioner to state a case where a question of law arises before the Commissioner in a review proceeding under section 33. But (*Semble*) the High Court may possibly pass such an order under section 45 of the Specific Relief Act. Similar observations have been made by the Rangoon High Court in the

case of *Sinsenghin*, 89 I. C. 785 : A. I. R. 1925 Rang. 252, and also in the case of *Ratanchand Khemchand Motishaw*, 98 I. C. 299, by the Bombay High Court. The recent amendment has removed all complications by providing reference out of an order under section 33 to a limited extent.

In *In the matter of Abdul Kadir Marakyar*, 51 M. L. J. 650, it was held that the High Court can compel the Commissioner to state a case where any question of law is involved. This was decided on the principle in the case of *Alcock Ashdown Co.*, 28 C. W. N. 762.

In the unreported case of *Leongmoh & Co.*, it was held that where an assessee did not apply to the Commissioner of Income-tax under section 66 (*2*) asking him to state a case, the High Court is without jurisdiction.

Neither the Commissioner nor the High Court is competent to condone delay or to allow an application which is time-barred : *In the matter of Ratanchand Khemchand Motishaw*, 98 I. C. 299. In *In the matter of Bulchand Keshab Das*, A. I. R. 1930 Sindh 301, it was held that the application is not time-barred as the period of limitation is to be computed from the date of communication of the order. Jurisdiction to excuse delay is not contemplated—*In re* : *Lakshmi Sewak Sahu*, 6 I. T. C. 142.

The High Court has no power to decide a question which was not raised at the original court or before the Commissioner. In *In the matter of A. K. A. C. T. V. Chhetyar Firm*, 113 I. C. 810, it was held that under section 66 of the Income-tax Act, the Commissioner of Income-tax cannot be required to state a case upon points of law which were not raised before him and the High Court is *functus officio*. The High Court must confine itself within the points raised by the assessee before the court of first instance. In *In the matter of Makhan Lal Ramswarup*, 86 I. C. 27, Justice Walsh remarks : "It must also clearly be understood that this court cannot listen to suggested points of law, which were not first taken in the original proceedings before the Income-tax Officer, and also submitted clearly and definitely to the Commissioner by way of appeal."

Where the Assistant Commissioner has no occasion to deal with or apply his mind to a point of law, the point not having been raised before him, such point of law cannot be said to arise out of his order and the assessee cannot claim any reference in respect of that point—*Commissioner of Income-tax* v. *Sindh Light Railway*, 138 I. C. 673. High Court has to decide questions of law as distinguished from questions of substantial error in procedure—*In re* : *H. S. Gour*, 7 I. C. 317.

In the case of *Iswar Das Dharamchand*, 92 I. C. 249, Justice Broadway remarks : "It seems to me that the application under section 66 (*2*) to the Commissioner should state the question of law which the petitioner desires to be referred to the High Court and I am also inclined to the view that the application under section 66 (*3*) should also specify the question or questions of law which the applicants consider ought to have been referred to the High Court by the Commissioner. In the present case, 3 points were taken before the Commissioner in the application under section 66 (*2*). One question alone was raised in the application to this court under section 66 (*3*) and it seems to me that had the Commissioner confined his reference to the point raised before this court objections could not be taken to this action." In the case of *Radha Kishan & Sons*, 3 I. T. C. 73, it has been held that where the Commissioner makes a reference in respect of two points and declines to refer other points, the High Court is not competent to entertain under section 66 (*3*) any application filed beyond the prescribed time. The competency of the High Court to issue mandamus under section 66 (*3*) should be questioned at the time of hearing of the application made under the said section and not after the order passed on the application : *In re* : *Firm Gokulchand*, A. I. R. 1927 Lah. 449. The Lahore High Court in *In the matter of Rai Bahadur Karamchand*, 131 I. C. 639, came to the conclusion that an applicant cannot raise any new question before the High Court, if not already raised before the court of the first instance.

The High Court is out of jurisdiction when there is no refusal to state a case by the Commissioner and an application is not tenable : *In the matter of Govinda Saran*, 2 I. T. C. 45, 480. Under section 66 (*3*) an assessee can maintain an application for *mandamus* only on points of law raised before the Commissioner and he cannot be permitted to shift his ground. Where therefore, the assessee substitutes new points of law in such an application, the application should stand dismissed : *In the matter of A. K. A. C. D. V. Chettyar Firm*, 6 Rang. 492 : A. I. R. 1928 Rang. 28. When the computation of profit is reasonable, High Court will not interfere—*In re* : *Ashgar Ali and Mohamad Ali*, A. I. R. 1932 O. 10.

Under section 66 (*3*) the power of High Court is not limited to the precise question formulated by the assessee. High Court has power to formulate question of law—*Vadilal Lalubhai* v. *C. I. T.*, 9 I. T. C. 90 : 1935 B. O. M. 170. In *Dituram Idan* v. *C. I. T.*, 1937 I. T. R. 502, High Court framed proper questions of law. But the High Court has no power to ask the Commissioner to refer a question of law not raised in an application under section 66 (*2*) before the Commissioner—*In re* : *Babulal Rajgarahia*, 1936 I. T. R. 148.

High Court has power to ask the Commissioner to refer questions other than those which the parties have formulated, but in such matters, High Courts should be cautious to go outside the questions formulated—*Narayan Atmaram Patkar* v. *C. I. T.*, 7 I. T. C. 207 : 1934 I. T. R. 486. The power of the High Court is ousted so far as finding of fact is concerned and the High Court cannot disturb the findings—*Jangi Bhagat* v. *C. I. T.*, 3 I. T. C. 418. Where question of law is trivial and the amount involved is small, an application under section 66 (*3*) is incompetent—*Hoshnakmal Thakardaw* v. *C. I. T.*, 1933 L. 822.

In *Gangaram Balmukunda* v. *C. I. T.*, A. I. R. 1937 L. 721, it has been enunciated that under sub-section (*3*) of section 66, it is no where laid down that a question is to be formulated by the court issuing the mandamus. Further, sub-section (*5*) of the same section also does not confine the High Court to the decision of the question of law as formulated by the Commissioner of the court issuing the mandamus. On the other hand, it conferred upon it full power to decide the question of law in the form it actually arises from the statement of the case made by the Commissioner. It is therefore competent to the High Court to clarify the issue of law involved in the statement of the case made by the Commissioner and to give its consideration on the question really at issue, not to do so would amount to a refusal to do its duty.

Where the Chief Court when requiring the Commissioner to make a reference has not made any modification in the form of the question as stated in the application of the assessee the Commissioner is bound under section 10 of appendix (*vii*) of the rules of the Chief Court to state the point of law in the form stated in the application of the assessee—*C. I. T.* v. *Beharylal Ram Chandra*, 169 I. I. C. 404 : A. I. R. 1937 Oudh 416.

It is not open to the High Court on a reference by the Commissioner either to require him to submit other questions for decision by the High Court or to formulate other questions and to answer them : *Sonaram Nehal Chand* v. *C. I. T.*, A. I. R. 1935 L. 727 (*Radha Kisson & Sons* v. *C. T. T.*, 3 I. T. C. *followed*).—High Courts have no jurisdiction to interfere on the ground of erroneous findings of facts : *B. C. G. A. Limited* v. *C. I. T.*, A. I. R. 1937 L. 338. (*C. I. T.* v. *S. M. Chitnavis*, A. I. R. 1932 P. C. 178 ; *Dinsaw* v. *C. I. T.*, A. I. R. 1934 (P. C.) M180 ; *Raja of Pittapur* v. *Secretary of State*, 52 Mad. 538 P. C. relied on)—It has been held that the Commissioner has no power to impose a condition of refund of the tax paid and that a third party should undertake to be responsible for payment in case of any future assessment—*C. I. T., Bombay* v. *Bombay Trust Corporation*, A. I. R. 1936 P. C. 269. But this law has been considerably amended in the new proviso to section 66(*7*).

If an officer vested with the discretion to do or not to do a particular thing, does not misdirect himself in law, or in other words, does not exercise his discretion arbitrarily, High Court will not be justified in making any interference—*Ramrekha Mal & Sons Ltd.* v. *C. I. T.*, A. I. R. 1936 L. 830. Matters not in issue cannot be decided by the High Court.—*Anwar Kha Mohabub Khan* v. *C. I. T.*, 6 I. T. R. 581.

Fees :

An assessee shall have to deposit the fee of Rs. 100 in respect of an entire application and not in respect of each point raised : *In the matter of Chokalingam*, 2 Rang. 579 : 84 I. C. 521. But in the case of *Mothay Ganga Raju*, 100 I. C. 291 : 500 Mad. 335, it was held that it is not competent for four separately assessed person to combine their application for a case to be stated in one document, when points to be raised are the same. Their case must be separately stated and they must pay separate fee of Rs. 100 each. Where more than one assessee put in one joint petition with one fee of Rs. 100, the application is not proper even in the case of any one of them.

Chief Justice Robinson in the case of *Chokalingam*, 84 I. C. 521, remarks : "on the question of the fee, we are of opinion that it is to be paid in respect of the application and not in respect of each point raised therein. The section contemplates each application in a case and sub-section (*3*) shows that each case may raise several questions of law. Words in the singular should be read as including the plural, unless there is anything in the context to point to a different meaning."

Costs :

Costs are allowed at the discretion of the Court. The Court in awarding costs shall have to decide the amount to be awarded. Cases are not wanting where the High Court has allowed both parties to bear their costs. In the case of *Aurangabad Mills, Limited*, 45 Bom. 1286, it was held : "The costs of reference under section 51 of the Act of 1918, made at the instance of the Chief Revenue Authority of Bombay within the local limits of the original jurisdiction, should be taxed as on the original side." All submissions in which costs are involved must be argued at the time of hearing and before a final order is drawn up : *In the matter af Ramgopal Mulchand*, 87 I. C. 97.

An order awarding assessee costs of reference means the award of all costs for making the reference and includes the amount of Rs. 100, deposited by the assessee. *In re* : *Lachman-*

das Baburam A. I. R. 1933 All. 833. (*Radheylal Balmukunda*, A. I. R. 1933 All. 23, *relied on*).

Under section, 66 (*6*), the High Court has power to deal with all costs of and subsequent to the application of the assessee to state a case and make a reference to the High Court. It is entirely in the discretion of the taxing master to decide if a case is of sufficient importance to justify the Commissioner in getting the reference settled by the Government Solicitor and the Advocate General—*Chunilal Madhablal* v. *C. I. T.*, 39 B. L. R. 1209. The fee of Rs. 100, paid by assessee as fee of reference is usually allowed as part of cost to successful assessee : *Radheylal Balmukunda* v. *C. I. T.*, 4 I. T. C. 454 and *C. I. T.* v. *Milne*, 1934 I. T. R. 28. In *Lachmandas Baburam*, 1933 I. T. R. 275, it has been held that it should always be included in the cost of assessees who succeed. All questions relating to and involving costs must be determined at the time of hearing and before the final order is drawn up—*Ramgopal Mulchand* v. *C. I. T.*, 1925 All. 403.

In *C. I. T.* v. *Gopal Vaijnath Manohar*, A. I. R. 1936 B. 386, Beaumont, C. J., observed : "The fact that the section, whilst providing for the refund of the fee in the event of the reference not being effective, makes no provision for the return of the fee if the reference is effective and the decision of the court goes against the Commissioner, seems to suggest that the legislature intended that when the reference comes before the court the question of return of the fee should be in the discretion of the court as part of the costs of the reference, and as the payment of the fee is a necessary incident to the obtaining of a reference, it seems to me that under the Act it is legitimate to hold that this fee is part of the assessee's cost of the reference. We are told that it has not been the practice up to now to allow the fee in other High Courts. We have been referred particularly to a recent decision of the Rangoon High Court, *in re* : *C. I. T.* v. *J. K. Milne*, (1937) I. L. R. 11 R. 454, where the learned Chief Justice, although he rather indicates the view that if the matter had been free from authority he would have been disposed to hold that this fee was not part of the costs of the reference, nevertheless followed the practice of the High Courts of Madras, Allahabad, Patna and Lahore, and directed the fee to be treated as part of the assessee's costs.....In my opinion the fee is part of the assessee's costs of reference and consequently the order directing the Commissioner to pay the costs covers the return of the fee as being part of the out-of-pocket costs of the assessee. In cases in which the assessee is ordered to pay costs the court can, if it considers that credit should be given to the assessee for the fee, give the Commissioner his costs less Rs. 100".

The sum of Rs. 100 paid by an assessee with an application for reference is not a mere deposit or security for costs which may be incurred, but a 'fee' in the ordinary sense of the word ; it is nevertheless part of the costs of the reference and therefore within the discretion of the Court under section 66 (*6*), and the Court therefore may pass such orders in relation to it, as may in its judicial discretion seem proper.

If the assessee is successful he would be normally entitled to his costs including the fee of Rs. 100 ; but if he fails, he is not, in the absence of special circumstances, entitled to have the taxed costs payable to the Commissioner, set off against the fee of Rs. 100, and the balance, if any, refunded to him : *C. I. T.* v. *Central Popular Insurance Co., Ltd.*, 7 I. T. R. 556 : A. I. R. 1939 S. 364 : 185 I. C. 683. (*C. I. T., Burma* v. *J. I. Milne*, A. I. R. 1934 Rang. 4 ; *C. I. T.* v. *Monohar*, 38 B. L. R. 929 : A. I. R. 1936 Bom. 385 and *C. I. T.* v. *K. H. Hatrak*, 1937 I. T. R. 527 *referred to*).

In *Central Talkies Circuit* v. *C. I. T., Bombay*, 7 I.T.R. 628 : 180 I. C. 556, Beamount, C. J., observed that the right rule is that the costs should follow event. The ultimate decision upon the point of law, whether for or against the Commissioner, can have no bearing on the question whether there was a point of law upon which a case should have been stated.

The preliminary deposit of Rs. 100, made by an assessee under section 66 (*2*) of the Act forms part of the costs incurred in relation to the reference, and where an assessee is awarded costs of the reference, he is entitled to a refund of this deposit : *Mohamad Mohsin Bakhsh* v. *C. I. T*, 8 I. T. R. 247. (*C. I. T.* v. *G. V. Manohor*, 4 I. T. R. 417 : A. I. R. 1936 Bom. 385 : 165 I.C. 518 ; *C. I. T.* v. *J. I. Milne*, A. I. R. 1934 Rang. 4 : 148 I. C. 98 ; *Lachmandas Baburam* v. *C. I. T.*, 1933 A. I. R. All. 853 : 148 I. C. 352 : *Massey and Co., Ltd.* v. *C. I. T.*, 3 I. T. C. 302 ; *Radha Krishna* v. *C. I. T.*, 3 I. T. C. 73 and *in re* : *Radheylal Balmukund*, A. I. R. 1931 All. 23 : 130 I. C. 634 : 4 I. T. C. 454 *referred to*)

Under section 66 (*6*) costs are in court's discretion. The deposit is returnable under proviso 2 to section 66 in certain circumstances. There is however no provision in the Act that costs payable by an assessee should be paid or limited to Rs. 100 deposited under section 66 (*2*)—*C. I. T.* v. *Narainda's & Co*, 187 I. C. 893.

Reference, if can stay payment of Income-tax :

What the sub-section means is that mere filing of reference does not *per se* operate to stay income-tax demand. This is

exactly on the line of the English Income-tax Act, section 149(4) of the Act of 1918.

Under the previous Act the proviso to sub-section (7) of section 66 laid down that in case of the assessment being reduced, the amount over-paid shall be refunded with such interest as the Commissioner may allow.

But under the Amendment Act of 1939, the substituted proviso amends section 66 sub-section (7) so as to empower the High Court on receipt of intimation of appeal to the Privy Council by the Commissioner to authorise the Commissioner to withhold the refund to the assessee who succeeded before the High Court. If the assessee succeeds in the Privy Council, he will get the refund with interest.

Section 66 sub-section (7) enunciates that a mere intimation given by the Commissioner to the High Court that he intends to ask for leave to appeal to His Majesty in Council, or an application for leave to appeal to His Majesty in Council will operate to postpone payment of such refund until the disposal of the appeal by the Privy Council.

This amendment will hard hit the assessees in general. The insertion in the proviso to the sub-section (7) of section 66 appears mainly to counteract the decisions in the cases of *C. I. T., Bombay*, v. *Bombay Trust Corporation, Ltd.*, A. I. R. 1936 P. C. 269, and *C. I. T., Bombay* v. *Bombay Trust Corporation, Ltd.* A. I. R. 1930 P. C. 54, and cases of the nature of *C. I. T., Madras*, v. *S. L. Nathias*, A. I. R. 1938 Mad. 352 (Subsequently affirmed by the Privy Council).

High Court :

For the purpoes of the Income-tax Act, High Court shall mean the Highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates (General Clauses Act, section 3(*24*) Act X of 1897). The Court of the Judicial Commissioner in Sindh is the High Court within the meaning of section 66—*Indian Life Assurance Co.* v. *C. I. T.*, A. I. R. 1931 B. 150. In *Lucknow Ice Association* v. *C. I. T.*, 2 I. T. C. 156, it has been held that the Chief Court of Oudh is a High Court within the meaning of section 66 with jurisdiction to hear reference. The Court of Judicial Commissioner of Peshwar is also a High court—*Taragulı Bai* v. *C. I. T.*, 2 I. T. C. 164.

High Court, whether exercises Original or Appellate Jurisdiction :

There are conflicting decisions as to whether the High Court hearing reference under section 66, exercises original or appellate

jurisdiction. An application for reference is not by way of an appeal. "It is desirable to point out that section 66 under the new Act does not give a right of appeal. Persons assessed to income-tax should clearly understand that this Court is not a Court of appeal to which resort may be had if they happen to be dissatisfied with the decision against them" : *In the matter of Makhan Lal Ramswarup*, 86 I. C. 27.

Original or Appellate Jurisdiction :

In *In the matter of Anantapur Gold Mines* v. *Chief Commissioner of Income-tax, Madras*, 64 I. C. 682, it was held that issuing of an order under section 45 of the Specific Relief Act in the nature of a mandamus is an exercise of original jurisdiction within section 106(*2*) of the Government of India Act. Chief Justice Walsh observes : "The High Court have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any Act ordered or done in the collection thereof in accordance with the usage and practice of the country of the law for the time being in force.

"Now the issuing of the writ of mandamus to secure the performance of a public duty when no adequate remedy existed by action or otherwise was, it seems to me, clearly an exercise of original jurisdiction. It was a proceeding originating in Court issuing it, and might be directed in a proper case to any class of public officer, executive or judicial. It must also be regarded as having been within the original jurisdiction of the Supreme Court, because the Court had no appellate jurisdiction. Similarly, I think that the substituted jurisdiction to issue order under section 45 of the Specific Relief Act, is original jurisdiction. It may in terms be directed to any person holding a public office, and to any corporation as well as to any inferior Court of judicature. Nature of the jurisdiction exercised is the "same in each case and must, in my opinion, be considered an exercise of original jurisdiction. If this be so, I am unable, with great respect, to agree with the learned Judge that in making the order prayed for, we should not be exercising original jurisdiction in a matter concerning revenue."

But the Privy Council in the case of *Alcock Ashdown & Company* v. *Chief Revenue Authority*, 28 C. W. N. 762, held that the Court exercises appellate jurisdiction. The High Court cannot exercise an original jurisdiction. In their Lordships' view, "the order of a High Court to a revenue officer to do his statutory duty would not be the exercise of original jurisdiction in any matter concerning revenue."

The Calcutta High Court in the case of *Birendra Kishore Manikya* v. *Secretary of State*, 48 Cal. 766 : 25 C. W. N. 80,

held that the High Court exercised not an original but an appellate jurisdiction.

In *In the matter of Aurangabad Mills, Ltd.*, 64 I. C. 9, it was held by Chief Justice Macleod that the High Court exercises original jurisdiction and as such cost should be assessed as on the Original Side.

But the Calcutta High Court in the case of *Pravat Chandra Barua*, 29 C. W. N. 295, held that such a judgment is merely advisory and made by the Court in exercise of its consultative jurisdiction. It seems that the decision of the Calcutta High Court in the case of *Pravat Chandra Barua*, 29 C. W. N. 295, lays down the reasonable and correct procedure.

Contents of Reference :

While making a reference, the Appellate Tribunal is to state facts upon which the question of law arises, but it must be noted that under the new section, his opinion is not required. Apparently therefore, the old procedure continues minus the 'opinion of the Tribunal'. The old decisions when the Commissioner had the right to refer cases will therefore be found applicable and those cases are therefore shewn below.

In case of reference under section 66 it is the duty of the Commissioner to find all the relevant facts ; he is not merely required to state the questions of law and give his opinion ; he is required above all things to state the fact upon which the question of law must be decided : *In the matter of Gangasagar Ananda Mohon*, 111 I. C. 282 : 55 Cal. 953.

It is sufficient for an assessee to suggest to the Commissioner the question of law. It is for the Commissioner to find the facts first and then to state the point of law which arises out of those facts and on which he desires opinion of the High Court. He may then give his own opinion in the case : *In the matter of Bijraj Rangalal*, 106 I. C. 193.

It is quite proper for Income-tax Commissioner to state his opinion on the question involved. It is his first duty to state clearly and fully the material facts admitted or proved in evidence before him : *In the matter of Raja Shivaprosad Singha*, 82 I. C. 653 : A. I. R. 1924 Pat. 679. It is the duty of the Commissioner to settle the case under section 66 (*2*) in its final form if no suggestion, addition or amendment is received by him within 14 days, but if a question does arise, it is clearly his duty to state whether he and the assessee are able or unable to agree (*vide* Rule 12)—*In re : Kangra Valley Estate Co., Ltd., Lahore*, 146 I. C. 599.

It is clearly open to the High Court on an application under sub-section (*3*) of section 66 to direct the Commissioner to refer some question other than that which the parties have formulated. But generally the Court should be slow to go outside the question which the parties have themselves asked to the Commissioner to state.

When the Income-tax Officer and the Assistant Commissioner hold that no method of accounting has been regularly employed, that being a question of fact, the High Court is bound by such decision.

When an estimated assessment is made under section 13, the only question that can arise is whether the procedure is a legal one.

When the Income-tax Officer proceeds under the proviso to section 13, computation of profits, can be challenged if it is made on a wrong basis ; but in every case when action is taken under the proviso, a question of law does not necessarily arise—*Narayan Atmaram Patkar* v. *C. I. Tax, Bombay*, 7 I. T. C. 207.

But the Rangoon High Court in the case of *C. P. L. E. Chittyar Concern* v. *C. I. T., Burma*, 7 I. T. C. 200, has held that the Court at the time of hearing of an application by the assessee under section 66 (*3*) has seisin only of such questions of law as have duly been raised before the Commissioner has expressed his opinion. The ambit of section 66 (*3*) is not wider than that of section 66 (*2*) (*E. M. Chittyar Firm* v. *C. I. T., Rangoon*, 8 R. 437 *approved*). The Lahore High Court in the case of *Niki Devi* v. *C. I. T., Lahore*, 2 I. T. R. 365, has held that the High Court has no jurisdiction under section 66(*3*) to order the Commissioner to state a case and refer a question for the consideration of the High Court which the High Court has not duly required the Commissioner to refer (*C. I. T.* v. *P. L. L. Firm*, 1934 R. 132 *relied on*).

The High Court has no power under section 66 (*3*) to require the Commissioner to state a case on the question of arbitrariness and perversity of assessment under section 23 (*4*). The High Court can require the Commissioner to make a reference for decision by the High Court of a question of law only, if it arises from an order under section 30.

But when the Assistant Commissioner rejects what purports to be an appeal on the ground that none lies, he gives effect to the proviso to section 30 and his order should be deemed to be one under it and not under section 31 : *Jot Ram Sher Singh* v. *C. I. T., C. P. and U. P.*, 2 I. T. R. 129. (*Ananda* v. *C. I. T., B. & O.*, 5 I. T. C. 411 *dissented from* ; *Abdul Bari Chowdhury, in re*, 5 I. T. C. 352, *followed.*)

High Court has power under sub-section (*3*) of section 66, to direct the Commissioner to state a case raising questions of law which have not been formulated before him—*Vadilal Lalubhai Mehta* v. *Commissioner of I. Tax, Bombay*, 1 I. T. L. R. 325.

Questions of Fact :

The question whether the assessee is separate from his son is purely a question of fact for which the Commissioner can refuse to make any reference to the High Court : *Raja Sing Obera* v. *Commissioner of I. Tax, Punjab*, 2. I. T. R. 331. (*Biseswar Lal Brijlal* v. *C. I. T., Bengal*, 57 Cal. 1336 ; *Jathu Saha Nathu Saha* v. *C. I. T., Punjab*, A. I. R. 1932 Lah. 575 *approved.*)

When the evidence adduced before the Taxing authorities established that the method of accounting adopted by the assessee was such that profits and gains of the business could not be properly deduced therefrom, it is a question of fact—*Niki Debi* v. *C. I. T., Punjab*, 2 I. T. R. 365.

When the Income-tax Officer acts on adequate evidence under section 13, no question of law arises before the High Court under section 66 (*2*)—*Diwanchand* v. *C. I. T., Punjab*, (1934) 2 I. T. R. 382.

On an assessment under section 23 (*4*) for non-compliance of the notice under section 22 (*2*), no question of law arises for a reference to the High Court. The decision of the Income-tax Officer that no sufficient cause for non-submission of the return was shown by the assessee, upon whom the onus lay, is a question of fact.

It is entirely within the discretion of the Income-tax Officer to issue notice under section 22 (*4*) of the Act and the omission to do so before acting under section 23 (*4*) does not raise any question of law for reference to the High Court : *A. W. Dalal* v. *C. I. T., C. P. and Berar*, (decided on 22nd June 1934) ; *R. S. Rochi Ram Khattar* v. *C. I. T., Punjab*, (1934) 2 I. T. R. 442.

The High Court is bound by the findings of fact arrived at by the Income-tax authorities : *In the matter of Commercial Properties, Limited*, A. I. R. 1928 Cal. 456. Thus the High Court has no jurisdiction to consider the findings of fact arrived at by the Income-tax authorities even where the grounds are unsound or where no grounds are stated at all. The Income-tax Act does not impose on the appellate authority to set out fully the reasons for decision and the High Court cannot interfere : *In the matter of M. Chetyar Firm*, A. I. R. 1930, Rang. 224 : 127 I. C. 468. The Calcutta High Court has arrived at a similar

conclusion, provided the finding of the tax authorities has not resulted in total failure to give effect to the provision of law. In the case of *Feroj Saha*, 125 I. C. 191 : A. I. R. 1930 Lah. 197, it was held that question of law arises where it can be shown that discretion has been arbitrarily exercised. It is not open to the High Court to go into the facts of the case and to determine whether Income-tax Officer was right in his findings of facts. Findings of facts arrived at by Income-tax authorities are not ordinarily open to review by the High Court unless there is evidence to support them—*In re* : *S. P. K. A. A. M. Chettyar Firm*, A. I. R. 1932 R. 66.

High Court is precluded from looking at the findings of fact except in so far as it is necessary to see whether there was any evidence which could have supported those findings (*vide American Thread Co.* v. *Joyce*, 58 S. J. 308). Except in cases when an Income-tax authority has proceeded in a wrong construction of the Act, an inference drawn by him from the evidence cannot be challenged solely on the ground that a different conclusion could reasonably be reached from the same facts by the Assistant Commissioner (*vide Farmar Company Cotton's Trustees*, 31 T. L. R. 478)—*Hemraj Kanji*, A. I. R. 1933 S. 146.

Questions of Fact, Instances of :

(1) The question whether an assessee produced all his books of accounts is a question of fact pure and simple : *In the matter of Joharmal Uttamchand*, 2 I. T. C. 301.

(2) Whether the assessee was prevented by a sufficient cause in complying with the requisition under sections 23 (*2*) and 22 (*4*) is purely a question of fact : *In the matter of Shivya-Protap Bhatadu*, 84 I. C. 131 : A. I. R. 1924 Mad. 880.

(3) In *In the matter of Bhagat Halwai*, 4 I. T. C. 48, it was held that where an Income-tax Officer forms an opinion from local inspection and determines the assessable income of the assessee in that way, after rejecting the evidence adduced, the question is one of fact.

(4) In *In the matter of Babu Sahib*, 2 I. T. C. 502, it was held that where an assessee gets a share of the profits of business by way of remuneration, the finding that he is not a partner is a question of fact.

(5) In *In the matter of Arunachaalam Chatyar*, 2 I. T. C. 38, it was held that whether a trust is revocable or not is a question of fact. Whether a particular expenditure is current or capital is a question of fact : *In the matter of Rattan Singh*, 85 I. C. 478, *vide* also the case of *Ramanath Reddiar*, 100 I. C. 601.

(6) In *In the matter of Doyaram Shovaram*, 2 I. T. C. 226, it was held that in the absence of clearly and properly kept accounts, the charging of a flat rate is not a question of law but is a question of fact.

(7) In *In the matter of Maharaja of Darbhanga*, A. I. R. 1930, Pat. 81, it was held that whether the assessee's accounts disclose true income or not, are questions of facts. (*James Cycle Co.* v. *Commissioner of Inland Revenue*, 12 T. C. 103 *followed.*)

(8) In *In the matter of Chanlochwan*, A. I. R. 1929, Rang. 102, it was held that whether a statement is incomplete or not is purely a question of fact.

(9) In the case of *P. K. N. Chettyar Firm*, A. I. R. 1930, Rang. 33, it was held that whether sufficient cause has been shown under section 27 is not a question of fact but is a question of law.

(10) In *In the matter of C. A. M. K. Kassi Chetyar*, 2 I. C. 98, it was held that the exercise of the discretion by the Assistant Commissioner in refusing to condone delay in presenting an appeal under section 30 is a question of fact . *vide* also the case of *Hukumchand Hardwat Roy*, I. T. C. 140.

(11) The question whether assessee is a member of the joint family or not is a question of fact : *In the matter of Makhon Ramswarup*, 86 I. C. 27.

(12) It is the duty of the Commissioner to state facts and then to formulate a question of law—*In re* : *Bai Sakina Boo*, A. I. R. 1932 B. 116.

(13) Remittance from foreign country, whether out of capital or profits is a question of fact : *V. P. R. P. L. Family* v. *Commr. of Income-tax*, A. I. R. 1933 R. 218. (*Scottish Provident Institution* v. *Allan*, (1903) A. C. 129 *followed.*)

(14) Whether accounts are regular or not are questions of fact—*Wall* v. *Cooper*, 14 T. C. 552.

(15) Whether an income is casual and of non-recurring nature or whether it is an addition to remuneration is a question of fact—*In re* : *Lakshman Chettier*, A. I. R. 1930 Mad. 21.

(16) Whether an assessee occupies a building solely or with another is a question of fact (*Hawken* v. *Compton*, 8 T. C. 306).

(17) Whether accounts kept are on mercantile or cash basis is a question of fact—*In re* : *Feroze Saha*, A. I. R. 1930 Lah. 187.

High Court is Competent to Require the Commissioner to state Facts and then Laws :

While is is quite proper for the Income-tax Commissioner in making a reference to place his opinion on the question involved, it is his first duty to state clearly and fully the material facts admitted or proved in evidence before him : *In the matter of Sri Shiboprosad Singha*, A. I. R. 1924, Pat. 679 : 82 I. C. 653.

The question whether a point of law arises on any given finding or whether in reality the alleged point of law is merely the conclusion of facts, depends to a great extent on the particular circumstances of each case. The question whether expenditure in a shipowner's business is current as opposed to capital must essentially be one of degree and, therefore, the effect of decision on question of fact must always be considered by an appellate court from the point of view whether although the decision is undoubtedly one of fact, there is sufficient evidence to come to a proper conclusion. If a decision of fact is founded on insufficient evidence, a question of law is produced which may be considered by any Court of Appeal. But if the lack of evidence and its insufficiency of materials is due to the neglect of the assessee, and insufficiency cannot be used to throw over the question of fact a cloak of law : *In the matter of Ramanath Reddier*, 110 I. C. 601 : A. I. R. 1928 Rang. 15. In cases under section 66 (*3*) it is the duty of the Commissioner to find all the relevant facts. The Commissioner must, above all things, state the facts, upon which the question is to be decided : *In the matter of Gangasagar Annadamohon Saha*, 55 Cal. 953 : 111 I. C. 828.

In *In the matter of Krishna Kumar and Mahendro Kumar Ghosh*, 35 C. W. N. 312, it has been held that the order passed by the Commissioner on the application filed before him under section 66 (*2*), giving his reasons as to why he decided to refer a case or why he will not refer some of the questions and not the other is one thing, the case stated is another. In strictness and for the sake of convenience, the two should not be comprised in one document.

In the case stated should be included only the point, the Commissioner intends to refer, and the relevant fact on the point. Question not meant for reference should not find a place there.

In a reference under section 66 (*2*) it is not the business of the High Court to decide abstract propositions of Income-tax Law, the question propounded should be formulated in a proper way, as concrete case arising out of the particular fact.

"This case must go back to the Commissioner and I must beg him, first of all, to make up his mind what question or questions

he is going to refer to this Court. If he is not going to refer any questions then he should leave out all mention of it in the case. When he knows what he has to refer and he states the facts relevant to those points, it will be possible for this Court to deal with the matter. I would add if the Commissioner thinks that there is a point of law proper to be referred, he is not bound to refuse merely by reason that the assessee has not framed it properly himself and than refer. The case must go back to the Income-tax Commissioner to state a proper case". The High Court has power under section 65 (*5*) to amend the questions asked by the Commissioner by raising the real question and then answering that question. *In the matter of National Mutual Life Association of Australasia*, A. I. R. 1931, Bom. 448. (*In re*: *Sibaprasad Gupta*, A. I. R. 1929, All. 819, *In re*: *Kajarimal Kalyanmal*, A. I. R. 1930, All. 209, *followed.*)

In *In the matter of Gakulchand Jagannath*, 76 I. C. 139, it was held that the Commissioner has no power under the law to refuse to pass any orders on an application or to delegate his authority to any subordinate officer, but that the Commissioner ought himself to have passed definite orders accepting or rejecting the application. It was held also, that the refusal by the Commissioner to state the case, whatever might be the grounds for the refusal, was tantamount to a refusal on the ground that there was no question of law involved and that the High Court, if not satisfied with the correctness of the Commissioner's decision, has the power to require the Commissioner to state the case and to make a reference to the High Court.

Mandamus:

Where the Court has no jurisdiction under the Act, section 45 of the Specific Relief Act gives jurisdiction. In *Alcock Ashdown & Co.*, 47 Bom. 742 (Privy Council), the opinion of Lord Phillimore is worth quoting: "To argue that if the Legislature says that a public officer, even a revenue officer, shall do a thing and he without cause or jurisdiction refuses to do that thing yet the Specific Relief Act would not be applicable and there would be no power in the Court to compel him to give relief to the subject, is to state a proposition to which their Lordships must refuse assent. Section 45 of the Specific Relief Act enables any of the three High Courts to make an order requiring any specific act to be done . ...by any person holding a public office, whether of a permanent or temporary nature or by any Court of judicature provided that such doing or forbearing is under any law for the time being in force, clearly incumbent on such person or Court in his or its public character or on such corporation in its corporate character and subject to other conditions not material to this case."

In the case of *Mahamad Farid Mahamad Safi*, 9 Lah. 317, it was held that powers under section 45 (*1*) of the Specific Relief Act can be exercised only by the Calcutta, Madras and Bombay High Courts and that the Lahore High Court cannot issue any mandamus.

In *In the matter of Doriaswamy Ayer & Co.*, 45 Bom. 1064, the High Court was moved under section 45 (*1*) of the Specific Relief Act and in the case of *Haji Abdulla Shahi & Co.*, 70 I. C. 30, The Board of Revenue referred to the High Court when an application was made under the Specific Relief Act.

What is sufficient cause within the meaning of section 27 is purely a question of the fact to be determined by the Income-tax Officer while making an adjudication. However harsh, baseless and injudicious the decision may be, section 45 (*1*) is inapplicable. In the case of *Shivapratap Bhattadu*, 84 I. C. 131, it was held : "If I were sitting as a court of appeal or revision, I would have no hesitation in characterising the proceeding as extremely harsh and the assumption baseless and in remanding the case for disposal on the merits. But the question is whether acting under section 45 of the Specific Relief Act, I can find that any case has to be stated. What sufficient cause is, is a question to be determined by the officer who has to deal with the application for setting aside the *ex parte* assessment and disposing the matter on an inspection on the account books. Where on the facts about which there is no dispute, that officer thinks that sufficient cause has not been shewn, it is difficult to see how the issue of an order directing him to refer the question as to what the meaning of 'sufficient cause' is, would help the petitioner..... ..... This is a matter, I think, where there has been an injustice to the petitioner which I am sorry, I cannot remedy by proceeding under section 45 of the Specific Relief Act."

In the case of *Anantapur Gold Mines Ltd.*, 44 Mad. 718 : 64 I. C. 682, it was held that section 16 (*2*) of the Government of India Act and section 62 of the Income-tax Act prohibited the High Court from entertaining any application under section 45 in the nature of a mandamus for the purpose of compelling the Revenue Board to refer the matter to the High Court under section 51 of the Income-tax Act : *Spooner* v. *Juddow*, 4 M. I. A. 353 *followed*. The assessee has no right to apply to the Court for an order in the nature of a mandamus under Specific Relief Act, requiring the Commissioner to state a case and refer a question of law because a "Specific and adequate legal remedy" in that behalf is available to the assessee under secs. 66 (*2*) and 66 (3).....*Commissioner of I. Tax, Burma* v. *C. P. L. E. Chettyar Concern*, A. I. R. 1934 R. 132. (*Sein Seng Hen* v. *Commr. of I. Tax*, A. I. R. 1925 R. 252 *referred to* ; *In re* :

Shiba Prosad Gupta, A. I. R. 1929 All. 819, *In re* : *Kajorimal Kalyanmal*, A. I. R. 1930 All. 209 *dissented from.*)

The above case was overruled by the decision of the Privy Council in the case of *Alcock Ashdown & Co., Ltd.*, 47 Bom. 742. Similarly in the case of *Abdul Kadir Marakyar & Co.*. 49 Mad. 725, it was held that the High Court is competent to issue a writ of mandamus directing the Commissioner to make a reference where any question of law is involved, although the Rangoon High Court in the case of *V. E. A. Chhatear Firm*, 7 Rang. 581, held that the High Court cannot exercise its discretion under section 45 of the Specific Relief Act in an order under section 33. The decision was to the effect that the Court exercising discretionary power is not justified in disregarding those conditions and holding by a reference to a General Act that the Court has power beyond those provided in the Special Act, that it will be an exercise of power which is not vested by law. To me it seems that in the absence of any express provision in the Income-tax Act, the right of any party to move the High Court under section 45 of the Specific Relief Act can be taken away by implication. The principle of all fiscal legislation is that no strained construction ought to be put to make liable to taxation that which would not otherwise be liable but a fair and reasonable construction ought to be put. There is no express obligation upon the Commissioner to state a case on an order arising under section 33, nor has the High Court power to order him to do so under section 45 of the Specific Relief Act—*Tata Hydro Electric Agency, Ltd.* v. *Commissioner of Income-tax, Bombay*, A. I. R. 1934 B. 62. The recent amendment provides reference out of an order under section 33.

Review of Judgment :

No application can be entertained under section 66 for a review of judgment of the order passed by the High Court. The said judgment is neither a decree nor an order under section 2 (*2*) of the Civil Procedure Code : *In the matter of Kajorimal Kalyanmal*, A. I. R. 1930 All. 211 ; *vide* also the case of *Satchitananda Singha*, 84 I. C. 792.

Letters Patent Appeal :

In *In the matter of Provat Chandra Barua*, 29 C. W. N. 398, the Calcutta High Court held that the judgment given on a reference under section 66 (*2*) is not a judgment within the purview of section 15 of the Letters Patent and as such is not appealable under the provisions of law. Such a judgment is merely advisory and made by the Court in exercise of its consultative jurisdiction.

Similarly in the case of *Bulaqui Sahi*, 86 I. C. 870 : 6 Lah. 30, it was held that the decision of a single Judge on a point of law under section 66 is not a judgment within the purview of clause (*10*) of the Letters Patent and is not appealable.

But an order of a single Judge dismissing an application to compel a reference on the ground that there is no question of law is a judgment appealable under the Letters Patent : *In the matter of Taharmal Uttamchand*, 2 I. T. C. 301. "As noted by their Lordships in their decision, the matter is not free from difficulty. In *Tata Iron and Steel Co., Ltd.*, v. *Chief Revenue Authority of Bombay*, 23 Bom. L. R. 1102, it was held that the decision, judgment or order made by the Court under section 51 of the Act of 1918 was merely advisory and the respondent contended that if the final order of the Court is merely advisory, a preliminary order refusing to call upon the Commissioner to state the case must be of the same nature. The cases, however, are distinguishable, for the Income-tax Act of 1922 differs from that of 1918 in this respect that under the latter statute the Commissioner of Income-tax was given the power to state the case and refer to this Court at his discretion whereas in the Act now in force he can be directed by this Court to state the case even after he has refused to do so at the instance of the assessee. There can be no doubt that the order of the learned Judge in Chambers is a final judgment so far as the proceedings in the Court are concerned and that an order issued by this Court to the Commissioner under section 66 (*3*) of the present Act is not merely advisory but is mandatory and must be obeyed by that official."

Decision of the High Court :

Where a decision is arrived at by the High Court, the Commissioner is to take steps accordingly in that case ; but other assessee cannot claim the same benefit by virtue of a particular ruling in a particular case, of course the Commissioner can decide those cases out of his own accord under section 33 in the light of decision arrived at by the High Court.

Chief Court and the Court of Judicial Commissioner :

The Judicial Commissioner or the Chief Court of Oudh are High Courts within the meaning of section 3 (*24*) of the General Clauses Act. The High Court in section 66 of the Income-tax Act with reference to assessment of an assessee resident in North-west Frontier Province is the Court of the Judicial Commissioner of the North-west Frontier Province and not the Lahore High Court which has no jurisdiction to entertain a reference with such assessment : *In re : Toragulbai*, 8 L. 335.

But in *In the matter of Lucknow Ice Association*, A. I. R. 1926 Oudh 191, it was held that by virtue of sections 3 and 8 of the Oudh Court's Act, 1925, read with section 3 (24) of the General Clauses Act, *the Chief Court of Oudh is a High Court* within the meaning of section 66 of the Act with jurisdiction to hear references. *In the matter of Khemchand Ramdas*, A. I. R. 1932 S. 1, it has been suggested that the assessee in Sind shall be placed in the same position as an assessee amenable to the jurisdiction of a High Court referred to in section 45 of the Specific Relief Act, so as to secure him the undoubtable right to have questions of law arising out of appellate officer's orders decided by a Court of law, when the Commissioner refuses to state a case on fanciful and unfounded grounds.

Has the High Court Power to examine Books of Accounts and come to finding of facts contrary to those arrived at by the Commissioner :

In *In the matter of Bengraj Hukumchand*, 35 C. W. N. 589, it was held that where a person is assessed in the ordinary way under section 23 (3) of the Income-tax Act, the authorities, it is true, cannot assess him upon any figure of profits not warranted by the evidence before them But where the transactions show a profit of a certain amount in the year concerned, if the assessee wants to deduct therefrom a certain sum as bad debt, the burden is upon him to prove the debt and prove the claim to set it off.

"The assessees have in this case asked us to receive in evidence certain copies of accounts said to appear in books of account which were not produced to Income-tax authorities at any stage. They ask us on the basis of these extracts to revise the Commissioner's decision upon the fact and to say that we are satisfied that the claim is made out. This shows an utter misconception of the procedure applicable to a reference under section 66 of the Act. *It is not open to any assessee to ask this Court upon such a reference to examine his books of account and come to findings of fact contrary to those arrived at by the Commissioner in the case stated. Still less it is intended that this Court should be a last resort for the production of books which were not produced before any one of three Income-tax authorities which are to deal with the case.*"

Imposition of Penalty under section 28 :

Where the Commissioner sets aside a penalty imposed under section 28 by the Income-tax Officer and after having given an opportunity to show cause, himself imposes a penalty, it is not open to the High Court to call upon the Commissioner to state

a case for reference to the High Court : *In the matter of Jamna Bhagat Ramabatar*, 121 I. C. 332 . A. I. R. 1930 Pat 127. (A. I. R. 1924 Pat 644 *distinguished* and A. I. R. 1926 Pat. 352 *doubted*)

"The plain language of section 66 does not empower this Court to require the Commissioner to state a case in respect of an original order passed by him and not in respect of an order passed in a matter which came before him on an appellate order by the Assistant Commissioner."

Judgment by the High Court :

Even if a judgment delivered by the High Court on a reference under the Income-tax Act, expounds a wrong construction of the Act against the Revenue authorities, if no appeal is preferred, the same must govern the relation of parties in the particular case—*The Commissioner of Income-tax, U. P.*, v. *Tehri Garhwal State through Ramprasad, Principal Officer*, 38 C. W. N. 314 (P. C.) : A. I. R. 1934 P C. 34.

Vakalatnama :

Where a pleader is authorised under a vakalatnama to appear under section 66 (*2*) in particular, and generally "for all purposes under all sections of the Indian Income-tax Act", his power to act by virtue of the vakalatnama is unlimited, he can withdraw an application and his actions are binding on the assessee : *Mussammat Hashen Banu Bibi and others* v. *C. I. T., Bengal*, 8 I. T. R. 482.

Limitation Act :

Section 5 —Any appeal or application for review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force, may be admitted after the period of limitation prescribed therefor, when the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation, may be sufficient cause within the meaning of that section.

Reference Incompetent :

Where the question does not arise in appeal, a reference is incompetent on that point : *In re* : *A. K. R. P. L. A. Chettyer Firm* v. *Commissioner of Income-tax, Burma*, 132 I. C. 718.

Difference Between Judges :

In case of difference between two judges who referred the matter to the Chief Justice and who ordered for a Full Bench reference, the contention that as they had differed they are *functus officio* and as there was no majority, one way or the other, the opinion of the Commissioner should prevail, is totally erroneous : *In re : Dr. Umar Baksh* v. *Commissioner of Income-tax, Punjab*, 131 I. C. 690.

Whether in a case where the subject matter involved is Rs. 10,000 or more in value, the refusal to issue a mandamus gives the applicant an appeal to the Judicial Committee as of right ?

In *In the matter of Feroze Saha* v. *Commissioner of Income-tax, Punjab*, 132 I. C. 704. Justice Broadway observes : "It was, however, clearly held that an order refusing a mandamus was a judgment and in this view I concur. That the judgment refusing a mandamus was final, is also to my mind perfectly clear. The only question for decision on an application under section 66 (*3*), Income-tax Act, whether a mandamus should or should not issue, is, therefore, a final one so far as this Court is concerned. The refusal must, therefore, in my opinion, be regarded as a final judgment. As pointed out in my order of reference, the refusal of the application was made in the exercise of this Court's original jurisdiction, I would merely refer to page 732 of 47 Bom.—*Tata Iron and Steel Co., Ltd.* v. *Chief Revenue Authority, Bombay*, (2 I. T. C. 301).....

"I would, therefore, hold that an order refusing to issue a mandamus must be passed by this court on its original side and amount to a final judgment as that, therefore, the question of refund should be answered in the affirmative."

Deceased Assessee :

Strictly speaking, heirs of a deceased assessee are not assessees, but the Patna High Court in the case of *Maharaja of Darbhanga*, A. I. R. 1930 Pat. 81, has allowed heirs to be substituted and heard in petition of reference. Even in appeal cases heirs are allowed to participate. When the High Court has been set in motion, there is no bar to have the reference answered. Section 24-B now provides that heir, administrator, etc., can now step into the place of the deceased assessee under certain circumstances. It is said that a reference does not abate after assessee's death. It may be continued by the legal representative : *Hemming* v. *Williams*, (1871) L. R. 6 C. P. 480 : *Smith* v. *William*, (1922) 1 K. B. 158 : *In re : Maharaja of Darbhanga*, A. I. R. 1930 Pat. 81. The Legislature has said very definitely that once a reference

has been made under para (*1*) or an application has been made either under para (*2*) or (*3*), the proceedings have commenced, they must go forward until a final decision is reached by the High Court, provided that there is a question of law arising out of the assessment. There shall be an adjudication.

Reference on findings of fact :

Findings of fact as to what is a bad debt and when a debt became bad are matters which cannot be raised in reference to High Court : *C. I. T.* v. *Seth Birdichand,* 6 I. T. R. 367. When the Commissioner refuses to refer an application to the High Court under section 66 (*2*) on the ground that questions as formulated do not arise out of the appellate order under section 31 or section 32, on an application under section 66 (*3*), High Court will decline to interfere as the questions raised are foreign to the issue : *Anwar Khan Mahaboob Khan* v. *C. I. T.,* 6 I. T. R. 581. When the Income-tax authorities do not misdirect themselves or do not misapply the principles, High Court will not interfere with the findings of fact : *Dith Ram Idan* v. *C. I. T.,* A. I. R. 1937 L. 814.

The jurisdiction exercised by the High Court under the Income-tax Act is a special jurisdiction as remarked by their Lordships of the Privy Council in 4 I. T. R 339 and is consequently circumscribed within the limits specified in the statute. The power of revising, reviving or interfering in any other manner with an assessment made under section 23 (*4*) being nowhere conferred upon the High Court expressly or impliedly by the Income-tax Act, no such power can be exercised merely by virtue of the general inherent jurisdiction of the High Court, if any : *Somchand Malukchand* v. *C. I. T.,* A. I. R. 1938 L 545.

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 any other law for the time being in force :

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

Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of

the North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail.

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

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

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

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

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

(*5*) Nothing in this section shall be deemed—

(*a*) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the

presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

66-A :

An application for review of judgment passed in a reference under section 66 of the Act is not maintainable, for a tribunal which determines the questions referred under that section does not operate as a Civil Court so as to attract the provisions of the Civil Procedure Code . *Seth Mathuradas* v. *C. I. T.*, 8 I. T. R. 412. (*C. I T., Bengal* v. *Hungerford Investment Trust Ltd.*, 3 I. T. R. 188 ; *Delhi Cloth Mills* v. *C. I. T.*, A. I. R. 1927 P. C. 242 and *Emperor* v. *Kajorimal Kalyan Das*, 4 I. T. C. 60 *referred to*).

66-A (2) :

An order of the High Court directing the Commissioner to state a case on a point of law is an interlocutory order in a matter in which the High Court acts in an advisory capacity, and the High Court has therefore no jurisdiction to grant a certificate permitting an appeal to His Majesty in Council from such an order, under clause 40 of the Letters Patent : *C. I. T.* v. *Voorasreermulu Chetty*, 7 I. T. R. 566 : 185 I. C. 465.

Notes :

By the Income-tax Amendment Act of 1926, section 66-A confers on the party a right of appeal to the Privy Council. Before the addition of this section, there was no appeal to the Privy Council : *Tata Iron & Steel Co.*, 47 Bom. 724 : 25 Bom. L. R. 208 : 39 C. L. J. 16 : 28 C. W. N. 307 : 74 I. C. 469.

Hearing of the reference :

References are to be heard by a Bench composed of at least two Judges of the High Court and the decision of the majority Judges shall be binding. But there are reported cases where it can be seen that references were often heard by a single Judge of the High Court. In the case of *Probhat Chandra Barua*, 52 Cal. 546, it was held that an appeal is incompetent against the decision of a single Judge. "A question has been raised," observes Mr. Justice Chatterjee, "by the learned Counsel for the appellant that the decision of Mr. Justice Rankin, who was the senior Judge, was held to have prevailed, was without jurisdiction. But that is a matter upon which both the learned Judges were agreed and this Bench constituted to hear the appeal under

section 15 (*3*) of the Letters Patent is not competent to consider the question as to whether the decision of the Division Bench is or is not right."

In the case of *Bulaki Saha*, 88 I. C. 570, it was held on the authority of *Tata Iron and Steel Works, Ltd.*, 47 Bom. 724, Privy Council, that the decision of a single Bench is not a judgment within the meaning of section 10 of the Letters Patent and as such is not appealable.

But under section 66-A all references are to be heard by a Bench of two Judges at least and in case of divided opinion, the matter is to be referred to a third Judge and an appeal against that is permissible.

Appeal to Privy Council :

High Court cannot grant leave to appeal to His Majesty in Council from an order to the High Court under section 66 (*3*) refusing to require the Commissioner to state a case : *In the matter of Chettyar Firm*, A. I. R. 1930 Rang. 274, (40 Cal. 21, Privy Council, *relied on* ; A. I. R. 1927 Privy Council 242 ; 21 I. T. C. 30 : A. I. R. 1921 Bom. 378 and A. I. R. 1923 Privy Council 138 *referred to.*)

Section 66-A confers a right of appeal to His Majesty in Council from a judgment of a High Court delivered on a reference made under section 66-A of the Act. But the appeal thereby provided is, by the express terms of sub-section (*2*) of section 66-A, confined to a case which the High Court certifies "to be a fit one for appeal to His Majesty in Council." These words are textually the same as the concluding words of clause (*c*) of section 109 of the Civil Procedure and coupled with the carefully limited referential words to the Code of Civil Procedure in sub-section (*3*) of section 66-A, suffice in their Lordships' judgment to exclude from any right of appeal cases which fall within the requirements of section 110 of the Code and are operative to confine that relief to cases which are certified to be otherwise fit for appeal to His Majesty in Council.

The Judicial Committee has held that section 66-A added by the Income-tax Amendment Act XXIV of 1926 which came into force on the first of April, 1926, conferred for the first time a right of appeal to His Majesty in Council and had no retrospective operation and accordingly there was no appeal at all from an order of the High Court made before and, therefore, final at the date when the section came into force : *In the matter of Delhi Cloth and General Silk Limited*, 47 C. L. J. 1, (Privy Council) ; (*Colonial Sugar Refining Co.* v. *Irving*, 1905 A. C. 369 *followed*). (*Vide* also the case of *Commissioner of Income-tax*,

Bengal v. *Shaw Wallace & Co.*, 36 C. W. N. 138, for permission to prefer an appeal in the Privy Council.)

An order under section 66(*3*) refusing to issue a mandamus to the Commissioner requiring him to state a case, passed by the Assistant Commissioner is a Judgment within the meaning of clause 29 of Letters Patent and is appealable to the Privy Council, if the value of the subject matter involved exceeds Rs. 10,000 : *Toramal Uttam Chand*, 2 I. T. C. 301, (*Tata Iron & steel Co., Ltd.*, A. I. R. 1923 P. C. 148 *referred to*) ; *In re* : *Feroze Saha*, 32 P. L. R. 234.

An application for a certificate that the case is a fit one to be taken on appeal to the Privy Council is made to the High Court under section 66-A. The case is governed by Article 181, Limitation Act. In such cases the date of judgment is the date from which time has to be counted. Under section 12 of the Limitation Act, the party in such cases is entitled to the time required to obtain a copy of the judgment.

Question of Importance :

The proper meaning of the words "previous year" under section 2 is a matter of importance and leave to appeal was sanctioned : *M. E. R. Malak*, 35 C. W. N. *notes portion*. This empowers the Privy Council to hear appeal in cases which are certified by the High Court to be fit for appeal as involving a question of law which is either of private or public importance. In *Mahamad Ibrahim*, 109 I. C. 129, Nag., the Court held that leave should be granted when the question of law is an important one.

In the matter of *Nathumal*, A. I. R. 1920 L. 109, where an assessee succeeded to an old business, it was held not to be of any public or private importance within the meaning of section 109 of the Civil Procedure Code. Question of great private or public importance may be a ground of appeal. The object of section 66-A is to enable an appeal to His Majesty in Council, in cases in which the High Court can certify that the question of law involved is one of great private or public importance—*In re* : *Delhi Cloth and General Mills Ltd.*, A. I. R. 1927 Lah. 181.

Costs :

The Crown applying to His Majesty in Council shall not get any cost and the Privy Council will not award it. It may be said in this connection that the Commissioner of Income-tax, though he makes a reference, is a party and may appeal to the Privy Council from an adverse decision and reference.

Appeal to Privy Council :

An appeal to His Majesty in Council, under section 66-A, sub-section (*2*) does not lie unless the case is certified to be a fit one for appeal.

When the question involved is of public importance affecting revenue, which may arise frequently, the case can be certified to be a fit one for appeal : *C. I. T., U. P.* v. *Maharaj Kumar of Vizianagram*, 3 I. T. R. 155

When the Commissioner of Income-tax challenges the jurisdiction of the High Court to have compelled him to refer certain question of law under section 66 (*3*), if the law permits the Commissioner to have the judgment of the High Court examined by their Lordships of the Privy Council, there is no reason why this request should not be granted notwithstanding the fact that the Commissioner does not challenge the correctness of the decision : *C. I. T.* v. *Bulchand Keshabdas*, (1934) 2 I. T. R. 197.

An order passed by the High Court declining to call upon the Commissioner to state a case and refer it, is not a judgment at all, so as to allow a right of appeal to the Privy Council . *Gurmuk Rai* v. *Secretary of State*, 2 I. T. R. 412. (*E. M. Chettyar Firm* v. *C. I. T., Rangoon* 435 *approved* and *relied on.*)

Unless there is a substantial question of law in an application, leave to appeal to the Privy Council, cannot be granted. In *Dhakeswar Prasad Narayan Singha* v. *C. I. T., B. and O.*, (Privy Council Appeal No. 29 of 1938, unreported, decided on the 3rd of January, 1939) Justice Wort of the Patna High Court observed "……if the notional payment of interest can be considered to be payment by the assessee, at the very most it could be said that it was a payment partly for purchasing the interest on the decree so long as it was not executed and partly for the decree itself. But in my judgment it was solely for the purchase of the decree and although it may be said here that this is not purely a question of fact, it does not follow that it becomes a substantial question of law within the meaning of section 110 of the Code of Civil Procedure."

Bar of suits in Civil Court.

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

Suit does not lie :

Section 67 of the Act is not *ultra vires* by virtue of section 32 of the Government of India Act, because a suit for the recovery of the tax paid would not lie against the East India Co. prior to 1858 : *In the matter of R. N. Singh* v. *Secretary of State for India*, 109 I. C. 180 : A. I. R. 1928 Rang. 7. There it has been further held that no officer can be prosecuted either civilly or criminally for acts done in good faith. The words "good faith" imply the same meaning as in the Indian Penal Code. A suit does not lie for the refund of the tax already credited.

In the case of *Raja of Ramnad* v. *Secretary of State*, 52 Mad. 12, it was held that the section bars a suit for refund of Income-tax paid only in cases where the tax is legally irrecoverable in respect of the income and not where the income is not liable to assessment ; but unless exacted by coercion, tax credited in respect of an income which is not chargeable to tax, is a voluntary payment and no suit lies for its recovery.

A suit does not lie to recover a tax which has been illegally assessed : *In the matter of Swami Natha Aiyer*, 1 I. T. C. 25. Attention is also invited to the decision in the case of *Khemchand Thawoomal*, 78 I. C. 438. A suit for refund of Income-tax refused by Income-tax authorities is not barred by section 67, which refers only to assessment—*In re* : *Zenab Bai*, 136 I. C. 819. Though the procedure for grant of refund of Income-tax is ordinarily made part of the assessment procedure, it does not become a question of assessment. Therefore a suit for refund of Income-tax is not barred by section 67 : *Sally Md. Hazi* v. *S. B. Neogi & Co.*, A. I. R. 1935 R. 56.

Civil Court has no jurisdiction to interfere with the propriety of an order passed by an Income-tax Officer. In the case of *Kayaram Ramdas*, 78 I. C. 940, it has been held : "If the Collector of Income-tax, who has been constituted as a Special Tribunal by the Income-tax Act, had assessed anything but income or had levied an assessment on the classes of income exempted by the Act, he would have overstepped the limits of his jurisdiction, his assessment would not have been under the Act. But in this case he professes to tax income and income only, there may be an error in his calculation, but his order is still one under the Act and if erroneous, it is capable of rectification on appeal." *Vide* also *Forbes* v. *Secretary of State*, 42 Cal. 151 : 19 C. W. N. 138 and also the case of *Hazi Rohimtulla Hazi Tar Mahamad*, 92 I. C. 351.

Bar of Suits in Civil Courts :

Section 67 bars a suit to set aside or modify an assessment under the Income-tax Act, and gives protection to the

Government Officers for acts done or intended to be done under the Act.

But where the Income-tax Officer acts in such a way which is *ultra vires*, a civil suit is not barred : *Dinonath Hangsoraj* v. *C. I. T.*, 2 I. T. C. 304. In *Nachiappa Chetiar* v. *Secy. of State*, 7 I. T. L. J. 339, it was held that a suit to modify an assessment in which the relief claimed was a declaration that the registration of the deed of partnership was *ultra vires*, was held tenable.

Reference to the following cases may be made where Civil suits are not barred :—*Raja of Ramnad* v. *Secy. of State*, 3 I. T. C. 263 : *Hazi Rahomatulla* v. *Secy. of State*, 2 I. T. C. 118, *Jenab Bibi*, 1932 S. 48 ; *Secretary of State* v. *Khemchand*, 1 I. T. C. 26 : *Debi Chand* v. *C. I. T.*, 4 I. T. C. 33.

But in the following cases, it was held that Civil suit is barred :—

(*a*) A suit that the income of the assessee was below the taxable limit : *Swaminathan Aiyar* v. *Secy. of State*, 1 I. T. C. 23 and see also the case of *Dayaram Ram-Das* v. *Secy. of State*, 1 I. T. C. 250.

(*b*) Where an assessee contends that he is not liable to be assessed to income-tax on the ground that he is not resident in British India, Income-tax Officer as the assessing authority has power to determine the question of the assessee's residence in British India. A suit by the assessee for a declaration that he is not liable to be assessed to income-tax and to recover the tax paid by him is not maintainable in a Civil Court. Such a suit is barred under section 67 of the Act. Subject to the controlling effect of the words "made under this Act" in section 67, the exclusion of the jurisdiction of the Civil Court is almost absolute and the appropriate remedies of an assessee by way o appeal and references have been provided in the Act itself : *Secy. of State* v. *Meyyappa Chetiar*, A. I. R. 1937 Mad. 241.

Justice Stoddart in the above case observed that a statutory tribunal or authority which was to arrive at a decision as to the existence or non-existence of certain facts before proceeding to take further action under the statute, is acting within the jurisdiction in making that decision and is immune from Civil proceedings to quash that decision except such as are prescribed by the statute. The absence of any other remedy is not to be taken in consideration in deciding the question whether the decision of a statutory tribunal is or is not final.

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

Computation of periods of limitation.

Notes :

The insertion of this section under Act XXII of 1930, gives the assessee a right to compute the period of limitation after excluding the days spent for obtaining copies of orders for an appeal under this Act or for an application under section 66. Before the introduction of this new section, decisions are available that the High Court allowed the period spent for obtaining copies in computing the period of limitation. In the case of *Romanath Roddar*, 6 Rang. 175, the days spent for obtaining the copy were allowed to be deducted in computing the period of limitation. In *In the matter of Mahamad Hyat Hazi Mahamad Sardar*, A. I. R. 1929 L. 170, it was held that the time spent in obtaining a copy of the Commissioner's order under section 66 (*2*) can be excluded under section 29 of the Limitation Act (as amended in 1922). In computing the period for limitation for an application under section 66, the time requisite for obtaining a copy of the order which is the subject-matter of reference can be excluded under section 67-A. Section 12, Limitation Act does not apply to proceedings under section 66 (*3*) Income-tax Act : *in re* : *Gopalchand Chotey*. 133, I. C. 621.

Applicability of the Limitation Act :

(*a*) That copies must be applied for before the limitation for the appeal or application expires.

(*b*) That where the Court or office remains closed on the last day of limitation for filing an appeal or an application, an application for copies made on the next re-opening day must be held to have been made within proper time.

(*c*) That it is incumbent on the applicant to furnish the Court or office with proper folios and stamps, etc., when required.

(*d*) That time for copies is allowed only up to the date when notice of the copy being ready is hung up and not up to the date of taking actual delivery.

As the Indian Limitation Act is applicable to the Income-tax Act, so far as procedure for taking copies is concerned attention is invited to section 12 (2) of the said Act which is as below :

Computation of period of Limitation :

"S. 12—(1) In computing the period of Limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

"(2) In computing the period of Limitation prescribed for an appeal, an application for leave to appeal and an application for review of judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded."

Section 67-A :

On a strict interpretation of the section, it is reasonable to hold that the assessee should be allowed the time spent in obtaining a copy of the assessment order for the purposes of limitation for an application under section 27 of the Indian Income-tax Act.

67B. If on the first 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.

Object :

Difficulties were often experienced and progress of adminstration was retarded owing to the delay in passing the Annual Finance Act. To obviate this difficulty, section 67B has been inserted so that assessment may proceed notwithstanding the delay in passing of the Annual Finance Act.

68. Repealed.

Transitory provisions with respect to operation of Act XI of 1922.

Notwithstanding the coming into force of Part II of the Indian Income-tax (Amendment) Act, 1939,—

(*a*) all appeals already duly instituted under section 32 of the Indian Income-tax Act, 1922, at the time when the said Part II comes into force,

(*b*) all proceedings then pending before the Commissioner in connection with the exercise of his powers of revision under section 33,

(*c*) all applications to the Commissioner, then pending, for reference to the High Court under sub-section (*2*) of section 66, and

(*d*) all applications to the High Court, then pending, for the issue of a requisition to the Commissioner under sub-section (*3*) of section 66,

may be continued and disposed of as if the said Part II had not come into force, and the provisions of sub-sections (*2*), (*3*), (*3A*), (*4*), (*5*) and (*6*) of section 66, as subsisting before the said Part II came into force, shall continue to have effect in relation to the appeals and proceedings referred to in clauses (*a*) and (*b*) :

Provided that where under the provisions of section 33 of the Indian Income-tax Act, 1922, as substituted by the Indian Income-tax (Amendment) Act, 1939, an assessee becomes entitled to appeal to the Appellate Tribunal against any order passed by an Appellate Assistant Commissioner under section 28 or section 31 in respect of which he has already lodged an appeal to the Commissioner under section 32 or made any application to the Commissioner for the exercise of his powers of revision under section 33, he may at his option elect to proceed with his appeal to

the Commissioner or his application, as the case may be, in which case he shall lose his right of appeal to the Appellate Tribunal, or he may elect to appeal to the Appellate Tribunal under section 33, in which case his appeal to the Commissioner or his application, as the case may be, shall lapse.

THE SCHEDULE

[*See* section 10 (*7*).]

Rules for the Computation of the Profits and Gains of Insurance Business :

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(*a*) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(*b*) the annual average of the surplus "arrived at by adjusting the surplus or deficit" disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made,.. ...so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business,

whichever is the greater :

Provided that the amount to be allowed as management expenses shall not exceed—

(*a*) 7½ per cent. of the premiums received during the preceding year in respect of single premium life insurance policies, *plus*

(*b*) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums received in less than twelve, or for which the number of years during which premiums are payable in less than twelve, for each such premium or each such year 7½ per cent. of such first year's premiums received during the preceding year, *plus*

(*c*) 85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies and 8½ per cent. of other premiums received during that year in respect of all life insurance policies other than single premium life insurance policies.

3. In computing the surplus for the purpose of rule 2,—

(*a*) one-half of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction :

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous 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 realisation of securities or other assets shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus :

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included

in the surplus in respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just ;

(*c*) the whole amount of interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall be deducted.

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, immediately 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 :

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 the 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 and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules ;

(*iv*) 'life insurance business' means life insurance business as defined in clause (*ii*) of section 2 of the Insurance Act, 1938 ;

(*v*) 'securities' includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Superintendent of Insurance, after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments, and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent. of the premium income of the previous year, or in the case of non-resident companies 15 per cent. of the British Indian premium income of the previous year.

8. The profits and gains of the British Indian branches of an insurance company not resident in British India, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its British Indian premium income bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in British India whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in British India.

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

Rules for the guidance of Assessment of Insurance Companies :

Section 10 (*7*) enunciates that 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.

Under the previous Act, assessment of Insurance companies was made by virtue of rule making power under section 59, sub-section (*2*), clause (*ii*). But clause (*ii*) has been deleted by the Amendment Act of 1939.

The following notification was published in the Gazette of India dated April 1. No 20 :

"In exercise of the powers conferred by sub-section (*1*) of section 59 of the Indian Income-tax Act, 1922 (XI of 1922) the Central Board of Revenue directs that the following further amendment shall be made in the Indian Income-tax Rules, 1922, the same having been previously published as required by sub-section (*4*) of the said section, namely :—

"In the said Rules, and rules 8-A, 9, 9-A, 25 to 32 and 35 shall be omitted."

It will be seen that Rules 25, 26, 27, 28, 29, 30, 31, 32 and 35 which exclusively dealt with the procedure for assessment of Insurance companies, have been deleted. As a result of this, the decisions under the rule making power become to some extent obsolete and the following reported cases are of little use now (See, *in the matter of North British and Mercantile Insurance Ltd.*, 41 C. W. N. 905 ; *in the matter of Messrs. Himalayan Assurance Co., Ltd.*, 42 C. W. N. 440 ; *in the matter of C. I. T., Bombay* v. *The Western India Life Assurance Co. Ltd.*, A. I. R. 1938 Bom. 345 ; *in the matter of Messrs Phoenix Assurance Co., Ltd.*, 10 I. T. C. 368 ; *in the matter of C. I. T., Bombay* v. *The Manufacture's Life Insurance Company*, Civil Reference No. 11 of 1937 ; and *C. I. T., Madras* v. *The Andhra Insurance Ltd., O. P. No. 34 of 1937*).

These cases were decided more or less either on the interpretation of Rule 25 or Rule 35 as embodied in the previous Act.

Computation Procedure :

Income of a person carrying on life insurance business shall be computed separately from his income, profits or gains from

any other business. Profits or gains shall be taken to be either,

(*a*) the gross external incomings of the preceding year less the management expenses,

(*b*) the annual average of the surplus by the actuarial valuation of the last inter-valuation period ending before the year for which the assessment is to be made after adjustment of expenditures, etc.

The Proviso lays down Management expenses shall not exceed :

(*a*) 7½% of the premiums received during the preceding year in respect of single premium life insurance policies,

(*b*) in respect of first year's premiums in respect of other life insurance policies for which the number of annual premiums received is less than twelve or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year 7½% of such first year's premiums received during the preceding year,

(*c*) 85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies and 8½% of other premiums received during that year in respect of all life insurance policies other than single premium life insurance policies.

Computation of surplus shall be made as laid down in section 3 of the schedule as shewn below :—

(*a*) One half of the amounts paid or reserved for or expended on behalf of policy-holders shall be allowed as deduction,

(*b*) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation or loss in 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 application of or gains on the realisation of securities or other assets shall be included in the surplus,

Provision has been made to adjust anything which is inconsistent with the valuation of securities.

(*c*) The whole amount of interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall be deducted.

Where for any year an assessment in made in accordance with the annual average of a surplus disclosed by a valuation

for an intervaluation period excluding 12 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.

Definitions :

"Preceding year" in this schedule means that year for which annual accounts are required to be prepared under the Insurance Act, 1938, immediately 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.

"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.

Management expenses :

It 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 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 and any expenditure other than expenditure which may under the provisions of section 10 be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these funds.

Life Insurance business :

It means life insurance business as defined in clause (*u*) of section 2 of the Insurance Act, 1938. The word "securities" includes stocks and shares.

Dividing Society :

Companies carrying on dividing society or assessment business shall be taken to be 15% of the premium income of the previous year and in the case of non-resident companies 15% of the British Indian premium income of the previous year.

But the profits and gains of 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

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

Section 59, which confers rule making power, has been amended so as to remove any doubts as to whether the rules regarding the computation of profits of life insurance business are *ultra vires* in so far as they vary the substantive provisions of the Act.

SCHEDULE II

[*See* Section *6.*]

PART I

RATES OF INCOME-TAX.

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

		Rate.
1.	On the first Rs. 1,500 of total income .	*Nil.*
2.	On the next Rs. 3,500 of total income .	Nine pies in the rupee.
3.	On the next Rs. 5,000 of total income .	One anna & three pies in the rupee.
	On the next Rs. 5,000 of total income	Two annas in the rupee.
	On the balance of total income	Two annas and six pies in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000 ;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

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

	Rate.
On the whole of total income . .	Two annas and six pies in the rupee.

PART II

RATES OF SUPER-TAX.

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

		Rate.
1.	On the first of Rs, 25,000 of total income	*Nil.*
2.	On the next Rs. 10,000 of total income .	One anna in the rupee.
3.	On the next Rs. 20,000 of total income .	Two annas in the rupee.
4.	On the next Rs. 70,000 of total income .	Three annas in the rupee.
5.	On the next Rs. 75,000 of total income .	Four annas in the rupee.
6.	On the next Rs. 1,50,000 of total income	Five annas in the rupee.
7.	On the next Rs. 1,50,000 of total income	Six annas in the rupee.
8.	On the balance of total income .	Seven annas in the rupee.

B. In the case of every company and local authority—

On the whole of total income . . One anna in the rupee.

Statement showing the Rates of Income-tax under "STEP" System for the years from 1922-23 to 1938-39.

Grades of income.	Rate in pies in the rupee.			Surcharge.	
	1922-23 to 1929-30.	1930-31.	1931-32 to 1938-39.		
2,000 to 4,999 .	5	5	6	No surcharge before 1931-32.	
5,000 to 9,999 .	6	6	9	1931-32	1/8th.
10,000 to 14,999 .	9	9	12	1932-33 to 1934-35	1/4th.
15,000 to 19,999 .	9	10	16		
20,000 to 29,999 .	12	13	19	1935-36	1/6th.
30,000 to 39,999 .	15	16	23	1936-37 to 1938-39	1/12th.
40,000 to 99,999 .	18	19	25		
1,00,000 and above .	18	19	26		
Company and Registered firm whatever its total income.	18	19	26		

Rates under "LOWER INCOMES"

Grades of income.	Rate in pies in the rupee.			
	1931-32.	1932-33 and 1933-34.	1934-35.	1935-36.
1,000 to 1,499 . .	2	4	2	1 1/3
1,500 to 1,999 . .	2	4	4	2 2/3

NOTE.—Special provision was made in each year to the effect that the rate of income-tax and surcharge applicable to such part of the total income of any person as is derived from salaries or from interest on securities paid in the previous year was the rate fixed for the year previous to the year in question ; and the same rate applied to refunds under section 48.

Statement showing the Rates of Super-tax from 1922-23 to 1938-39

	1922-23 to 1929-30.	1930-31	1931-32 to 1938-39
I. COMPANY—			
First Rs. 50,000, . .	*Nil*	*Nil*	*Nil*
Every rupee of the remainder .	12	12	12
II. HINDU UNDIVIDED FAMILY—			
First Rs. 75,000. . .	*Nil*	*Nil*	*Nil*
Every rupee of next 25,000 . .	12	13	15
Ditto 50,000 . .	18	19	21
Ditto 50,000 . .	24	25	27
Ditto 50,000 . .	30	31	33
Ditto 50,000 . .	36	37	39
Ditto 50,000 . .	42	43	45
Ditto 50,000 . .	48	49	51
Ditto 50,000 . .	54	55	57
Ditto 50,000 . .	60	61	63
Ditto 50,000 . .	66	67	69
Every rupee of the remainder . .	72	73	75
III. INDIVIDUAL, UNREGISTERED FIRM AND ASSOCIATION OF INDIVIDUALS—			
First Rs. 30,000 . . .	*Nil*	*Nil*	*Nil*
Every rupee of next 20,000 . .	*Nil*	*Nil*	9
Ditto 50,000 . .	12	13	15
Ditto 50,000 . .	18	19	21
Ditto 50,000 . .	24	25	27
Ditto 50,000 . .	30	31	33
Ditto 50,000 . .	36	37	39
Ditto 50,000 . .	42	43	45
Ditto 50,000 . .	48	49	51
Ditto 50,000 . .	54	55	57
Ditto 50,000 . .	60	61	63
Ditto 50,000 . .	66	67	69
Every rupee of the remainder . .	72	73	75

Surcharge : The surcharge was the same as that for income-tax shown at page 130.

"Extract from the Indian Finance Act, 1940."

1. (1) This Act may be called the Indian Finance Act, 1940.

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

* * * * *

7. (1) Subject to the provisions of sub-section (*2*)

(*a*) income-tax for the year begining on the 1st day of April, 1940, shall be charged at the rates specified in Part I of Schedule 11 to the Indian Finance Act, 1939 ;

(*b*) rates of super-tax for the year beginning on the 1st day of April, 1940, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule 11 to the Indian Finance Act, 1939.

Provided that in the case of an association of persons being a Co-operative Society, other than the Sanikatta Saltowner's Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under any Act of the Provincial Legislature governing the registration of the Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1940, shall be.....

(1) On the first Rs. 25000 of total income *Nil.*

(2) On the balance of total income...One anna in the rupee.

(2) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates imposed by sub-section (*1*).

(3) For the purpose of this section and of the rates of tax imposed by sub-section (*1*), the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922".

PART II

"Statutory Orders, Exemptions and Rules"

Statutory provision in the United Kingdom for relief from United Kingdom Income-tax in respect of incomes subjected to Dominion Income-tax (including Indian Income-tax)—Section 27-Finance Act, 1920.

27. (1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income-tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income-tax paid or payable by him on that part of his income at a rate thereon to be determined as follows :—

(*a*) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom income-tax, the rate at which relief is to be given shall be Dominion rate of tax ;

(*b*) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of United Kingdom income-tax.

For the purpose of this section, the expression "the appropriate rate of United Kingdom tax" means the rate at which the claimant for the year to which the claim relates has borne or is liable to bear United Kingdom income-tax and where the claimant is liable to United Kingdom super-tax the expression "the appropriate rate of United Kingdom tax" means a rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom income-tax and super-tax, respectively, for that year.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income-tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual

any relief to which he may be entitled under the provisions of this part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income as may be necessary to secure that the amount of United Kingdom income-tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of Schedule D or in any other provision of the Income-tax Acts, no deduction shall be made on account of the payment of Dominion income-tax in estimating income for the purposes of United Kingdom income-tax, and where income-tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income-tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income-tax shall be deemed to be income arising or received after deduction of Dominion income-tax and an addition shall, in estimating income for the purposes of the United Kingdom income-tax, be made to that income of the proportionate part of the income-tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income-tax directly charged or chargeable in the Dominion in respect of that income :

Provided that—

(*a*) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Special Commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this sub-section the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI of Schedule D ; and

(*b*) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, then in assessing or charging income-tax in the United Kingdom in respect of income assessed or charged to income-tax in that Dominion deduction shall be allowed in estimating income for the purpose of United Kingdom income-tax of an amount equal to the difference between the amount of the Domion income-

tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom income-tax in respect of the Dominion income-tax for the period on the income of which the assessment or charge to United Kingdom income-tax is computed.

In this sub-section the expression "dividends" includes any interest, annuities, dividends, shares of annuities, pensions, or other annual payments or sums in respect of which tax is charged under the Rules applicable to Schedule C or under Rule VII of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D, and E, a body of persons is entitled to deduct income-tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income-tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income-tax.

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax the obligation as to secrecy imposed by the Income-tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed both from United Kingdom income-tax and from Dominion income-tax.

(7) The Commissioners of Inland Revenue may from time to time make regulations generally for carrying out the provisions of this section, and may, in particular by those regulations provide :—

(*a*) for making such arrangements with the Government of any Dominion to which the last preceding sub-section applies as may be necessary to enable the appropriate relief to be granted :

(*b*) for prescribing the year which in relation to any Dominion income-tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income-tax.

(8) In this section :—

(*a*) The expression "Dominion" means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being

exercised by the Government of any part of His Majesty's dominions :

(*b*) The expressions "United Kingdom income-tax" and "United Kingdom super-tax" mean respectively income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts :

(*c*) The expression "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom income-tax or super-tax.

(*d*) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income-tax paid for the year by the amount of the income in respect of which the Dominion income-tax is charged for that year, except that where the Dominion income-tax is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the Special Commissioners.

For the purposes of this section, the rate of United Kingdom income-tax shall be ascertained by dividing by the amount of the taxable income of the person concerned the amount of tax payable by that person on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of this section, and the rate of United Kingdom super-tax shall be ascertained by dividing the amount of the super-tax payable by any person by the amount of that person's total income from all sources as estimated for super-tax purposes.

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

PART I

Introductory and General :

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

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

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

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

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

(*a*) in relation to India or Burma, be construed as references to a rate determined by dividing the amount of income-tax paid in India or Burma, as the case may be, for the year in question (before deduction of any relief granted under section forty-nine of the India Income-tax Act, 1922, or under this Order) by the amount of the income on which tax was charged ;

(*b*) in relation to the United Kingdom, mean the appropriate rate of United Kingdom income-tax for the year in question as defined for the purposes of section twenty-seven of the Finance Act, 1920.

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

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

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

PART II

Relief in India :

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

In this paragraph "appropriate rate of relief" means—

(*a*) in relation to income taxed in India and Burma and not in the United Kingdom, a rate bearing to the Indian rate of tax or the Burman rate of tax, whichever is the lower, the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax ;

(*b*) in relation to income taxed in India, Burma and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in

respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax.

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

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

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

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

(*a*) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order ;

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

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

PART III

Relief in Burma :

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

In this paragraph "appropriate rate of relief" means—

(*a*) in relation to income taxed in Burma and India and not in the United Kingdom, a rate bearing to the Burman rate of tax or the Indian rate of tax, whichever is the lower, the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax ;

(*b*) in relation to income taxed in Burma, India and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the tree-rates of tax the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax.

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

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

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

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

(*a*) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order ,

(*b*) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part II of this Order ;

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

[Note.—The forms prescribed under this Order are in rules 40-A and 40-B.]

NOTIFICATIONS REGARDING DOUBLE INCOME-TAX RELIEF

Indian States :

[*Notification No. 69, dated the 16th September, 1939.*]

In exercise of the powers conferred by section 49A of the Indian Income-tax Act, 1922 (XI of 1922), the Central Government is pleased to make the following rules for the granting of relief in respect of income on which tax has been paid both in British India and in certain Indian States, namely :—

1. These rules may be cited as the Income-tax (Double Taxation Relief) (Indian States) Rules, 1939.

2. In these rules,—

(*a*) the expression "Indian income-tax" and "Indian rate of tax" have the same meanings as in clauses (*a*) and (*b*) respectively of sub-section (*2*) of section 49 of the Indian Income-tax Act, 1922 ;

(*b*) "State" means any of the Indian States specified in the Schedule to these Rules ;

(*c*) the expression "State income-tax" means income-tax and super-tax charged in accordance with the provisions of the law relating to income-tax for the time being in force in the State ; and

(*d*) the expression "State rate of tax" means the amount of State income-tax divided by the amount of the larger of the two incomes on which income-tax and super-tax respectively have been charged by the State.

3. If any person who has paid by deduction under section 18 of the Indian Income-tax Act, 1922, 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 at any time paid by deduction or otherwise State income-tax in respect of the same part of his income, he shall be entitled to the refund of a sum calculated on that part of his income at a rate equal to half the State rate of tax :

Provided that the rate at which the refund shall be given shall not exceed one-half of the Indian rate of tax.

4. (1) Every application for refund of income-tax under these rules shall be made to the Income-tax Officer of the district in

which the applicant is chargeable directly to income-tax, or, if he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which the applicant ordinarily resides, or, if he is not resident in British India,—

(*i*) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or

(*ii*) if he has never been so resident, to the Income-tax Office, of the district or area where the income-tax for the refund of which application is made was paid.

(2) Such application may be presented by the application in person or by a duly authorized agent or may be sent by post, and shall be in Form I appended to these Rules.

5. No claim to any refund of Indian income-tax or super-tax under these rules shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was recieved 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 1st April 1939, the claim shall not be allowed unless it is made within one year from the last day of the year in which such tax or the State income-tax was recovered, whichever is later.

6. An applicant for refund under these rules may appeal to the Appellate Assistant Commissioner of Income-tax from any order of the Income-tax Officer disallowing the claim for refund either wholly or in part.

7. The appeal shall be presented within thirty days of the date on which the order of the Income-tax Officer was communicated to the applicant, and shall be in Form II appended to these Rules.

SCHEDULE

Gujarat States Agency.

1. Baroda.
2. Chhota Udepur.
3. Sachin.

Kashmir Agency.

1. Jammu and Kashmir.

Madras States Agency.

1. Travancore.
2. Cochin.

Mysore Agency.

1. Sandur.

Central India Agency.

1. Dhar.
2. Makrai.
3. Bhopal.

Punjab States Agency.

1. Patiala.
2. Bahawalpur.
3. Jind.
4. Kapurthala.
5. Loharu.
6. Maler Kotla.
7. Mandi.
8. Faridkot.

Punjab Hill States Agency.

1. Baghat.

Deccan States Agency.

1. Akalkot.
2. Phaltan.
3. Ramdurg.
4. Kolhapur.
5. Sangli.
6. Jamkhandi.

Gwalior Agency.

1. Benares.

Eastern States Agency.

1. Bastar.
2. Kanker.
3. Raigarh.
4. Jashpur.
5. Sarangarh.
6. Kawardha.
7. Khairagarh.
8. Korea.
9. Nandgaon.
10. Chhuikhadan.
11. Mayurbhanj.
12. Patna.
13. Sonepur.
14. Kalahandi.
15. Rairakhol.
16. Baudh.
17. Seraikela.
18. Talcher.
19. Gangpur.
20 Kharsawan.
21. Keonjhar.

Form I

(See rule 4.)

Application for relief from double income-tax under the Income-tax (Double Taxation Relief) (Indian States) Rules, 1939.

I, of do hereby state that I have paid [or under the provisions of section 49B of the Indian Income-tax Act, 1922 (XI of 1922) must be deemed to have paid] (name of State) State income-tax/income-tax and super-tax amounting to Rs. for the year ending 19 on an *income of Rs. and that Indian income-tax/income-tax and super tax of Rs. has also been paid [or under the provisions of section 49B of the Indian Income-tax Act, 1922 (XI of 1922) must be deemed to have been paid] on the same income*/part of the same income amounting to Rs. I now pray for relief at the rate of amounting to Rs. to which I am entitled under the Income-tax (Double Taxation Relief) (Indian States) Rules, 1939. My income from all sources during the "previous year" ending on the 19 , amounted

*Where the income on which income-tax has been charged differs from that on which super-tax has been charged both amounts must be specified.

to Rs. only—see Return of income attached/already submited.

I hereby declare that what is stated herein is correct.

Signature.

Dated 19

Form II

(See Rule 7)

Appeal from an order of the Income-tax Officer disallowing a claim for refund under the Income-tax (Double Taxation Relief) (Indian States) Rules, 1939.

To

The Appellate Assistant Commissioner of Income-tax.....

The day of 19 .

The petition of of post office District sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Income-tax (Double Taxation Relief) (Indian States) Rules, 1939, of Rs. . The Income-tax Officer has by his order, dated the of which a copy is attached rejected the application / granted a refund of only Rs. . Intimation of this order was received by your petitioner on .

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed.

Grounds of Appeal :

Form of Verification

I, , the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief

Signed.

Ceylon :

(Notification No. 14, dated the 2nd April, 1932.)

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922) the Central Government is pleased to make the following modifications in respect of income-tax in favour of income on which income-tax has been charged both in British India and in Ceylon, namely :—

(1) In the notification—

(*a*) the expression "Ceylon tax" has the meaning assigned to it in section 45 (*4*) (*b*) of the Ceylon Income-tax Ordinance, 1932 (2 of 1932),

(*b*) the expression "Indian income-tax" has the meaning assigned to it in clause (*a*) of section 49 (*2*) of the Indian Income-tax Act, 1922 (XI of 1922).

(2) If any person, who has paid 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 Ceylon tax for the corresponding year in Ceylon on the same part of his income he shall be entitled to the refund of a sum equal to half the Ceylon tax calculated on that part of his income on which relief is admissible under the Ceylon Income-tax Law, or to half the Indian income-tax on the same part of his income, whichever is less : Provided that where any person is entitled to a further relief in British India on the part of his income on which relief is admissible under the Ceylon Income-tax Law on account of its having been also taxed in some other country besides Ceylon, the relief in respect of the Ceylon tax shall not exceed the difference between half the Indian income-tax and such further relief as may have been granted in British India owing to that part of his income having been taxed in some other country besides Ceylon.

(3) Every application for refund of income-tax under this notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax of if he is not chargeable directly to income-tax to the Income-tax Officer of the district in which the applicant ordinarily resides or if he is not resident in British India—

(i) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or

(ii) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax

for the refund of which application is made was deducted.

Such application may be presented by the applicant in person or by a duly authorized agent or may be sent by post, and shall be in the following form :—

Application for relief from double income-tax under Notification No. 14, dated 2nd April, 1932.

I, of do hereby state that I have paid Ceylon tax amounting to Rs. for the year ending 19 , on an income of Rs. and that Indian income-tax/income-tax and super-tax of Rs. has also been paid on the same income*/part of the same income amounting to Rs. . I now pray for relief of a sum of Rs. under Notification No. 14, dated 2nd April, 1932 to which I am entitled. My income from all sources to which this Notification applies during the "previous year" ending on the 19 , amounted to Rs. only—see Return of income attached/already submitted.

Signature.

I hereby declare that what is stated herein is correct.

Signature.

Dated 19 .

(4) No claim to any refund of income-tax under this notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the Ceylon tax was recovered whichever is later.

(5) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under this Notification or to the amount of refund allowed, may appeal to the Appellate Assistant Commissioner.

(6) The appeal shall be presented within thirty days of receipt of the intimation of the refusal to grant a refund or of the amount of refund allowed.

(7) The appeal shall be in the following form :—

*Where the income on which income-tax has been charged differs from that on which super-tax has been charged both amounts must be specified.

Form of appeal against an order refusing to grant a refund under the Notification of the Government of India in the Finance Department (Central Revenues) No. 14-Income-tax, dated the 2nd April, 1932.

To

The Appellate Assistant Commissioner of

The day of 19 .

The petition of of

post-office District

sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Notification of the Government of India in the Finance Department (Central Revenues), No. 14-Income-tax, dated the 2nd April, 1932 of Rs. . The Income-tax Officer has by his order, dated the of which a copy is attached

refused to grant a refund
granted a refund of only Rs. .

Intimation of this order was received by your petitioner on.....

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund applied for may be granted.

Signed.

Grounds of Appeal :

Form of Verification.

I, the petitioner named above in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

Aden :

(Notification No. 21-Income-tax, dated the 5th June, 1937.)

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Government is pleased to make the following modifications in respect of income-tax in favour of income on which tax has been charged both in British India and Aden, namely :—

(1) In this Notification :—

(*a*) The expression "Aden Income-tax" means income-tax and super-tax charged for any year in accordance with the provisions of the Aden Income-tax Ordinance, 1937.

(*b*) The expression "Aden rate of tax" means the amount of Aden income-tax divided by the amount of the income on which it was charged.

(*c*) The expression "Indian income-tax" means income-tax and super-tax chargeable in accordance with provisions of any law in force in British India.

(*d*) The expression "Indian rate of tax" means the rate determined by dividing the amount of income-tax paid in British India for the year in question by the amount of income on which tax was charged.

(*e*) The reference to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those two rates.

(2) If any person who has paid by deduction under section 18 or otherwise Indian Income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid for that year Aden Income-tax in respect of that part of his income he shall be entitled to the refund of Indian Income-tax calculated on that part of his income at a rate bearing to the Indian rate of tax or the Aden rate of tax whichever is the lower, the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Aden rate of tax.

(3) Every application for refund of income-tax under this notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which the applicant ordinarily resides, or if he is not resident in British India—

(i) to the Income-tax Officer of the district or area in

which he was last charged directly to income-tax when so resident, or

(ii) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was paid.

Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the following form :—

Application for relief from double income-tax under Notification No. 21-Income-tax, dated the 5th June, 1937.

I, of do hereby state that I have paid Aden income-tax/income-tax and super-tax amounting to Rs. for the year ending 19 on an income* of Rs. and that Indian income-tax/income-tax and super-tax of Rs. has also been paid on the same income*/part of the same income amounting to Rs. . I now pray for relief at the rate of amounting to Rs. under Notification No. 21-Income-tax, dated the 5th June, 1937 to which I am entitled. My income from all sources to which this Notification applies during the "previous year" ending on the 19 , amounted to Rs. only—see Return of income attached/ already submitted.

Signature.

I hereby declare that what is stated herein is correct.

Dated 19 .

Signature.

(4) No claim to any refund of Indian income-tax under this Notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the Aden income-tax was recovered, whichever is later.

(5) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under this Notification or to the amount of refund allowed, may appeal to the Appellate Assistant Commissioner.

(6) The appeal shall be presented within thirty days of receipt of the intimation of the refusal to grant a refund or of the amount of refund allowed.

*Where the income on which income-tax has been charged differs from that on which super-tax has been charged both amounts must be specified.

The appeal shall be in the following form :—

Form of appeal against an order refusing to grant a refund under the Notification of the Government of India in the Finance Department (Central Revenues) No. 21-Income-tax, dated the 5th June, 1937.

To

The Appellate Assistant Commissioner of

The day of 19 .

The petition of of post-office District sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Notification of the Government of India in the Finance Department (Central Revenues), No. 21-Income-tax, dated the 5th June, 1937 of Rs. . The Income-tax Officer has by his order the of which a copy is attached refused to grant a refund / granted a refund of only Rs. . Intimation of this order was received by your petitioner on.....

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund applied for may be granted.

Signed.

Grounds of Appeal :

Form of Verification.

I, the petitioner named above in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

Kenya :

[*Notification No. 67, dated the 19th August, 1939.*]

In exercise of the powers conferred by section 49A of the Indian Income-tax Act, 1922 (XI of 1922), the Central Government is pleased to make the following rules for the granting of relief in respect of income on which tax has been paid both in British India and in Kenya, namely :—

1. These rules may be cited as the Income-tax (Double Taxation Relief) (Kenya) Rules, 1939.

2. In these rules,—

(*a*) the expression 'Kenya income-tax' means tax charged for any year in accordance with the provisions of the Income-tax Ordinance, 1937 (XII of 1937) of the Colony and Protectorate of Kenya.

(*b*) the expression 'Kenya rate of tax' has the meaning assigned to it in sub-section (*3*) of section 44 of the said Ordinance.

(*c*) the expressions 'Indian Income-tax' and 'Indian rate of tax' have the same meaning as in clauses (*a*) and (*b*), respectively of sub-section (*2*) of section 49 of the Indian Income-tax Act, 1922.

3. If any person who has paid by deduction under section 18 of the Indian Income-tax Act, 1922 or otherwise Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid by deduction or otherwise Kenya income-tax for that year in respect of the same part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate to be determined as follows :—

(*i*) If he is resident in British India the rate at which refund is to be given shall be—

(*a*) the Kenya rate of tax, when that rate does not exceed half of the Indian rate of tax, and

(*b*) half the Indian rate of tax, in any other case.

(*ii*) If he is not resident in British India the rate at which refund is to be given shall be—

(*a*) half of the Kenya rate of tax when that rate does not exceed the Indian rate of tax, and

(*b*) in any other case, the amount by which the Indian rate of tax exceeds half of the Kenya rate of tax.

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 or be greater than the excess of the lower of the Indian and the Kenya rate of tax over the rate at which relief is given in Kenya.

4. (1) Every application for refund of income-tax under these rules shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which the applicant ordinarily resides, or if he is not resident in British India—

(*i*) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or

(*ii*) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was paid.

(2) Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall as far as circumstances permit be in Form I appended to these rules.

5. No claim to any refund of Indian income-tax or super-tax under these rules shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into British India.

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the 1st April, 1939, the claim shall not be allowed unless it is made within one year from the last day of the year in which such tax or the Kenya income-tax was recovered whichever is later.

6. An applicant for refund under these rules may appeal to the Appellate Assistant Commissioner of Income-tax from any order of the Income tax Officer disallowing the claim for refund either wholly or in part.

7. The appeal shall be presented within thirty days of the date on which the order of the Income-tax Officer was communicated to the applicant, and shall, as far as circumstance permit, be in Form II appended to these rules.

Form I

(See rule 4.)

Application for relief from double income-tax under the Income-tax (Double Taxation Relief) (Kenya) Rules, 1939.

I, of , do hereby state that I have paid [or under the provisions of section 49B of the Indian Income-tax Act, 1922 (XI of 1922) must be deemed to have paid] Kenya income-tax amounting to £ for the year ending 19 on an income of £ and that Indian income-tax/income-tax and super-tax of Rs. has also been paid [or under the provisions of section 49B of the Indian Income-tax Act, 1922 (XI of 1922) must be deemed to have been paid] on the same income*/part of the same income amounting to Rs. . I now pray for relief at the rate of amounting to Rs. to which I am entitled under the Income-tax (Double Taxation Relief) (Kenya) Rules, 1939. My income from all sources during the 'previous year' ending on the 19 , amounted to Rs. only—see Return of income attached/already submitted.

Signature.

I hereby declare that what is stated herein is correct.

Signature.

Dated *19* .

Form II

(See rule 7.)

Appeal from an order of the Income-tax Officer disallowing a claim for refund under the Income-tax (Double Taxation Relief) (Kenya) Rules, 1939.

To

The Appellate Assistant Commissioner of Income-tax

The Day of 19 .

The petition of of post office, District sheweth as follows :—

*Where the income on which income-tax has been charged differs that on which super-tax has been charged both amounts must be specified.

Your petitioner applied to the Income-tax Officer for a refund under the Income-tax (Double Taxation Relief) (Kenya) Rules, 1939, of Rs. . The Income-tax Officer has by his order, dated the , of which a copy is attached rejected the application / granted a refund of only Rs. . Intimation of this order was received by your petitioner on .

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed.

Grounds of Appeal :

Form of Verification.

I, , the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

RULES REGARDING RECOGNISED PROVIDENT FUNDS

I

(Notification No. 9, dated the 15th March, 1930.)

In exercise of the powers conferred by Chapter IX-A of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to make the following rules, the same having been previously published as required by sub-section (*1*) of section 58-L read with sub-section (*4*) of section 59 of the said Act :—

1. These rules may be called the Indian Income-tax (Provident Funds Relief) Rules.

2. In these rules, "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922).

3. The contributions made by employees after the date of recognition of a provident fund and the interest on the accumulated balances of such contributions shall be wholly invested either in securities of the nature specified in clause (*a*), (*b*), (*c*), (*d*), or (*e*) of section 20 of the Indian Trusts Act, 1882, and payable both in respect of capital and of interest in British India or in a Post Office Savings Bank Accounts in British India.

4. (*1*) Withdrawals by employees shall not be allowed by the trustees except on special grounds in the following circumstances or circumstances of a similar nature—

(*a*) to pay expenses incurred in conncetion with the illness of a subscriber or a member of his family ;

(*b*) to pay for the passage over the sea of a subscriber or any member of his family ;

(*c*) to pay expenses in connection with marriages, funerals or ceremonies which by the religion of the subscriber it is incumbent upon him to perform and in connection with which it is obligatory that expenditure should be incurred ;

(*d*) to meet the expenditure on building or purchasing a house or a site for a house provided that such house or site is assigned to the trustees of the fund ;

(*e*) to pay premia on policies of insurance on the life of the subscriber or of his wife provided that the policy is assigned to the trustees of the fund and that the receipts granted by the insurance company for the premia are from time to time handed over to the trustees for inspection by the Income-tax Officer.

(*2*) For the purposes of sub-rule (*1*) "Family" means any of the following persons who reside with and are wholly dependent on the employee, namely :—the employee's wife, legitimate children, step children, parents, sisters and minor brothers.

(*3*) No such withdrawal shall exceed (1) the pay of the employee for three months, or, in the case of a withdrawal for the purpose specified in clause (*d*) of sub-rule (*1*) six months at the time when the advance is granted, or (2) the total of the accumulation of exempted contributions and exempted interest contained in the balance to the credit of the employee whichever is less.

(*4*) A second withdrawal shall not be permitted until the sum first withdrawn has been fully repaid.

5. (*1*) Where a withdrawal is allowed for a purpose specified in clause (*d*) or clause (*e*) of sub-rule (*1*) of rule 4 the amount withdrawn need not be repaid.

(*2*) Where a withdrawal is allowed for any other purpose the amount withdrawn shall be repaid in not more than twenty-four equal monthly instalments and shall bear interest in accordance with rule 6 and no further withdrawal shall be permitted until repayment has been effected in full.

6. In respect of withdrawals which are repaid in not more than 12 monthly instalments, an additional instalment of 4 per cent. of the amount withdrawn shall be paid on account of interest , and in respect of withdrawals which are repaid in more than 12 monthly instalments two such instalments of 4 per cent. of the amount withdrawn shall be paid on account of interest :

Provided, however, that at the discretion of the Trustees of the Fund, interest may be recovered on the amount withdrawn or the balance thereof outstanding from time to time at 1 per cent. above the rate which is payable for the time being on the balance in the fund at the credit of the member.

7. The employer shall deduct such instalments from the employee's salary, and pay them to the Trustees. The deductions shall commence from the second monthly payment made after the withdrawal or in the case of an employee on leave without pay from the second monthly payment made after his return to duty.

8. In case of default of repayment of instalments under rules 6 and 7, the Commissioner of Income-tax may at his discretion order that the amount of the withdrawal or the amount outstanding shall be added to the total income of the employee for the year in which the default occurs and the Income-tax Officer shall assess the employee accordingly.

9. Notwithstanding anything contained in rules 4 to 8, it shall be open to the trustees of a recognised provident fund to permit the withdrawal of ninety per cent. of the amount standing at the credit of an employee if the employee takes leave preparatory to retirement, provided that if he rejoins duty on the expiry of his leave he shall refund the amount drawn together with interest at the rate allowed by the fund.

9-A. Where the accounts of a recognised provident fund are kept outside British India, certified copies of the accounts shall be supplied not later than the 15th June in each year to a local representative of the employer in British India :

Provided that the Income-tax Officer may in any year appoint a date later than the 15th June as the date by which the certified copies shall be supplied.

10. (*1*) An application for recognition shall be made by the employer maintaining the fund for which recognition is sought and shall be accompanied by the following documents :—

(*a*) the trust deed if any in original with one copy thereof, the latter to be retained by the Commissioner, and

(*b*) the rules of the fund :

Provided that if the original of the trust deed cannot conveniently be produced, it shall be open to the Commissioner of Income-tax to accept in lieu of the original a copy certified either by a Magistrate or in any manner specified in rule 7 of the Indian Companies Rules, 1914, in which case an additional copy shall be furnished for retention by the Commissioner.

(*2*) The application shall be submitted through the Income-tax Officer of the area in which the accounts of the funds are kept, or, if the accounts are kept outside India, through the Income-tax Officer of the area in which the local headquarters of the employer are situate.

(*3*) The application shall contain the following information :—

(*a*) Name of employer and address, his business, profession, etc., also his principal place of business.

(*b*) Number of employees subscribing to the fund—

(i) in British India ,

(ii) in Indian States ;

(iii) outside India.

(*c*) Place where the accounts of the fund are or will be maintained.

(*d*) If the fund is already in existence—

(i) a copy of the last balance sheet of the fund, where such is maintained,

(ii) details of investments of the fund.

(*4*) A verification in the following form shall be annexed to the application :—

Form of verification :

We/I, the trustee(s) of the above-named fund, do declare that what is stated in the above application is true to the best of our/my information and belief, and that the documents sent herewith are the originals or true copies thereof.

11. Where an employee of a company owns shares in the company with a voting power exceeding ten per cent. of the whole

of such power the sum of the exempted contributions of the employee and employer to the recognised provident fund maintained by the company shall not exceed Rs. 250 in any month.

12. If an employee assigns or creates a charge upon his beneficial interest in a recognised provident fund, the Income-tax Officer shall, on the fact of the assignment or charge coming to his knowledge, give notice to the employee that if he does not secure the cancellation of the assignment or charge within two months of the date of receipt of the notice the consideration received for such assignment or charge shall be deemed to be income received by him in the year in which the fact became known to the Income-tax Officer and shall be assessed accordingly.

13. If the Commissioner withdraws recognition from a recognised provident fund, the balance to the credit of each employee at the end of the financial year prior to the date of the withdrawal of recognition shall be paid to him free of income-tax and super-tax at the time when such employee receives the accumulated balance due to him. The remainder of the accumulated balance due to him shall be liable to income-tax and super-tax as if the fund had never been recognised.

14. Before withdrawing recognition, the Commissioner of Income-tax shall give an opportunity to the employer and the trustees of the fund to show cause why recognition should not be withdrawn.

II

(Notification No. 10, dated the 15th March, 1930.)

In pursuance of sub-section (*2*) of section 58-F of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to fix six per cent. as the rate referred to in the said sub-section.

III

(Notification No. 12, dated the 15th March, 1930.)

In exercise of the powers conferred by Chapter IX-A and by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue is pleased to make the following rules, the same having been previously published as required by sub-section (*1*) of section 58-L read with sub-section (*4*) of section 59 of the said Act :—

1. These rules may be called the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

2. In these rules "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922).

3. An order according recognition to a provident fund shall take effect—

(*a*) in cases where the application for recognition has been received by the Commissioner of Income-tax before the 31st May 1930—on 31st March 1930 ;

(*b*) in other cases—on the last day of the month in which the order is made, or, at the request of the employer, on the last day of any later month in the same financial year.

4. An appeal under sub-section (*4*) of section 58-B shall be in the following form and shall be verified in the manner indicated therein :—

Form of appeal against refusal to recognise or withdrawal of recognition from a Provident Fund :

To

The Central Board of Revenue.

The petition of employer(s) carrying on business, profession or vocation at .

Your petitioner(s) *applied to* (*obtained sanction from*) the Commissioner of Income-tax under section 58-B of the Indian Income-tax Act, 1922, for the recognition of the provident fund maintained by him (them) for the benefit of his (their) employees. The Commissioner of Income-tax has *refused recognition* (*withdrawn recognition*) for the reasons stated in his order dated of which a copy is attached.

For the reasons set out below your petitioner(s) submit(s) that the fund should *be* (*continue to be*) recognised, and pray(s) that the Central Board of Revenue may be pleased to accord recognition / continue the recognition.

Grounds of appeal :

We/I , the petitioner(s) named in the above petition do declare that what is stated therein is true to the best of our/my information and belief.

Signature.

Address of the appellant

Date

N.B.—Unnecessary words or letters should be scored out.

5. The accounts of a recognised provident fund shall be prepared at intervals of not more than twelve months.

6. An account shall be maintained for each subscriber to the fund and it shall include the particulars shown in the following form :—

Account closed
Date
Paid to employee
Lapsed to employer or to fund
Recovery by employer.

Name_____ Date of joining fund_____

Year and month. 1	Salary. 2	Contributions.				Total interest on column 6.* 7	Exempt.		Not exempt.			Remarks. 13
		Contribution by employee. 3	Regular contributions by employer. 4	Employer's contributions of a contingent nature. 5	Total of cols. 3, 4 and 5. 6		Contributions not exceeding 4th of salary for the year or Rs. 6,000 whichever is less. 8	Interest on sums in column 6 at... % p.a. but not exceeding 3rd of the salary for the year. 9	Contributions column 6 minus column 8. 10	Interest column 7 minus column 9. 11	Additions to total income (cols. 4, 5 & 7). 12	
Balance brought forward												
April												
May												
.												
March												
Total												
Adjustment on account of temporary withdrawals account (columns 8 and 9 only).												
Adjustment on account of non-repayable withdrawals account (columns 10 and 11)												
Total carried over												

NON-REPAYABLE WITHDRAWALS ACCOUNT.

	Amount.
April	
May	
June	
July	
.	
March	
Total	

TEMPORARY WITHDRAWALS ACCOUNT.

	Advance.	Repayment.	Interest.
Balance brought forward			
April			
May			
June			
July			
.			
March			
Balance carried over			

*If desired column 7 may be divided into sub-columns to show separately the interest on column 3 and columns 4 and 5 respectively.

7. An abstract for the financial year or other applicable accounting period of the individual account of each employee participating in a recognised provident fund whose income under the head "Salaries" is Rs. 1,500 or over per annum, shall be furnished by the trustees to the Income-tax Officer of the area in which the employer conducts his business, profession or vocations, or to such other Income-tax Officer as the Commissioner may, in each case, direct, not later than the fifteenth day of June in each year or any other subsequent date fixed by the Income-tax Officer. It shall be in the form prescribed in rule 6, but shall show only the totals of the various columns thereof for the financial year or other accounting period. It shall also give an account of any temporary withdrawals by the employee during the year and of the repayment thereof. Similar abstract shall also be furnished in respect of other employees participating in a recognised provident fund who were allowed withdrawals under rule 4 of the Indian Income-tax (Provident Funds Relief) Rules or who come within the purview of rule 11 of these Rules.

8. The account to be made under the provisions of sub-section (1) of section 58-J shall show in respect of each employee (i) the total salary paid to the employee during the period of his participation in the provident fund, (ii) the total contributions, (iii) the total interest which has accrued thereon, and in so far as may be, the percentage of the employee's salary in accordance with which contributions have been made by the employer and employee.

VI

(Notification No. 16, dated the 30th September, 1939.)

In pursuance of sub-section (4) of section 5 of the Indian Income-tax Act, 1922 (XI of 1922), as applied to the Civil and Military Station of Bangalore, the Central Board of Revenue directs that the Appellate Assistant Commissioner of Income-tax for the said Station shall perform his functions in respect of all persons and incomes assessed to income-tax and super-tax in the said Station.

Rules made under section 59 of the Indian Income-tax Act, 1922.

(*Vide* Notification No. 3-I.T., dated the 1st April, 1922 as amended from time to time.)

1. These rules may be called the Indian Income-tax Rules, 1922.

2. Any firm constituted under an Instrument of Partnership specifying the individual shares of the partners may, under the provisions of section 26-A of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer, the particulars contained in the said Instrument on application made in this behalf.

Such application shall be signed by all the partners personally and shall be made—

(*a*) before the income of the firm is assessed for any year under section 23 of the Act, or

(*b*) if no part of the income of the firm has been assessed for any year under section 23 of the Act, before the income of the firm is assessed under section 34 of the Act, or

(*c*) with the permission of the Appellate Assistant Commissioner hearing an appeal under section 30 of the Act, before the assessment is confirmed, reduced, enhanced or annulled, or

(*d*) if the Appellate Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such fresh assessment is made.

3. The application referred to in Rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original Instrument of Partnership under which the firm is constituted, together with a copy thereof : provided that if the Income-tax Officer is satisfied that for some sufficient reason the original Instrument cannot conveniently be produced, he may accept a copy of it certified in writing by all the partners to be a correct copy, and in such a case the application shall be accompanied by a duplicate copy.

*The rules which were made prior to 1st April, 1924 were made by the Board of Inland Revenue and the rules which were made or amended subsequent to that date were made or amended by the Central Board of Revenue.

FORM I

Form of application for registration of a firm under Section 26-A of the Indian Income-tax Act, 1922.

To

The Income-tax Officer,

Dated *19*

Income-tax year 19 /19 .

1. We beg to apply for the registration of our firm under section 26-A of the Indian Income-tax Act, 1922, for the assessment for the income-tax year 19 /19 .

2. The original / A certified copy of the Instument of Partnership under which the firm is constituted specifying the individual shares of the partners, together with a copy / duplicate copy is closed. The prescribed particulars are given in the Schedule below.

3. We do hereby certify that the profits (or loss if any) of the previous year were divided or credited as shown in section B of the Schedule and the information given above and in the attached Schedule is correct.

(Signatures)
(Address)

NOTE.—This application must be signed personally by all the partners in the firm as constituted at the date on which the application is made.

SCHEDULE

Name of partner.	Address.	Date of admittance to partnership.	(1) Interest on capital or loans (if any).	(1) Salary or commission from firm.	(2) Share in the balance of profits (or loss) (annas and pies in the Rupee).	Remarks
1	2	3	4	5	6	7

(*A*) *Particulars of the firm as constituted at the date of this application.*

(*B*) *Particulars of the apportionment of the income, profits or gains (or loss) of the business, profession or vocation in the previous year between the partners who in that previous year were entitled to share in such income, profits or gains (or loss).*

NOTE.—(1) If the interest, salary and/or commission is payable (or allowable) only if there are sufficient profits available this fact should be noted by marking the items in the appropriate columns with the letter "R". (In other cases the interest, salary and/or commission may exceed the total profits so as to leave a balance of net loss divisible in column 6.)

(2) If any partner is entitled to share in profits but is not liable to bear a similar proportion of any losses this fact should be indicated by putting against his share in column 6 the letter "P".

4. (1) If, on receipt of the application referred to in Rule 3, the Income-tax Officer is satisfied that there is a firm in existence constituted as shown in the instrument of partnership and that the application has been properly made, he shall enter in writing at the foot of the instrument or certified copy, as the case may be, a certificate in the following form, namely :—

"This instrument of partnership / certified copy of an instrument of partnership has this day been registered with me, the Income-tax Officer for.....in the Province of.....under section 26-A of the Indian Income-tax Act, 1922, and this certificate of registration shall have effect for the assessment for the year ending on the 31st day of March, 19 ."

(2) If the Income-tax Officer is not so satisfied, he shall pass an order in writing refusing to recognise the instrument of partnership, or the certified copy thereof, and furnish a copy of such order to the applicants.

(3) The certificate referred to in paragraph (1) above shall be signed by the Income-tax Officer, who shall thereupon return to the applicants the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or the duplicate copy thereof.

5. The certificate of registration granted under Rule 4 shall have effect only for the assessment to be made for the year mentioned therein.

6. Any firm to whom a certificate of registration has been granted under Rule 4 may apply to the Income-tax Officer to have the certificate of registration renewed for a subsequent year. Such application shall be signed personally by all the partners of the firm and accompanied by a certificate in the form set out below. The application shall be made within the time and subject to the conditions, if any, which are specified in clause (*a*), clause (*b*), clause (*c*), or clause (*d*), as the case may be, of Rule 2.

FORM OF APPLICATION FOR THE RENEWAL OF REGISTRATION OF A FIRM UNDER SECTION 26-A OF THE INDIAN INCOME-TAX ACT, 1922.

To

The Income-tax Officer,

Dated *19* .

Assessment for the Income-tax Year 19 /19 .

1. We..... ..... beg to apply for the renewal of the registration of our firm under section 26-A of the Indian Income-tax Act, 1922, for the assessment for the income-tax year 19 /19 .

2. The $\frac{\text{instrument of partnership}}{\text{certified copy of the instrument of patnership}}$ was registered by the Income-tax Officer for.....in the Province of..... on the..... .....of... . .....19 and we hereby certify that the constitution of the firm and the individual shares of the partners as specified in the $\frac{\text{instrument of partnership}}{\text{certified copy of the instrument of partnership}}$ so registered on..... ...remain unaltered.

(Signatures)

(Address)

NOTE.—This application must be signed personally by all the partners in the firm.

6A. On receipt of an application under Rule 6 the Income-tax Officer may, if he is satisfied that the application is in order, grant to the assessee a certificate signed and dated by him in the following form :—

"The registration of the firm of.....granted on..... is renewed by me and will remain effective for the assessment for the year ending on the 31 day of March 19 ."

If the Income-tax Officer is not so satisfied, he shall pass an order in writing refusing to renew the registration of the firm.

6B. In the event of the Income-tax Officer being satisfied that the certificate granted under Rule 4, or under Rule 6-A, has been obtained without there being a genuine firm in existence, he may cancel the certificate so granted.

7. Under section 9 (*1*) (*vi*) of the Act, the sum to be allowed in respect of collection charges shall not exceed 6 per cent. of the annual value of the property.

No. 9 :—The following draft of certain further amendments to the Indian Income-tax Rules, 1922, which the Central Board of Revenue proposes to make in exercise of powers conferred by sub-section (*1*) of Section 59 of the Indian Income-tax Act, 1922 (XI of 1922) is published as required by sub-section (*4*) of the said section for information of all persons likely to be affected thereby :—

Draft Amendment of Rule 7 :

In rule 7 of the said rules the words "as diminished by the amount allowed for vacancies" shall be added after the word 'annual value of the property'.

"8. An allowance under section 10 (*2*) (*vi*) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement :—

Class of asset.	Rate. Percentage on the written down value.	Remarks.
1. Buildings—		
(1) First class substantial buildings of selected materials.	2·5	Double these rates will be allowed for factory buildings excluding offices, godowns, officers' and employees' quarters.
(2) Second class buildings of less substantial construction.	5	
(3) Third class buildings of construction inferior to that of second class buildings but not including purely temporary erections.	7·5	
(4) Purely temporary erections such as wooden structures.	...	No rate is prescribed ; renewals will be allowed as revenue expenditure.
II. Furniture and fittings—		
(1) General	·6	
(2) Rate for furniture and fittings used in hotels and boarding houses.	9	

Class of asset.	Rate. Percentage on the written down value.	Remarks.
III. Machinery and Plant—		
(1) General rate	7	An extra allowance up to a maximum of 50 per cent. of the normal allowance will be allowed by the Income-tax Officer where a concern claims such allowance on account of double or multiple shift working and satisfies the Income-tax Officer that the concern has actually worked double or multiple shifts. This extra allowance will be proportionate to the number of days during which double or multiple shifts are worked For the purpose of granting this extra allowance the normal number of working days throughout the year will be taken as 300 and if for example a concern has worked double or multiple shifts for 100 days the extra allowance will be $\frac{1}{3}$ of 50 per cent. of the normal allowance for

Class of asset.	Rate. Percentage on the written down value.	Remarks.
		the whole year. This applies to all concerns whether the general rate or any special rate applies to them but does not apply to an item of machinery or plant specifically excepted by the letters "N.E.S.A"† & being shown against it.
(2) Special rates to be applied to the whole of the machinery and plant used in the following concerns :—		The special rates for electrical machinery specified hereinafter may be adopted, at the option of the assessee, for that portion of the machinery used in these concerns.
(*i*) Flour Mills	9	* Replacements of Rollers will be allowed as revenue expenditure.
(*ii*) Rice Mills		
(*iii*) Bone Mills		
(*iv*) Sugar Works ...		
(*v*) Distilleries		
(*vi*) Ice Factories		
(*vii*) Aerating Gas Factories		
(*viii*) Match Factories ...		
(*ix*) Tea Factories		
(*x*) Shoe and other leather goods factories. ...		
(*xi*) Starch factories ...		
(*xii*) Coffee manufacturing concerns		
B—(*i*) Paper Mills	10	
(*ii*) Straw Board Mills		
(*iii*) Ship building and Engineering works. ...		

†Letters N. E. S. A. are a contraction of the expression 'No extra-shift allowance."

Class of asset.	Rate. Percentage on the written down value.	Remarks.
(*iv*) Iron and Brass Foundries.	10	
(*v*) Aluminium Factories . .		
(*vi*) Electrical Engineering Works.		
(*vii*) Motor car repairing works.		
(*viii*) Internal combustion Engines repairing works.		
(*ix*) Galvanizing works . .		
(*x*) Patent stone works . .		
(*xi*) Oil extraction factories		
(*xii*) Chemical works		
(*xiii*) Soap and candle works		
(*xiv*) Lime works		
(*xv*) Saw Mills		
(*xvi*) Tin and can making works.		
(*xvii*) Dyeing and bleaching works.		
(*xviii*) Cement works using rotary kilns.		
(*xix*) Rod Mills		
(*xx*) Hydraulic Presses . .		
(*xxi*) Brick manufacture . .		
(*xxii*) Tile making industry . .		
(*xxiii*) The manufacture of vegetable ghee.		
(*xxiv*) The manufacture of optical instruments.		
(*xxv*) Coke manufacture . .		
(*xxvi*) The manufacture of concrete pipes.		
(*xxvii*) Glass manufacture of vacuum tubes and vacuum bulbs.		
(*xxviii*) Telephone operating concerns.		
(*xxix*) Wire and nail making Mills.		

Class of asset.	Rate. Percentage on the written down value.	Remarks.
(*xxx*) Iron and Steel Industry (Blast furnace plant, steel-making plant, steel rolling plant, forges, generators, boilers and sheet mills).		
(*xxxi*) Tanneries	10	
(*xxxii*) Battery manufacture ..		
(*xxxiii*) The manufacture of Healds and Reeds (knitting, reed-making, varnishing, doubling, winding and polishing machines).		
C.—(*i*) Rubber goods factories—		
(*a*) General machinery and plant ...	12	
(*b*) Moulds (N.E.S.A.)	40	
D.—(*i*) Silk manufacturing—weaving machinery worked by electric motors including winding machines, twisting frames, doubling machines, pirn winding machines, warping machines, looms, stentering machines and hydroextractors.	12	
(3) Special rates to be applied to other machinery and plant—		
A.—Ropeway structures (N.E.S.A.)—		
(*i*) Trestle and Station steel work.	6	
(*ii*) Driving and tension gearing.	10	
(*iii*) Carriers	12	

Class of asset.	Rate. Percentage on the written down value	Remarks.
(*iv*) Ropeway ropes and trestle Sheaves and connected parts.	30	
B.—Salt works—		
(*i*) Machinery, plant, locomotives, wagons and rolling stock.	15	
(*ii*) Parges and floating plant (N.E.S.A.)	10	
(*iii*) General plant and machinery used in Engineering shops.	10	
(*iv*) Reservoirs, condensers, salt pans, delivery channels and piers, if constructed of masonry, concrete cement, asphalt or similar materials. (N.E. S.A.).	6	
NOTE—Repairs to similar works made of earth will be allowed as revenue expenditure.		
(*v*) Piers, quays, and jetties constructed entirely or mainly of steel (N.E.S.A.).	7·5	
(*vi*) Piers, quays and jetties constructed entirely or mainly of wood (N.E.S.A.)	12	
(*vii*) Pipe lines for conveying brine if constructed of masonry, concrete, cement, asphalt or similar materials (N.E.S.A.).	12	
C.—Electrical machinery—		
(*i*) Batteries	20	
(*ii*) Other electrical machinery including electrical generators and motors (other than tramway motors).	10	

Class of asset.	Rate. Percentage on the written down value.	Remarks.
(*iii*) Switchgear and instruments, transformers and other stationary plant and wiring and firings of electric light and fan installations (N.E.S.A.).	10	
(*iv*) Underground cables and wires (N.E.S.A.).	7·5	
(*v*) Overhead cables and wires (N.E.S.A.).	5	
(*vi*) X-Ray and Electro-therapeutic apparatus and accessories thereto (N.E.S.A.).	20	
D.—Machinery used in the production and exhibition of cinematograph films—(N.E.S.A.).		
(*i*) Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights.*	20	* Renewals of Bulbs of studio lights will be allowed as revenue expenditure.
(*ii*) Projecting equipment of film exhibiting concerns.	20	
E.—Electric supply undertakings—		
(*i*) Electric plant, machinery, boilers.	10	
(*ii*) Hydro-electric concerns—hydraulic works, pipe lines and sluices (N.E.S.A.).	2·5	
F.—Electric tramways—		
(*i*) Permanent way (N.E.S.A.)—		
(*a*) Not exceeding 50,000 car miles per mile of track per annum.	9	

Class of asset.	Rate. Percentage on the written down value.	Remarks.
(*b*) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum.	10	
(*c*) Exceeding 75,000 and not exceeding 1,25,000 car miles per mile of track per annum.	12	
(*d*) Exceeding 1,25,000 car miles per mile of track per annum.	15	
(*ii*) Cars—car trucks, car bodies, electrical equipment and motors (N.E. S.A.).	10	
(*iii*) General plant, machinery and tools.	9	
G.—Tramways run by internal combustion engines (N.E. S.A.)—		
(*i*) Permanent way	The same rates as have been prescribed for the permanent way of electric tramways.	
(*ii*) Tramcars including engines and gears	10	
H.—Mineral oil concerns (N.E.S.A.)—		
Refineries—		
1. Boilers	10	
2. Prime movers ...	10	
3. Process plant ...	12	

Class of asset.	Rate. Percentage on the written down value	Remarks.
Field Operations—		
1. Boilers	10	
2. Prime movers ...	10	
3. Process plant ... except for the following items—	12	
1. Below ground ...	100	
2. Above ground—		
(*a*) Portable boilers, drilling tools, well-head tanks, rigs, etc.	30	
(*b*) Storage tanks ...	10	
(*c*) Pipe lines—		
(*i*) Fixed boilers ...	10	
(*ii*) Prime movers ...	12	
(*iii*) Pipe line ...	10	
Distribution—		
1. Returnable packages ...		Cost of packages actually used up will be allowed as revenue expenditure.
2. Kerbsides pumps including underground tanks of fittings		
I.—Ships (N.E.S.A.)—	15	
(*i*) Ocean—		
(*a*) Steamer ...	5	These rates are percentages on the original cost.
(*b*) Sail or tug ...	4	
(*ii*) Inland—		
(*a*) Steamers ...	10	
(*b*) Tug boats ...	12·5	
(*c*) Iron or steel flats for cargo	10	
(*d*) Wooden cargo boats up to 50 ton capacity ...	10	
(*e*) Wooden cargo boats over 50 tons capacity ...	10	

Class of asset.	Rate. Percentage on the written down value.	Remarks.
(*f*) Motor launches	12·5	
*(*g*) Speed boats ...	20	
J.—Mines and quarries (N.E.S.A.)—		
(*i*) Machinery—		
(*a*) Surface and underground machinery (except electrical machinery), head gear, moving part and rails ...	15	
(*b*) Boilers and head gears (excluding moving parts)	8	
(*ii*) Coal tubs, winding ropes and haulage ropes ...	...	Renewals will be allowed as revenue expenditure.
(*iii*) Shafts and inclines ...	7	
(*iv*) Portable under-ground machinery ...	25	
(*v*) Safety lamps ...	...	Cost of lamps actually used up will be allowed as revenue expenditure.
(*vi*) Tramways on the surface	10	
K.—Aeroplanes (N.E.S.A.)—		
(*i*) Aircraft	30	
(*ii*) Aero-engines	40	
(*iii*) Aerial photographic apparatus	25	
L.—(*i*) Textile machinery excluding silk manufacturing machinery—		
(*a*) Cotton ...	10	
(*b*) Jute excluding generating plant	9	
(*c*) Woollen and worsted ...	10	

* "Speed boat' means a motor-driven boat by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in still water and so designed that when running at speed it will plane, *i.e.*, its bow will rise form the water.

Class of asset.	Rate. Percentage on the written down value.	Remarks.
(*d*) Carpet ...	10	
(*ii*) Ginning and pressing machinery ...	9	
M.—(*i*) Air compressers and pneumatic machinery. (*ii*) Electro-plating and electro-welding plant. (*iii*) Newspaper production plant and machinery. (*iv*) Air conditioning machinery ... (*v*) Locomotives, rolling stock, tramways, and railways used by concerns excluding railway concerns (N.E.S.A).	10	
N.—(*i*) Tube well boring plant ... (*ii*) Concrete pile driving machines ... (*iii*) Weighing machines (N.E.S.A.) ... (*iv*) Works instruments ... (*v*) Automatic and semi-automatic machine tools. ... (*vi*) Precision machine tools, *e.g.*, grinding machines.	12	
O.—(*i*) Calculating machines (N.E.S.A.) ... (*ii*) Typewriters (N.E.S.A.) (*iii*) Neo Post Franking machines (N.E.S.A.) (*iv*) Accounting machines (N.E.S.A.) ... (*v*) Other office machinery (N.E.S.A.) ...	15	

Class of asset.	Rate. Percentage on the written down value.	Remarks.
(*vi*) Sewing and knitting machines employed in the manufacture of hosiery and woollen goods. (*vii*) Sewing and stitching machines for canvas or leather. (*viii*) Hand or automatic embroidery machines and their accessories (N.E.S.A.) (*ix*) Refrigeration plant, containers, etc. (N.E.S.A.) (*x*) Road making plant and machinery ... (*xi*) Artificial silk manufacturing machinery* (*xii*) Surgical instruments (N.E.S.A.)... (*xiii*) Wireless apparatus and gear, wireless appliances and accessories (N.E.S.A.) (*xiv*) Building contractors' machinery (N.E.S.A.)	15	*Replacement of wooden parts of plant and machinery will be allowed as revenue expenditure.
P.—(*i*) Indigenous sugar cane crushers (Kohlus and Belans) (N.E.S.A.)	18	
Q.—(*i*) Motor cars (N.E.S.A.)	20	
R.—(*i*) Moulds used in the manufacture of concrete pipes (N.E.S.A.)	25	
(*ii*) Motor taxis, motor lorries, motor buses and motor tractors (N.E.S.A.)	25	
S.—(*i*) Railway sidings (N.E.S.A.) ...	7	

8A. Omitted.

9. Omitted.

9A. Omitted.

10. All sums deducted in accordance with the provisions of section 18 of the Act shall be paid—

(*a*) in the case of deduction by or on behalf of Government on the same day ; and

(*b*) in all other cases within one week from the date of such deduction or the date of receipt of the chalan by the person making the deduction, as the case may be :

Provided that in cases falling under (*b*) the Income-tax Officer may, in special cases, and with the approval of the Inspecting Assistant Commissioner, permit an employer to pay the income-tax and super-tax deducted from any income chargeable under the head "Salaries" quarterly on June 15th, September 15th, December 15th and March 15th.

10A. The prescribed rate of exchange for the calculation of the value in rupees of any income chargeable under the head "Salaries" which is payable to the assessee out of India in sterling by or on behalf of Government shall be 1*s.* 6*d.* per rupee.

11. (1) In the case of income chargeable under the head "Salaries" where deduction is not made by or on behalf of Government, the person making the deduction shall forthwith send to the Income-tax Officer within whose jurisdiction the deduction is made, (or where there is more than one Income-tax Officer having jurisdiction in the same area to the Income-tax Officer specified by the Commissioner of Income-tax) a statement giving the following particulars :

1. Name of employee.

2. Amount of salary (or wages) paid during the month.

3. Leave salary or allowance, if any, paid in the United Kingdom or in a Colony.

4. Date of payment.

5. Period for which the salary (or wages) was paid.

6. House rent allowance paid.

7. Value of rent free quarters.

8. Bonus, gratuity, fees, commissions, perquisites, or other allowances, profits in lieu of or in addition to salary, payments at or in connection with the termination

of the employment, advances of salary, and all other sums paid which are chargeable to income-tax (full details showing amount, date of payment and period for which due are to be given for each item separately).

9. Salary, bonus and all other sums, which were due to be paid during the month but were not actually paid (full details showing the amount, due date, period for which the amount was payable to be given for each separately).

10. Estimated total yearly income under the head "Salaries".

11. Average rate of income-tax.

12. Average rate of super-tax.

13. Yearly amounts paid or deducted in respect of provident or superannuation or other funds and life insurance premiums (with details).

14. Net amount upon which tax has been deducted during the month.

15. Amount of income-tax deducted during the month.

16. Amount of super-tax deducted during the month.

(2) In cases where the trustees of an approved Superannuation Fund repay any contributions to an employee during his life-time but not at or in connection with the termination of his employment they shall forthwith send to the Income-tax Officer specified in sub-rule (1) a statement giving the following particulars :—

1. Name and address of the employee.

2. The period for which the employee has contributed to the Superannuation Fund.

3. The amount of contributions repaid—

   (*a*) Principal ,

   (*b*) Interest.

4. The average rate of deduction of income-tax during the preceding three years.

5. Amount of income-tax deducted on repayment.

(3) The statements referred to in sub-rules (1) and (2) shall be drawn up in separate sections one for each place where the employees are stationed and an additional extract of those sections relating to employees who are residing outside the jurisdiction of the Income-tax Officer referred to above shall also be sent with the statement.

(4) The person responsible for making the deduction, or the trustees, as the case may be, shall pay the amount of tax so deducted to the credit of the Central Government by remitting it within the time prescribed in Rule 10 into the Government Treasury or office of the Reserve Bank of India or of the Imperial Bank of India accompanied by an Income-tax chalan, blank copies of which shall be supplied by the Income-tax Officer for the purpose : provided that on receipt of the above-mentioned statement the Income-tax Officer may, if so expressly requested and if satisfied that there is sufficient ground for the request, himself have the necessary chalan prepared and forwarded to the person concerned, who shall thereupon pay the amount to the credit of the Central Government in the manner above described.

12. In the case of any income chargeable under the head 'Interest on Securities' the person responsible for paying the interest shall at the time of deduction send to the Income-tax Officer concerned a statement showing the following particulars :—

(i) Name and address of the recipient,
(ii) Description of securities,
(iii) Numbers of securities,
(iv) Dates of securities,
(v) Amounts of securities,
(vi) Period for which interest is drawn,
(vii) Amount of interest, and
(viii) Amount of tax.

12A. The person making deductions in accordance with sub-sections (3A), (3B), (3C), (3D) and (3E) of section 18 shall at the time of deduction send to the Income-tax Officer concerned a statement showing the following particulars :—

1. Name and address of the non-resident on whose behalf the tax is deducted.

2. The date of payment and in the case of dividend the date of the declaration of the dividend by the company.

3. The nature of payment.

4. The amount paid :—

(i) in the case of interest the rate per cent. per annum, the period for which the interest has been paid and the amount on which the interest has been computed,

(ii) in the case of dividend the gross amount before deducting income-tax along with the basis of the computation of the gross amount.

5. The amount of income-tax deducted.

6. The amount of super-tax deducted.

12B. On receipt of the statements prescribed in Rules 12 and 12A, the Income-tax Officer shall without delay prepare the necessary chalan and send it to the person responsible for making the deduction who shall pay the amount to the credit of the Central Government by remitting it into the Government Treasury, or office of the Reserve Bank of India or of the Imperial Bank of India as the case may be within the time limit specified in Rule 10 : provided that where deduction is made by or on behalf of Government the amount shall be credited within the time and in the manner aforesaid without production of a chalan.

13. The certificate to be furnished under section 18 (*9*) of the Act by any person paying interest chargeable to income-tax on any security of the Central Government or of a Provincial Government shall be in the following from :—

Draft No. (*).

Certified that Rs. being income-tax at the rate of pies per rupee has been deducted by draft of this date from Rs. being the amount of interest on (1) for Rs. / for Rs. / for Rs. standing in the name of 19 .

Superintendent or Principal Officer.

(To be signed by claimant.)

I hereby declare that the securities on which interest as above specified has been received were my own property and were in the possession of at the time when income-tax was deducted.

Signature

Date

---

*This number also appears in the interest pages on the back of the Securities.

(1) Name of Security.

13A. The certificate [2] to be furnished under section 18 (*9*) of the Act by the person paying any interest on debentures or other securities for money issued by or on behalf of a local authority or a company shall be in the following from :—

Name of Local Authority/Company.

Address.

To [3]

Name and address of payee [4]

I/We hereby certify that Rs. being income-tax at the rate of pies per rupee has been deducted from Rs. being the amount of interest at the rate of per cent. per annum due [5] on debentures Nos. of Rs. each of the [6] and that it has been or will, within the prescribed period, be paid by me/us to the Central Government at

Superintendent, Public Debt Office,
or Principal Officer or Managing Agents.
19 .

(*N.B.*—The securities to be produced when required in support of any claim.)

(To be signed by claimant.)

I hereby declare that the securities on which interest as above specified has been received, were my own property and were in the possession of at the time when income-tax was deducted.

Signature

Date

(*N.B.*—The securities to be produced when required in support of any claim.)

---

(2) In the case of bearer debentures or bonds a certificate under section 18(*9*) shall only be given if the recipient of the interest declares the name and address of the real owner of the security at the time of receiving the interest.

(3) Name and address of the owner of security should be given here. In the case of bearer debentures or bonds, these particulars are to be given as declared by the payee concerned.

(4) To be completed only in the case of bearer debentures or bonds.

(5) The date on which interest is payable.

(6) Here enter the name of the local authority or the company.

13B. The certificate to be furnished under section 18 (*g*) of the Act by the person paying any interest not being "interest on securities" or any other sum chargeable under the provisions of the Act shall be in the following form :—

Name of person making payment.

Nature of payment.

Address.

To

Name and address of payee.

I/We hereby certify that Rupees being income-tax at the rate of pies per rupee and Rupees being super-tax at the rate applicable have been deducted from Rupees being the amount paid on *at the rate of per cent. per annum for the period (1) computed on the amount of Rupees (2).

Signature of person making payment.

13C. The certificate to be furnished under section 18 (*g*) of Act by the person paying any dividend on shares registered in the Reserve Bank of India shall be in the following form :—

Name of person paying dividend.....

Address

To

Name of payee.

I hereby certify that Rs. being income-tax at the rate of pies per rupee has been deducted from Rs. being the amount of dividend at the rate of per cent. per annum due (3) on share of Rs. and that it has been or will, within the prescribed period, be paid by the bank to the Central Government at

Governor,
Reserve Bank of India.
19 .

* This applies to payment of interest only.

(1) Here specify the period for which interest has been paid.

(2) Here state the amount on which interest has been computed.

(3) Here specify the date on which refund is payable.

(To be signed by claimant)

I hereby declare that the shares on which dividend as above specified, has been received, were my own property and were in the possession of at the time when the income-tax was deducted.

Signature

Date

(*N.B.*—The shares certificates to be produced when received in support of any claim.)

14. The certificate to be furnished by the principal officer of a company under section 20 shall be in the following form :—

(*Name of Company.*)

(*Address of Company.*)

Date

Warrant for Rs. (in words and figures or, if the certificate is crossed by an entry in words stating that the amount of dividend is under the next multiple of Rs. 50 above that amount, in figures only) being dividend (1) at the rate of Rs. (in words and figures) per share for the (2) the period from to during the year ending on the day of 19 , (3) on (4) shares in this Company, registered during the said period/on (Date) in the name of . This dividend was declared at the (5) meeting held on the (6) 19 .

I/We hereby certify that income-tax on the entire/such part as is liable to be charged to Indian Income-tax of the profits and gains of the Company, of which this dividend forms a part, has been, or will be duly paid by me/us to the Government of India.

Signature

Date

---

(1) Or dividend and bonus.

(2) Year or half-year, as the case may be.

(3) Here enter whether free of income-tax or not.

(4) Here enter number and description of shares.

(5) Here specify number and nature of meeting.

(6) Here enter date.

(To be signed by the claimant.)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared/during the period from to /on (Date) and were in the possession of

Signature

Date

15. The returns for Government officers under section 21 of the Act shall be prepared and submitted to the Income-tax Officer by :—

(*a*) Civil Audit Officers for all gazetted officers and others who draw their pay from audit offices on separate bills ; and also for all pensioners who draw their pensions from audit offices.

(*b*) Treasury officers for all gazetted officers and others who draw their pay from treasuries on separate bills without countersignature ; and also for all pensioners who draw their pensions from treasuries.

(*c*) Heads of Civil or Military offices for all non-gazetted officers whose pay is drawn on establishment bills or on bills countersigned by the head of office.

(*d*) Forest disbursing officers and Public Works Department disbursing officers in cases where direct payment from treasuries is not made, for themselves and their establishments.

(*e*) Head postmasters for (*i*) themselves, their gazetted subordinates and the establishments of which the establishment pay bills are prepared by them and (*ii*) gazetted supervising and controlling officers of whose headquarters post office they are in charge and (*iii*) pensioners drawing their pensions through post offices ; Head Record Clerks, Railway Mail Service, for themselves and all the staff whose pay is drawn in their establishment pay bills ; the Disbursing Officers in the case of the Administrative and the Audit Officers.

(*f*) Controllers of Military Accounts (including Divisional Military Supply, Marine, Field and War Controllers) for all gazetted military officers under their audit.

(*g*) Disbursing officers in the Military Works Department for themselves and their establishments.

(*h*) Chief Accounts officers or Chief Auditors of Railways concerned for all railway employees under their audit.

16. The minimum income under the head "salaries" referred to in section 21 (*a*), shall be Rs. 1,600 per annum.

17. The return to be delivered to the Income-tax Officer under section 21 of the Indian Income-tax Act, 1922, to be made within thirty days from the 31st day of March in each year by 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 be made and verified in the following form :—

Designation of { Government office / Local authority / Company / Public body / Association / Private employer } _____

Serial No.	Name of employee.	Postal address of residence.	Appointment nature of employment.	Total amount of salary, wages, annuity or pension paid during the year ending on 31st March 19 .	Period for which items in column 5 were paid.	House allowance paid during the year.	Value of rent free quarters for the year.
1	2	3	4	5	6	7	8

Bonus, gratuity, fees, commission, perquisites or other allowances, profits in lieu of salary payments made at or in connection with the termination of employment; advances of salary, etc., and all other sums paid which are chargeable to income-tax. (Full details showing the total amount paid during the year, period for which the payments were made are to be given separately for each distinct class of payment)	Salary, bonus, all other sums which were due to be paid during the year but which were not actually paid. (Full details showing the amount, the due date, and the period for which the amount was payble are to be given.)	Total of columns, 6, 7, 8, 9 & 10.	Yearly amounts paid in respect of Provident Fund Contributions and Life Insurance premiums (give details).	Net amount upon which tax has been deducted during the year.	Total amount of income-tax deducted during the year.	Remarks.
9	10	11	12	13	14	15

I certify that the above statement contains a complete list of the total amounts paid by ..... to all persons who were receiving or to whom was due income on the 31st day of March 19 , at the rate of Rs. 1,600 per annum or have received or to

whom was due during the year ended on that day not less than Rs. 1,600 in respect of salary, wages, annuity, pensions, gratuity, fees, commission, perquisites or profits in lieu of or in addition to salary or wages, advances of salary, payment at or in connection with retirement or any other sums chargeable to income-tax under the head "salaries" and that all the particulars stated are correct.

Dated———— ———— Signature of person by whom the return is delivered

at—— ———— Designation.

18. The manner of publication under sub-section (*1*) of section 22 other than publication in the press shall be as follows :—

On or before the 1st May in each year, a notice, in the form set out in Rule 18-A, or as near thereto as may be, requiring every person whose income exceeds the maximum amount which is not chargeable to income-tax, to furnish a return of his total income and total world income during the previous year in the prescribed form and verified in the prescribed manner shall be affixed to the notice board of the Income-tax Officer's office and (with the consent of the Provincial Government where such consent is necessary and has been obtained) of as many of the following offices or Courts situated within the Income-tax Officer's jurisdiction as may be practicable :—

1. All Head Post Offices and Sub-Post Offices.

2. Courts of the District Judges, Subordinate Judges, Civil Judges and District Munsiffs.

3. Office of the District Collectors, Deputy Commissioners, Divisional and Sub-Divisional Officers, Tahsildars, Mamlatdars and Mukhtiarkars.

18A. The notice referred to in sub-section (*1*) of section 22 shall be in the following form :—

NOTICE.

INCOME-TAX.

Return of total income and the total world income of the previous year for assessment in the year commencing on the 1st April 19 .

In pursuance of sub-section (*1*) of section 22 of the Indian Income-tax Act, 1922 (XI of 1922), notice is hereby given to EVERY PERSON whose total income during the previous year exceeded the maximum amount not chargeable to Income-tax to furnish within sixty days from the date of this Notice a return in the prescribed form and verified in the prescribed manner

setting forth (along with such other particulars as are required by the said form) his total income and total world income during that year.

A copy of the prescribed form will be supplied free of charge to any person who, for the purpose of complying with this Notice, applies at my office.

Penalty.—Any person who fails without reasonable cause to furnish the return required by this Notice, or fails without reasonable cause to furnish it within the time allowed or in the manner required is liable under section 28 of the said Act to a penalty not exceeding one and a half times any tax payable by him.

Income-tax Officer.

Address.

Date.

NOTE.—For the year commencing on 1st April 1939, the maximum amount which is not chargeable to income-tax is as follows :—

In the case of—

(i) Any Court of Wards, Administrator-General, Official Trustee, any Receiver or Manager appointed under any order of a Court, or any trustee or trustees appointed under a duly executed trust deed, where the 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 .. ..Rs. *nil.*

(ii) Any company or local authority.....Rs. *nil.*

(iii) Any person, being a British subject or the subject of a State in India or Burma, who is not resident in British India and whose total world income exceeds Rs. 2,000 ....Rs. *nil.*

(iv) Any other non-resident person .....Rs. *nil.*

(v) Any other individual, Hindu undivided family, firm or association of persons ..... Rs. 2,000.

19. (1) The return of total income and total world income for individuals, Hindu undivided families, companies, local authorities, firms and other associations of persons required under sub-section (*1*) or sub-section (*2*) of section 22 shall be in the following form :—

Form of return of total income and total world income for individuals, Hindu undivided families, companies, local authorities, firms and other associations of persons under sub-section (1) or (2) of section 22 of the Indian Income-tax Act, 1922—*See note 1.*

Income-tax year 19 -19

Name....

Status...

Address.

PART I

Statement of total income and total world income during the previous year ended_____

—*See note 2.*

Sources of income —*See note 3.*	Amount of Income, Profits or Gains, *See note 4* Tax ed Rs.	Rs. as.
SECTION A.—INCOME WHICH ACCRUED, ARISE, OR WAS RECEIVED OR IS DEEMED TO HAVE ACCRUED, ARISEN OR BEEN RECEIVED IN BRITISH INDIA (*and, unless the assessee is not resident in British India, income arising abroad from a business controlled in, or a profession or vocation set up in, India, including Indian States.*)		
1. SALARIES—(The value of rent-free quarters and contributions by your employer to a recognised Provident Fund with interest on such contributions and on accumulations thereof should be shown separately.)—*See note 6.*		
2. INTEREST ON SECURITIES.—*See note 7.* Interest from which tax has been deducted. Interest which is tax-free.		
3. PROPERTY. *See note 8.* Total amount as detailed in PART VI of this Return.		
4. BUSINESS, PROFESSION OR VOCATION.—*See note 9.* (*a*) Profits and gains as detailed in PART IV of this Return. (*b*) Share of profits in a registered firm. (*c*) Share of profits in an unregistered firm.		

Sources of income—*See note 3.*	Amount of Income, Profits or Gains, *See note 4*	Tax already charged or deducted at source.—*See note 5*
1	2	3
	Rs.	Rs. as
5. OTHER SOURCES.		
Dividends from companies (gross amount.)—*See note 10*		
Interest on Mortgages, Loans, Fixed Deposits, Current Accounts, etc.		
Ground Rents.		
Sources other than those mentioned above (give details).—*See note 11.*		
TOTAL OF SECTION A.		
SECTION B.—INCOME NOT INCLUDED IN SECTION A WHICH ACCRUED, OR AROSE OUTSIDE BRITISH INDIA AND WAS BROUGHT INTO BRITISH INDIA DURING THE PREVIOUS YEAR. (*Persons not resident in British India should write "not applicable" in this section.*)		
1. Out of income which accrued or arose during such previous year (give details).		
2. Out of income which accrued or arose prior to such previous year but after 1st April 1933 (give details) excluding such part of it as has suffered tax after the commencement of the Income-tax Amendment Act, 1939.—*See note 13.*		
SECTION C.—INCOME WHICH ACCRUED OR AROSE OUTSIDE BRITISH INDIA DURING THE PREVIOUS YEAR AND IS NOT INCLUDED IN SECTION A OR B.—*See note 13.*		
(*a*) Non-residents should show the full amount in column 2.		
(*b*) Persons resident but not ordinarily resident in British India should write the words "not applicable" in this section.		
(*c*) Persons ordinarily resident should give details in the sub-column and deduct Rs. 4,500 before carrying the total to the main column. If, in the case of such a person, the income is less than Rs. 4,500 and no income on account of unremitted profits is included in section A no details need be given, and the words "less than Rs. 4,500" may be written in this section.		
Details.—		
Less (for persons ordinarily resident in British India.) Rs. 4,500		
TOTAL OF SECTIONS A, B AND C.—*See note 12.* Rs.		

PART II

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

—See note 14.

	Rs.
1. Sums deducted from salary payable by the Crown and to which the proviso to sub-section 1 of section 7 of the Act applies.—*See note 15.*	
2. Sums paid to effect an insurance on the life of the assessee or on the life of his wife, or her husband or in respect of a contract for a deferred annuity ; or, in the case of a Hindu undivided family, to effect an insurance on the life of any male member or his wife. (The original receipt or certificate from the insurance company must be attached.)	
3. Contributions to (*a*) any provident fund to which the Provident Funds Act, 1925, applies (*b*) a recognised provident fund or (*c*) an approved superannuation fund (*d*) interest on contributions to a recognised provident fund and accumulations thereof which is exempt from Income-tax.—*See note 16.*	
4. Share in the income of an unregistered firm or an association of persons where the tax has already been paid or is payable on the income by the firm or association (give details)	
5. Interest on tax-free securities	
Total Rs. .	

PART III

Particulars required under sub-section (5) of section 22 of the Income-tax Act, 1922.

(*a*) *To be completed in the case of all persons engaged in a business, profession or vocation. In the case of a firm this section should be completed on the firm's return and not on the individual partner's returns.*

Name in which the business, profession or vocation is carried on, or, in the case of a firm the firm's name.

Principal place of the business, profession or vocation.

Location and style of each branch :

1.

2.

3.

(*b*) *To be completed in the case of firms only.*

Name of each partner.	Address.	Extent of share including interest on capital, salary, commission or other remuneration, if any. (Give details.)

(*c*) *To be completed in cases where the assessee is a partner in a firm or firms.*

Name and address of the firm.	Name of each Partner including the assessee.	Address of each partner.	Share of each partner including interest on capital, salary, commission or other remuneration, if any. (Give details.)

PART IV

Particulars of income from Business, Profession or Vocation.

(1) In the case of a firm this part is to be completed in firm's return and not in the partners' individual returns.

(2) If the accounts are kept on the mercantile accountancy or book profit system a copy of the Profit and Loss Account and Balance Sheet must be attached to this Return. If the accounts are kept on any other system, the name or description of the system is to be stated and a copy of any statement which corresponds to the Profit and Loss Account in the mercantile accountancy system must be attached to this Return. In the case of a Company a copy of the Auditor's Report and certificate must also be attached.

	Rs.	Rs.
PROFIT OR LOSS AS PER PROFIT AND LOSS ACCOUNT (OR STATEMENT CORRESPONDING TO THE PROFIT AND LOSS ACCOUNT) FOR THE YEAR ENDED 19 .		
Add—(*Deduct* if the above figure is a loss) . . . Any profits or gains not included in arriving at the above figure of profit.		
Reserve for Bad Debts		
Sums carried to reserve for provident or other funds .		
Interest credited to reserves or other funds . .		
Expenditure of the nature of charity or presents .		
Expenditure of the nature of capital . . .		
Income-tax or Super-tax		
Drawings of proprietor or partners . . .		
Salaries and commission paid or credited to the proprietor or partners—*See note 17(a).*		
Interest allowed to the proprietor or partners on capital or loan accounts—*See note 17(a).*		
Rental value of the property owned and occupied .		
Cost of additions to or alterations, extensions or improvements to any of the assets of the business.		
Losses sustained in former years and charged in arriving at the figure of profit (or loss) shown above.		
Depreciation of any of the assets of the business .		
Private or personal expenses		
Any other expenditure not incurred wholly and exclusively for the purpose of the business, profession or vocation. (Give details.)		
Any other expenditure which is not allowable under the provisions of section 10 of the Income-tax Act, 1922—*See note 17(b).* Give details :—		

PROFIT OR LOSS AS PER PROFIT AND LOSS ACCOUNT (OR STATEMENT CORRESPONDING TO THE PROFIT AND LOSS ACCOUNT) FOR THE YEAR ENDED 19 —*continued*	Rs	Rs
Deduct—		
Any profit or gains, capital sums or other items credited in arriving at the above figure of profit which are not taxable or upon which tax has already been paid Give details —		
Interest on securities tax free		
Depreciation allowable as shown in Part V of this Return—*See note 17(c)*		
Any other allowable expense which has not been charged in arriving at the above figure of profit Give details —		
Net profit (or loss—*See note 9*)—carried to Part I of this Return Rs		

N B—The above particulars should be given for each separate and distinct business profession or vocation

PART V—DEPRECIATION [See note 17(c)]

Statement of particulars prescribed under proviso (*a*) of section 10 (2) (vi) of the Income-tax Act, 1922, and of the amount of depreciation allowable

Description of buildings, machinery plant or furniture	*Written down value as at the beginning of the accounting period [See Note 17 (c)]	Capital expenditure during the year for additions alterations improvements and extensions	Date from which the additions etc referred to in Col (3) are used for the purposes of the business, profession or vocation	If a plant or machinery has been sold or discarded during the year, show in this column the written down value as at the beginning of the accounting period and the value for which it is actually sold or its scrap value	Amount on which depreciation is now allowable	Prescribed rate per cent	Depreciation allowable	Remarks
1	2	3	4	5	6	7	8	9

*Notes—(1) In the case of ocean going ships, particulars of original cost instead of those of the written down value should be furnished

(2) For the assessment year 1939 40 the figures to be furnished are those of 'original cost' instead of those of "written down value"

PART VI.—INCOME FROM PROPERTY

| | | |

I declare that to the best of my knowledge and belief the information given in the above statements in Parts I, II, III, IV, V and VI of this Return is correct and complete, that the amounts of total income and total world income and other particulars shown are truly stated **and relate to the year ended** .....

and that no other income accrued or arose or was received by

*me / the firm / the family / the association / the company / the total authority	during the said year and that	*I / the firm / the family / the association / the company / the local authority

had during the said year no other sources of income.

I further declare that | †I / the firm / the family / the association / the company | was | ordinarily resident / resident / not resident |

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

Date

*Signature*_____

*Status*_____

*NOTE.—The alternatives which are not required in the declaration should be scored out. The declaration shall be signed—

(*a*) in the case of an individual by the individual himself ;

(*b*) in the case of a Hindu undivided family by the Manager or *Karta* ;

(*c*) in the case of a company or local authority by the principal officer ;

(*d*) in the case of a firm by a partner ; and

(*e*) in the case of any other association by a member of the association.

The signatory should satisfy himself that the return is correct and complete in every respect before signing the verification.

Notes for guidance in filling up Return Form No. I. T. 11.

Important changes in the Act have been made by the Income-tax (Amendment) Act, 1939, and assessees are advised to read carefully such of these notes as are appropriate to their cases.*

1. *On the publication of the notices referred to in section 22 (1) of the Act* every person or association of persons whose total income exceeds the maximum amount not chargeable with income-tax is required to make a return of his total income and his total world income *whether or not he has been served with an individual notice under section 22 (2) of that Act.* The maximum amount which is not chargeable to income-tax is as follows :—

In the case of—

(*i*)	Any Court of Wards, Administrator General, Official Trustee, any Receiver or Manager appointed under any order of a Court, or any trustee or trustees appointed under a duly executed trust deed, where the 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	Rs. *Nil.*
(*ii*)	Any company or local authority ...	Rs. *Nil.*
(*iii*)	Any person, being a British Subject or the subject of a State in India or Burma, who is not resident in British India and whose total world income exceeds Rs. 2,000	Rs. *Nil.*
(*iv*)	Any other non-resident person ...	Rs. *Nil.*
(*v*)	Any other individual, Hindu undivided family, firm or association of persons ...	Rs. 2,000.

Total income is the total income chargeable under the Act, and total world income includes all income wherever accruing or arising unless exempted under section 4 (*3*) of the Act.

2. "*Previous year*" means for each separate source of income—

(*a*) the year ended on 31st March prior to the income-tax year, or at the option of the assessee, the year ended on the date (prior to the 31st March) to which his accounts have been made up, or

*NOTE.—In these Notes "the Act" means the Income-tax Act, 1922.

(*b*) the year prescribed by the Central Board of Revenue for any case or class of cases.

Certain conditions attach to the exercise of the option referred to in (*a*) and certain further conditions govern the determination of "previous year" in respect of a business, profession or vocation newly set up, and these are shown in clause (11) of section 2 of the Act.

For each source of income for which the previous year does not end on the 31st March, the last date of the previous year should be shown.

3. *Sources of income.*—The following income must be included in your return under the appropriate head—

(*a*) *So much of the income of your wife* as arises directly or indirectly from—

(*i*) her membership in a firm of which you are a partner ;

(*ii*) assets transferred directly or indirectly to her by you otherwise than for adequate consideration or in connection with an agreement to live apart.

(*b*) *So much of the income of your minor child* as arises from—

(*i*) his (or her) admission to the benefits of partnership in a firm of which you are a partner ;

(*ii*) assets transferred directly to him (or her) by you otherwise than for adequate consideration unless she is a married daughter.

(*c*) *So much of the income of any person or association of persons* as arises from assets transferred by you to the person or association otherwise than for adequate consideration for the benefit of your wife or minor child or both.

(*d*) *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 which remain your property, or by virtue of a revocable transfer of assets.

[Section 16 (*1*) of the Act contains definitions of "revocable", and "settlement or disposition", and sets out also certain exceptions.]

(*e*) *Income from assets transferred to persons not resident, or, if resident not ordinarily resident* for the purpose

of avoiding tax in the circumstances set out in section 44-D.

(*f*) *Income from securities, stocks or shares* which have been sold before the date of payment of the interest or dividend and re-purchased subsequently in the circumstances set out in sections 44-E and 44-F.

4. *An individual is "resident" in British India* 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 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 ;

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

A company is resident in British India in any year,

(*a*) if the control and management of its affair 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.

(*a*) *An individual is ordinarily resident* in British India if he has been resident as defined above in nine out of ten years preceding that year *and* has been in British India for periods amounting in all to more than two years during the seven years preceding that year.

(*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.

5. *Tax already charged or deducted at source.*—In this column only British Indian tax should be entered. Super-tax deducted at source should be shown separately (unless, in the case of a salaried person, the assessee is unaware of the allocation between Income-tax and Super-tax). In the case of a dividend from a Company the tax to be entered is the tax appropriate to that part of the dividend which has borne Income-tax and should be calculated at the rate in force for companies for the year in which the dividend was paid. Where this figure of tax is not known, it should be estimated and the word "estimated" written below the figure. The correct figure will then be computed in the Income-tax office. If any tax deducted at source is in excess of the amount on which you are chargeable, the excess will be deducted from any other tax payable by you provided that certificates of tax deducted are attached to this Return.

6. *Salaries* includes wages, pensions (if payable anywhere in India including and Indian State, and if earned in British India), annuities, gratuities, fees, commission, allowances, perquisities, value of rent-free quarters and profits received in lieu of or in addition to salary or wages. The full amount should be entered and not the net amount after deducting income-tax, your provident fund contributions, etc.

Prior to the Indian Income-tax (Amendment) Act, 1939, the basis was the amount of salary *received* in the previous year. It is now the amount actually received or the amount due *whether paid or not.* An advance of income is to be treated as salary on the date on which the advance is received.

If *by the conditions of your employment* you are required to spend any sum out of your remuneration *wholly, necessarily and exclusively in the performance of your duties* you may claim a deduction for such a sum and should give particulars. Travelling expenses from your house to your place of employment are not allowable.

A payment received by you as an employee from your employer or former employer or from a provident or other fund at or in connection with the termination of your employment is taxable to the extent to which it does not consist of the return of your own contributions or interest, thereon. Payments made solely as compensation for loss of employment and certain payments from provident funds to which the Provident Funds Act, 1925, applies from a recognised provident fund or from an approved superannuation fund are exempted.

7. *Interest on Securities* means interest on promissory notes or bonds issued by the Government of India or any Provincial Government, or the interest on debentures or other securities

issued by or on behalf of a local authority or company. The gross amount before deduction of income-tax should be entered.

Entries under this head should be accompanied by the certificate issued by the person paying the interest under section 18 (9) of the Act.

Deductions are allowable in respect of—

(a) commission charged by a banker for collecting the interest :

(b) interest payable on money borrowed for the purpose of investment in the securities except certain interest payable to persons abroad from which tax has not been deducted (see section 8 of the Act for details). Full particulars (in separate statement if necessary) should be given of any deduction claimed.

8. *Property.*—The tax is payable under this head in respect of the *bona fide* annual value of all buildings or lands appurtenant thereto, of which you are the owner, other than such portion of such buildings and lands as you occupy for the purpose of your business, profession or vocation the profits of which you are assessable to tax. In arriving at the *bona fide* annual value *add* to the full rent payable by the tenant to the owner such rates and taxes paid by him as are leviable on property and are to be borne by the owner, and *deduct* such taxes for services as are payable by the tenant but for convenience are borne by the owner.

9. *Business, Profession or Vocation.*—You should complete item 4 (a) of Part I, and Parts IV and V of the Return in respect of any business, profession or vocation if you are the sole proprietor, or if you are making the Return on behalf of your firm. If you are a partner in a registered firm, or if your firm has applied for registration you must complete item 4 (b) of Part I, and if you are a partner in an unregistered firm you must complete item 4 (c) of Part I.

For the purpose of completing items 4 (b) and 4 (c) of Part I, the share of a Partner is to be determined as follows :—

(i) *The share is the share to which he was actually entitled during the previous year and not the share to which he was entitled on the date on which the assessment is to be made* ;

(ii) it includes all interest (whether on loan or capital account, and whether actually paid or not) and all salary, commission or other remuneration paid, payable or credited to him.

Losses are to be computed in like manner as profits, and the balance of any loss made in the previous year for assessment for the year 1939-40, which cannot be set off wholly against other income of the same year, can be carried forward and set against the profits *of the same business, profession or vocation* of the following year.

Persons resident but not ordinarily resident, are entitled to deduct from their income arising abroad from a business controlled in or a profession or vocation set up in India, including Indian States, a maximum amount of Rs. 4,500 in respect so much of the profits as are not remitted to British India. They should, therefore, show their income in Section A after deducting the appropriate amount up to a maximum of Rs. 4,500 from the unremitted profits.

Persons ordinarily resident, are entitled to deduct a maximum of Rs. 4,500 from *all income* accruing or arising abroad (including income from business controlled in or a profession set up in India including Indian States) but not remitted to British India. They should claim this deduction in Section 'C' to the extent to which it can be claimed here and the balance out of any unremitted profits included in Section A which should be reduced accordingly.

Local authorities.—The income of local authorities which is chargeable to income-tax is the profits and gains from a trade or business carried on by those authorities other than income arising from the supply of a commodity or service within its own jurisdictional area.

10. *Dividends from companies.*—The gross amount should be entered after adding to the net sum received income-tax computed as explained in Note 5 above. Where the exact tax is not known, the estimated tax should be added and the figure of net dividend put in Column I followed by the word "net".

11. (*a*) *Income from Agriculture* from land not paying land revenue or local rates to an authority *in British India*, and *all* agricultural income arising abroad (including Indian States and Burma) should be included under this head if received in British India.

(*b*) *Remittances received by a wife resident in British India from her non-resident husband* are deemed to be income accruing in British India and must be included in her return if they are not paid out of income included in her husband's total income.

12. *Non-residents.*—Income-tax is payable by a non-resident on the total of Section A. If he is a British subject or the subject of a State in India or Burma the income-tax is computed by reference to the average of rates appropriate to the total of

Sections A and C. The Income of other non-resident is chargeable at the full company rate. The income of all non-residents is chargeable to super-tax on the total of Section A at the average of the rates appropriate to the total of Sections A and C. A dividend paid without British India is 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.

13. *For the income-tax year 1939-40 only* tax is not chargeable in respect of both the income accruing or arising outside India in the previous year and the income brought into British India during that year out of income accruing or arising in earlier years but only in respect of the greater of these two amounts. If the former sum is the greater, Section B (*2*) should be marked "covered by Section C", and if the latter is the greater Section C should be marked "covered by Section B (*2*)".

14. Sums entered in Part II cannot be deducted from total income, but, subject to the limits laid down in the Act, a deduction will be made in respect of such sums from the income-tax payable at the average rate for the total income. No deduction from super-tax is given in respect of these sums, except in certain special cases of members of unregistered firms and other associations of persons as provided for in the second proviso to section 55.

15. The proviso to section 7 (*1*) of the Act applies to sums deducted in accordance with the conditions of service for the purpose of securing a deferred annuity or of making provision for the employee's wife or children.

16. Details of the amounts to be entered in respect of a recognised Provident Fund should be obtained from the trustees of the fund or from your employer.

17. *Part IV.*—(*a*) In computing the profits or gains of a partnership *all* sums paid or credited to a partner must be disallowed. These sums will be taken into account in allocating the gross income of the business between the partners to ascertain the individual share of each partner. All sums of interest, salary or commission will thus be included in the partners' share of the firm's income and will not be again assessed on that partner as interest, salary or commission, respectively.

(*b*) Attention is particularly drawn to the provisions of section 10 (*2*) (*iii*) and section 10 (*4*) (*a*) of the Act which prohibits the deduction of any payment of interest chargeable under the Act which is payable without British India except interest on which tax has been paid or from which tax has been deducted, or in respect of which there is an agent who may be assessed under section 43, or any payment chargeable under the head "Salaries"

if it is payable without British India and tax has not been deducted. An exception is made in the case of interest on a loan issued for public subscription before 1st April 1938. These provisions do not apply to interest or salary which is not chargeable to income-tax under the Act (*i.e.*, interest on money borrowed abroad from a non-resident and not brought into British India in any form whatever, or salary for services rendered wholly abroad by a non-resident).

(*c*) *Depreciation.*—From the assessment year 1940-41, depreciation allowance is to be calculated at prescribed rates on the basis of "written down" value instead of on the basis of "original cost". The "written down" value is to be computed as follows :—

(*a*) In the case of assets acquired in the previous year, the actual cost represents the "written down" value.

(*b*) In the case of assets acquired before the previous year but after the commencement of the Amendment Act, 1939, the actual cost less all depreciation allowable under section 10 of the Act.

(*c*) In the case of assets acquired before the commencement of the Income-tax (Amendment) Act, 1939, the actual cost less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each year since 1st April 1922 and at the rates in force on the 1st April 1922, for each such year prior to date, but so much of the unabsorbed depreciation allowance as has been carried forward up to and including the assessment year 1938-39 to which full effect has not been given in the assessment for the year 1939-40 is not to be deducted in arriving at the "written down" value.

18. *General Directions.*—

(*a*) The form must be filled in and signed in ink. Losses may be shown in red ink.

(*b*) Figures only are to be inserted in columns (2) and (3) of Part I and should not be modified by words such as "about" or "approximately" except as stated in Note 5. The word '*nil*' must be entered in column (2) in Part I against each source from which you did not derive any income.

(*c*) If you spoil this form you should ask your Income-tax Officer for another. Erasures should not be made. You should sign your name in full against any alteration.

Form of return of particulars to be furnished under section 38 of the Indian Income-tax Act, 1922 (see paragraph 4 of notice).

(*a*) To be filled up in the case of *firms* only. If this information is already given in Part III of the Return under section 22 of the Indian Income-tax Act, 1922, write "See Part III" in this section.

Firm's Name

Address

Names of Partners.	Addresses.

Representative's Signature

Date

Designation

(*b*) To be filled up in the case of *Hindu undivided families* only.

Name of family

Address

Serial No.	Names of Adult male members of family.	Address.
	(Manager or Karta.)	
1		
2		
3		
4		
5		
6		

Representative's Signature

Date

Designation

(*c*) To be filled up by Trustees, Guardians or Agents only.

Names and addresses of persons for whom the assessee is the trustee, guardian or agent.		Whether Trustee, Guardian or Agent.
Names.	Addresses.	

Signature

Date *Designation*

Address

(*d*) Statement of the names and addresses of all persons to whom assessee has paid in the previous 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 and particulars of all such payments.

Serial No.	Name and address of the person to whom the payment was made.	Nature of payment.	Amount paid.	Date of payment.	Whether paid in cash or by book adjustment
1					
2					
3					

Signature

Date *Address*

Draft Amendment of the form of Return :

In the form of return of the total income and total world income for individual, Hindu undivided family, companies, Local authorities, Firms and other Association of persons, required under sub-section (*1*) or sub-section (*2*) of section 22, prescribed by sub-rule (*1*) of Rule 19 of the said rules :—

(1) In the heading above part I after the word "status" an asterisk (*) shall be added and connected with the following footnote, namely :—

"'Please state whether the assessee is individual, Hindu undivided family, Firm, Company, Local authority or an Association of persons."

(2) In part VI—Income from property—

(*a*) in column 14 after the word "property" the following shall be added, namely
"or interest on capital borrowed for acquiring, constructing, repairing, renewing or reconstructing property",

(*b*) for the existing entries in columns 18, 20 and 21, the following entries respectively shall be substituted, namely,

"18. Amount claimed on account of property remaining vaccant."

"20. Total for columns 12 to 18."

"21. Net annual value assessable after deducting column 20 from column 11."

(*c*) After the word "Status" occurring below signature an asterisk (*) shall be added and for existing 'Note' the following "Notes" shall be substituted, namely :—

(*a*) in the case of an individual by the individual himself ;

(*b*) in the case of Hindu undivided family by the manager or Karta ;

(*c*) in the case of company or local authority by the Principal Officer ;

(*d*) in the case of a firm by a partner, and

(*e*) in the case of any other association by a member of the association.

The signatory should satisfy himself that the Return is correct and complete in every respect before signing the verification.

*Note 1—The alternatives which are not required in the declaration should be scored out.

*Note 2—The declaration shall be signed.

19A. Notwithstanding anything contained in Rule 19 the return of total income, in respect of any income, profits or gains liable to be assessed in any year ending before the 1st April 1939 shall—

(i) in the case of individuals, firms, Hindu undivided families and other associations of persons, but not companies, be in Form A annexed to this Rule ; and

(ii) in the case of companies be in the Form B annexed to this Rule.

Form A

Form of return of total income for Individuals, Firms, Hindu undivided families and other Associations of individuals.

Income-tax year 19 -19 .

Name of assessee.....

Designation.....

Address.....

Statement of total income during the previous year.

1 Sources of income.	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.	
	Rs.	Rs.	A.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of, or in addition to, salary or wages . . [See note (1)]			
1A. The contributions made by an employer to the accounts in a recognised provident fund of the person making the return . .			
1B. The interest accruing to the account mentioned in 1A which is not exempt from income-tax . . [section 58F (2)]			
1C. Interest accruing to the account mentioned in 1A which is exempt from income-tax . . [section 58F (2)]			
2. Interest on securities (including debentures) already taxed. . . [See note (2)]			
3. Interest on securities of the Government of India or of local Governments declared to be income-tax free . ,, (3)			
4. Property as shown in detail in Schedule A ,, (4)			
5. Business, trade, commerce, manufacture or dealing in property, share or securities (details as in note 5) . . ,, (5)			
6 Profession . . . ,, (6)			
7. Dividends from companies (net) . ,, (7)			

1 Sources of income.	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.	
	Rs.	Rs.	A.
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not being income from business			
9. Ground rent			
9A. Income of wife, minor child and association of individuals [Section 16(3)—See note (10)]			
10. Any source other than those mentioned above including any income earned in partnership with others [See note (8)]			
Total			
Deductions claimed—			
(a) on account of insurance premia			
(b) on account of contributions to a provident fund to which the Provident Funds Act applies			
(c) on account of contributions to a recognised provident fund [section 58A (a)]			
(d) on account of interest on contributions to a recognised provident fund and accumulations thereof which is exempt from income-tax [section 58F (2)]			
(e) others			

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended_____and that no other income accrued or arose or was received by $\frac{\text{me}}{\text{the firm}}$ / $\frac{\text{the family}}{\text{the association}}$ during the said $\frac{\text{I}}{\text{the firm}}$ / $\frac{\text{the family}}{\text{the association}}$ had during the said year no other sources of income.

Date *Signature*

N.B.—(a) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(b) All income from whatever source derived must be entered in the form including income received by you as a partner of a firm.

NOTE 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

NOTE 2.—"Interest on securities" means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures, or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received and the gross amount so arrived at should be entered in column 2 of the statement. The term "interest on securities" does not include interest on fixed deposits or other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18 (*9*) of the Act.

NOTE 3.—(*a*) The income-tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(*b*) Only the interest on securities of the Government of India or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax, but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(*c*) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4.—The tax is payable under this head in respect of the *bona fide* annual value of any buildings or lands appurtenant thereto, of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

NOTE 5.—(*a*) Where you keep your accounts on the mercantile accountancy or book profits **system**, you must file a return in the following form :

Income, profits or gains from business, trade, commerce.

	Rs.	A.
Income, profits or gains as per Profit and Loss Account for the year ended————19 .		
Add any amount debited in the accounts in respect of—		
1. Reserve for bad debts		
2. Sums carried to reserve for provident or other funds .		
3. Expenditure of the nature of charity or presents . .		
4. Expenditure of the nature of capital		
5. Income-tax or super-tax		
6. Drawings or salary of proprietor, drawings of partners and salary of partners.		
7. Rental value of property owned and occupied . . .		
8. Cost of additions to or alterations, extensions, improvements of, any of the assets of the business.		
9. Interest on the proprietor's or partner's capital including interst on reserve or other funds.		
10. Losses sustained in former years		
11. Losses recoverable under an insurance or contract of indemnity.		
12. Depreciation of any of the assets of the business . .		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits.		
TOTAL .		
Deduct.—Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free.		
Balance		

(*Signature of the person making the return.*)

(*Date*)————————19 .

State here amount of salary paid to a *partner* and *not* added back on the ground that it is not an appropriation of profits . . . . Rs.

(*b*) Where you do not keep your accounts on the mercantile accountancy or book profits system, but on a cash basis you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts specifying separately salary paid to partners and deducted from gross receipts as not being an appropriation of profits. No deductions are permissible on account of—

(i) Property owned and occupied by the owner of a business for the purposes of a business ;

(ii) Additions to, or alterations, extensions, or improvements of, any of the assets of the business ;

(iii) Interest on the capital of the proprietors or partners of the business ;

(iv) Bad debts not actually written off in the accounts ;

(v) Losses sustained in previous years ;

(vi) Reserves of any kind ;

(vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business ;

(viii) Any expenditure of the nature of charity or a present ;

(ix) Any expenditure of the nature of capital ;

(x) Any loss recoverable under an insurance or a contract of indemnity ;

(xi) Depreciation of any kind other than that specified in the Act ;

(xii) Drawings or salary of the proprietor, drawings of partners and salary of partners if it be an appropriation of profits ;

(xiii) Private or personal expenses of the assessee ;

(xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the puspose of arriving at your taxable profits.

(*c*) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58K (*2*).

NOTE 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred *solely* for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

NOTE 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by the shareholders represent the net amount remaining after any income-tax due by the company has been paid. This amount should be entered in column 2 of the statement. The proportionate tax will be added in the Income tax Office.

' *If the rate of tax applicable to your total income is less than the rate of tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.*

NOTE 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head, or under income from business according to circumstances.

NOTE 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

NOTE 10.—(*a*) Under Head 9-A you should enter so much of the income of your wife or minor child as arose directly or indirectly—

(i) from the membership of your wife in a firm of which you are a partner ,

(ii) from the admission of your minor child to the benefits of partnership in a firm of which you are a partner ;

(iii) from any assets transferred by you directly or indirectly to your wife otherwise than for adequate

consideration or in connection with an agreement to live apart ; and

(iv) from any assets transferred by you directly or indirectly to your minor child, not being a married daughter.

(*b*) Under this head you should also enter so much of the income of any association of individuals consisting of yourself and your wife as arises from any assets transferred by you to such association.

Schedule A.

Serial No.	Name of village or town where the property is situated.	Name of Mohalla or Street and number of property.	In the case of municipalities the name of the person in whose name the property stands in the municipal registers.	Whether the property is occupied by owner or is let.	Annual letting value of the property.	Period during which the property remained vacant.	Amount of rent actually received for the property, if let.
1	2	3	4	5	6	6A	7

Deductions.

One-sixth of the annual letting value shown in column 6.	Premium paid to insure the property against damage or destruction.	Interest on a mortgage or charge on the property.	Ground rent paid for the property.	Land revenue paid for the property.	Collection charges paid.	Amount claimed on account of property remaining vacant.	Total of columns 8 to 13A.	Net amount to be carried over to the front of the form.
8	9	10	11	12	13	13A	14	15

Form B.

FORM OF RETURN OF TOTAL INCOME OF A COMPANY

Income-tax year 19 -19 .

*Name of Company*_____

*Its principal place of business*_____

Total income of the Company.

	Rs.	A.
Income, profits or gains as per profit and loss account for the year ended————19 .		
Add any amount debited in the accounts in respect of—		
1. Reserve for bad debts		
2. Sums carried to reserve for provident or other funds .		
3. Expenditure of the nature of charity or presents . .		
4. Expenditure of the nature of capital		
5. Income-tax or super-tax		
6. Rental value of property owned and occupied . . .		
7. Cost of additions to, or alternations, extensions, improvements of, any of the assets of the business.		
8. Interest on reserve or other funds		
9. Losses sustained in former years		
10. Losses recoverable under an insurance or contract of an indemnity.		
11. Depreciation of any of the assets of the company . .		
12. Expenses not incurred solely for the purpose of earning the profits.		
TOTAL .		
Deduct—Any profits or income included in the accounts on account of—		
(*a*) *Interest (net amount) on securities taxed at source* .		
(*b*) Interest on securities tax-free		
(*c*) Dividends (net amount) from companies taxed in British India.		
*(*d*) Other items already taxed at source (specify details) .		
Balance .		

*If any other deduction is to be claimed, please give particulars thereof in a separate letter to be forwarded with the return.

If the Company owns any property not occupied for the purposes of the business, a statement in the form prescribed in the Schedule overleaf should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration :

I, the [Secretary etc., see section 2 (*12*) of the Act] of the (name of Company), declare that the information against each head in this return is correctly given as shown in the books of the Company as also in the accounts which have been duly audited

by the auditors of the Company and which have been adopted by the shareholders of Company.

Signature

Designation

Date *19*

(2) The company shall also attach to the return a statement showing the sums charged in the accounts under the provisions of section 58 K (*2*).

N.B.—This return must be accompanied by a copy of the profit and loss account referred to above.

Schedule referred to overleaf.

Serial number.	Name of village or town where the property is situated.	Name of Mohalla or Street and number of property, if any.	In the case of municipalities the name of the person in whose name the property stands in the municipal registers.	Whether the property is occupied by owner or is let.	Annual letting value of the property.	Period during which the property remained vacant.	Amount of rent actually received for the property, if let.
1	2	3	4	5	6	6A	7

Deductions								
One-sixth of the annual letting value shown in column 6.	Premium paid to insure the property against damage or destruction.	Interest paid on a mortgage or charge on the property.	Ground-rent paid for the property.	Land revenue paid for the property.	Collection charges paid.	Amount claimed on account of property remaining vacant.	Total of columns 8 to 13A.	Net amount.
8	9	10	11	12	13	13A	14	15

20. The Notice of Demand under section 29 shall be in the following form :—

INCOME-TAX

Notice of Demand under section 29 of the Income-tax Act, 1922

To

_____

_____

_____

Take notice that for the assessment year the sum of Rs. as specified overleaf, has been determined to be payable by you.

2. *Whereas you have not paid the sum of for the year on the prescribed date in accordance with the Notice of Demand served on you on you are hereby informed that a penalty of Rs. has been imposed upon you under section 46 (1) of the Indian Income-tax Act, 1922.*

3. You are required to pay the amount on or before the to

Treasury Officer,
Sub-Treasury Officer,
Agent, Imperial Bank of India,
Governor, Reserve Bank of India,

at when

you will be granted a receipt. A chalan is enclosed for the purpose.

4. If you do not pay the amount on or before the date specified above you will be liable under section 46 (1) to a penalty which may be as great as the tax due from you.

5. *You are further warned that unless the total amount due, including this penalty, is paid on or before 19 , a further penalty will be imposed on you (and a warrant of distress will be issued for the recovery of the whole amount due with cost).*

6. The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you failed

to make a return of your income under section, 22 (2) ;
to comply with a notice under sub-section (4) of section 22 ; but if you
to comply with a notice under sub-section (2) of section 23 ;

were prevented by sufficient cause from making the return or did not receive the notice (s) aforesaid. or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying, with the terms of the notice (s) you may apply to me, within one month from the receipt of this notice, under section 27, to cancel the assessment and proceed to make a fresh assessment.

7. If you intend to appeal against the assessment you may present an appeal under sub-section (*1*) of section 30 of the Indian Income-tax Act, 1922, to the Appellate Assistant Commissioner of Income-tax at within 30 days of the receipt of this notice, in the form prescribed under sub-section (*3*) of section 30, duly stamped and verified as laid down in that form but no apppeal will lie against an order under section 46 (*1*) unless the tax has been paid.

Income-tax Officer.

Address.

Dated.....19 .

Place.

Delete inappropriate paragraphs and words.

ASSESSMENT FORM

ASSESSMENT FOR 19 -19 UNDER SECTION OF THE INCOME-TAX ACT, 1922.

Name of assessee..... District or Area.....
Status..... Number in General Index.....
Address..... Number of Miscellaneous Record..

Detailed sources of income.	Amount of income.	Tax already deducted or otherwise paid at source.			
		Income-tax		Super-tax.	
Total income :—	Rs.	Rs.	As.	Rs.	As.
Salaries					
Interest on securities					
Property					
Business, Profession or Vocation ...					
Other sources. (In the case of dividends the gross amount liable to tax and the tax appropriate should be shown).					
1.					
2.					
3.					
Total income...					
Adjustments to total income to arrive at total world income (*) (give details).					
Total world income (*)...					
Gross income-tax and super-tax chargeable on Total income					
Gross Income-tax and super-tax computed on Total World Income (*)					
Average rate of income-tax : pies in the rupee...					
Sums included in total income in respect of which income-tax is not payable :—	Rs.				
(a) Under section 7(*1*) or on account of a Provident Fund to which the Provident Funds Act, 1925, applies.					
(b) On account of recognised Provident and Superannuation Funds.					
(c) On account of Insurance premia.					
(d) Share from association of persons or from an unregistered firm the profits of which have been assessed to income-tax.					
(e) Interest from tax-free securities of the Central Government or of a Provincial Government.					
Total amount upon which relief is due, and income-tax thereon.					
Deduct income-tax or super-tax deducted or otherwise paid at source as above.					
Double income-tax relief					
Net amount of income-tax and super-tax $\frac{\text{payable}}{\text{refundable}}$ †					
Penalties under sections 25(*2*), 28, 44E, 44F and 46(*1*) (†)					

TOTAL SUM $\frac{\text{Payable}}{\text{Refundable}}$† (IN FIGURES AS WELL AS IN WORDS).

Rs. as. (figures) ; Rupees annas (words).

Date.....

*To be completed in the case of non-residents only.
†Delete inappropriate words or figures.

21. An appeal under section 30 shall, in the case of an appeal against a refusal of an Income-tax Officer to make a fresh assessment under section 27, be in Form A ; in the case of an appeal against an order of an Income-tax Officer under section 25 (*2*) in Form C ; in the case of an appeal against the order of an Income-tax Officer under section 25-A in Form C (1) ; in the case of an appeal against an order of an Income-tax Officer under section 28 in Form D ; in the case of an appeal against a refusal of an Income-tax Officer to register a firm under section 26-A in Form D-1 ; in the case of an appeal against an order of an Income-tax Officer under section 23-A in Form F ; in the case of an appeal against an order of an Income-tax Officer under section 26 (*2*) in Form G ; in the case of an appeal against of an order of an Income-tax Officer under section 44-E(*6*) or 44-F(*5*) in Form H ; in the case of an appeal against an order of an Income-tax Officer under section 46 (*1*) in Form I ; in the case of an appeal against an order under section 48, 49 or 49-F refusing to grant a refund in Form J and in other cases in Form B.

FORM A.

Form of appeal against an order refusing to reopen an assessment under section 27 :

To

The Appellate Assistant Commissioner of

The day of 19 .

The petition of of post office, District sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner's $\frac{\text{income}}{\text{loss}}$ has been computed at Rs. for the year commencing the 1st day of April 19 .

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 (*2*) or did not receive the notice issued under sub-section (*4*) of section 22, or sub-section (*2*) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (*4*) of section 22 or sub-section (*2*) of section 23, as more particularly specified in the statement attached.

3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition, the Income-tax Officer, by his order, dated of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

Signed

STATEMENT OF FACTS.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed

FORM B.

Form of appeal against assessment to Income-tax :

To

The Appellate Assistant Commissioner of

The day of 19 .

The petition of of post office, District sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, for the year commencing the 1st day of April 19 ;

**your petitioner's total income has been assessed at.....*

your petitioner's total world income has been assessed at.....

the amount of tax payable by your petitioner has been determined at.....

the amount of loss incurred by your petitioner has been computed at.....

your petitioner has been granted a refund of

*2 The notice of demand / intimation of the amount of loss / intimation of the order of refund

attached hereto, was served upon your petitioner on

*3 During the previous year ending *your petitioner's total income was / total world income was / total tax works out at / loss amounted to / refund allowable to your petitioner was and that during the said previous year your petitioner had no other income.

N.B.—Delete the inappropriate words.

*4. Your pititioner has made a return of his income to the Income-tax Officer under section 22, sub-section (1)/(2) of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer under section 23(2) and or [section 22(4)].

5. Your petitioner therefore prays that

*he may be assessed accordingly
he may be declared not to be chargeable under the Act
his loss may be determined at
he may be granted a refund of

Signed

Grounds of Appeal.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM C.

Form of appeal against an order under section 25 (2).

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office, District sheweth as follows :—

1. Under section 25 (9) of the Indian Income-tax Act, 1922, a penalty of Rs. has been imposed on your petitioner. The notice of demand attached hereto was served upon him on .

2. Your petitioner was prevented by sufficient cause as more particularly explained below from giving notice within the time prescribed by section 25(2) to the Income-tax Officer of the discontinuance of his business, profession or vocation.

*N. B.—Delete the inappropriate words.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. upon your petitioner may be set aside.

Signed

Statement of facts.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed

FORM C (1)

From of appeal against an Order under section 25-A.

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office, District, sheweth as follows :—

Under section 25-A of the Indian Income-tax Act, 1922, your petitioner/petitioners who belonged to a Hindu Family, hitherto assessed as undivided, claimed before the Income-tax Officer

at the time of assessment that a partition had taken place among the members of the family and that the joint family property had been partitioned among the various members (or group of members) in definite portions and payed that an order might be passed to this effect as laid down in section 25-A(*1*) and that an assessment be levied as laid down in section 25-A(*2*).

2. By his order, dated the a copy of which is herewith attached, the Income-tax Officer has refused to pass the order referred to above and make assessments accordingly as laid down in section 25-A(*2*). Your petitioner/petitioners

therefore request(s) that the Income-tax Officer may be directed to pass such an order under section 25-A(*1*) and to levy an assessment as laid down in section 25-A(*2*).

Signed

Grounds of appeal.

Form of verification.

I We, . the petitioner/petitioners, named in the above petition, do hereby declare that what is stated therein is true to the best of my/our information and belief.

Signed

FORM D.

Form of appeal to the Appellate Assistant Commissioner against an Order under section 28 :

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office,

District, sheweth as follows :—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. has been imposed on your petitioner by the Income-tax Officer. The notice of demand attached hereto was received by your petitioner on .

*2. Your petitioner had reasonable cause for not furnishing return of his total income which he was required to furnish under sub-section (*1*) or sub-section (*2*) of section 22 or section 34, or

*Delete the inappropriate words.

for not furnishing it within the time allowed and in the manner required by such notice.

Your petitioner had reasonable cause for not complying with the notice under sub-section (*1*) of section 22 or sub-section (*2*) of section 23.

Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars of such income.

3. For the reasons given in the grounds of appeal your petitioner therefore prays that the order of the Income-tax Officer may be set aside.

Signed

Grounds of appeal.

Form of verification.

I, , the petitioner, named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM D-1.

Form of appeal against an Order refusing to register a firm under section 26-A :

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office,

District, sheweth as follows :—

Under section 26-A of the Indian Income-tax Act, 1922, your petitioner applied to the Income-tax Officer for the registration of the firm .

By his order, dated the a copy of which is herewith attached, and of which the intimation was received by your petitioner on the Income-tax Officer has refused to register the said firm.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to register the firm.

Signed

Grounds of appeal.

Form of verification.

I, . the petitioner, named in the above petition do hereby declare that what is stated therein is true to the best of my information and belief.

Signed

FORM F.

Form of appeal against an Order under section 23-A.

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of pose office,

District, sheweth as follows :—

1. The Income-tax Officer of , with the approval of the Inspecting Assistant Commissioner of has passed an order dated (of which a copy is attached) under sub-section (*1*) of section 23-A of the Indian Income-tax Act, 1922, that the undistributed portion of the assessable income of the company for the year as computed for income-tax purposes shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting held on

2. Your petitioner being of opinion, on the grounds set out below, that the order of the Income-tax Officer should not have been passed prays that the said order may be set aside.

Signed

Statement of Grounds of Appeal.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the statement of grounds of appeal is true to the best of my information and belief.

Signed

FORM G.

Form of appeal against an Order under proviso to sub-section (2) of section 26.

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office,

District, sheweth as follows :—

1. Under the proviso to sub-section (2) of section 26 of the Indian Income-tax Act, 1922, your petitioner has been held liable in respect of the tax of Rs. . The Notice of Demand attached hereto was served upon him on .

2. As will be seen from the grounds of appeal attached hereto this tax should be recovered from whom your petitioner has succeeded.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing tax of Rs. upon your petitioner bo set aside.

Signed

Grounds of Appeal.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above grounds of appeal is true to the best of my information and belief.

Signed

FORM H.

Form of appeal against an Order under section 44-E (6) or 44-F (5).

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office, District, sheweth as follows :—

1. Under section 44 $\frac{\text{E (6)}}{\text{F (5)}}$ a (further) penalty of Rs. has been imposed on your petitioner by the Income-tax Officer . The Notice of Demand attached hereto was served upon him on .

2. As will be seen from the grounds of appeal attached hereto your petitioner had reasonable excuse for failure $\frac{\text{to comply with the}}{\text{to furnish statement of}}$ $\frac{\text{notice}}{\text{particulars required by}}$ the Income-tax Officer.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a (further) penalty of Rs. upon your petitioner may be set aside.

Signed

Grounds of Appeal.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above grounds of appeal is true to the best of my information and belief.

Signed

FORM I.

Form of appeal against an Order under section 46 (1).

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office.

District, sheweth as follows :—

1. Under sub-section (*1*) of section 46 of the Indian Income-tax Act, 1922, a (further) penalty of Rs. has been imposed on your petitioner. The Notice of Demand attached hereto was served on him on .

2. As will be seen from the grounds of appeal your petitioner had no intention to default.

3. The tax due in respect of the assessment for the assessment year has already been paid.

4. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. upon your petitioner may be set aside.

Signed

Grounds of Appeal.

Form of verification

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above

grounds of appeal is true to the best of my information and belief.

Signed

FORM J.

Form of appeal against an Order refusing to grant a refund under section 48, 49 or 49-F.

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office,

District, sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under section 48, 49, or 49-F, of the Indian Income-tax Act, 1922, of Rs. . The Income-tax Officer has by his order, dated the of which a copy is attached rejected the application. / granted a refund of only Rs. . Intimation of this order was received by your petitioner on .

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed

Grounds of Appeal.

Form of verification.

I, , the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed

21A. Omitted.

"22. An appeal under section 33 shall, in the case of an appeal against—

(a) an order under clause (a) or (b) or (g) of sub-section (*3*) of section 31, be in form B (T),

(b) an order under clause (c) of sub-section (*3*) of section 31, confirming an order under section 26-A, refusing to register a firm or cancelling such order and directing the Income-tax Officer to register the firm, be in form D (1) (T),

(c) an order under clause (d) of sub-section (*3*) of section 31, confirming, cancelling or varying an order imposing a penalty under sub-section (*2*) of section 25, be in form C (T),

(d) an order under section 28 imposing a penalty or under clause (f) of sub-section (*3*) of section 31, confirming, cancelling, enhancing or reduciug a penalty imposed under section 28, be in form D-E (T),

(e) an order under clause (f) of sub-section (*3*) of section 31, confirming, cancelling, enhancing or reducing a penalty imposed under sub-section (*6*) of section 44-E, be in form H (T).

(f) an order under clause (f) of sub-section (*3*) of section 31, confirming, cancelling, enhancing, or reducing a penalty imposed under sub-section (*5*) of section 44-F, be in form H (1) (T),

(g) an order under clause (f) of sub-section (*3*) of section 31, confirming, cancelling, enhancing or reducing a penalty imposed under sub-section (*1*) of section 46, be in form I (T),

(h) an order under clause (d) of sub-section (*3*) of section 31, confirming, cancelling or varying an order refusing to allow a claim to a refund under section 48, be in form I (T),

(i) an order under clause (d) of sub-section (*3*) of section 31, confirming, cancelling or varying an order refusing to allow a claim to a refund under section 49, be in form J (1) (T),

(j) an order under clause (d) of sub-section (*3*) of section 31, confirming, cancelling or varying an order refusing

to allow a claim to a refund under section 49-F, be in form J (T) or J (1) (T), according as the original claim to refund arose under section 48 or 49,

(k) an order under clause (c) of sub-section (3) of section 31, confirming an order refusing to cancel an assessment under section 27 or cancelling such order and directing the Income-tax Officer to make a fresh assessment, be in form A (T),

(l) an order under clause (e) of sub-section (3) of section 31 confirming an order under sub-section (1) of section 25-A or cancelling such order and directing the Income-tax Officer to make a further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25-A, be in form C (1) (T),

(m) an order under clause (d) of sub-section (3) of section 31, confirming, cancelling or varying an order under sub-section (2) of section 26, be in form G. (T), and

(n) an order under clause (d) of sub-section (3) of section 31, confirming, cancelling or varying an order under sub-section (1) of section 23-A, be in form F (T),

FORM A (T).

Form of section 27 Cancellation of Assessment Appeal.

IN THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

27 C. A. A. No. of 19 .*

versus

Appellant.	Respondent.
Province from which the appeal is filed.	
Assessment year and in the case of an assessment under section 34 the year in which the income should have been assessed.	
Previous year.	Commencing the day of 19 and ending the day of 19 .

*(To be filled in by the office.)

FORM A (T)—*contd.*

Grounds on which cancellation was applied for.	
Income-tax Officer making the original order.	
Date of the refusal to make a fresh assessment.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed or cancelled and the Income-tax Officer directed to make a fresh assessment.	
Date of the Appellate Order.	
If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant).

Signed

(Authorised representative, if any).

Verification.

I. , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the at day of 19 .

Signed ( )

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs 100.

FORM B (T).

Form of Regular Assessment Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

R. A. A. No.————of 19———.*

versus.

Appellant.	Respondent.
Province from which the appeal is filed.	
Assessment year, and in the case of an assessment under section 34 the year in which the income should have been assessed.	
Previous year.	Commencing the day of 19 , and ending the day of 19 .
Income-tax Officer making the original order.	
Total income assessed by the Income-tax Officer.	

*(To be filled in by the office.)

FORM B (T)—*contd.*

Total world income assessed by the Income-tax Officer.	
Amount of loss computed by the Income-tax Officer.	
Amount of net tax determined by the Income-tax Officer.	
Amount of refund, if any, granted by the Income-tax Officer.	
Date of receipt of notice of demand.	
Date of intimation of the order of refund.	
Date of service of the order of the Income-tax Officer computing loss.	
Appellate Assistant Commissioner determining the appeal.	
Date of the order of the Appellate Assistant Commissioner.	
Date of service of notice of the Appellate Assistant Commissioner's order.	
Total income as found by the Appellate Assistant Commissioner.	
Total world income as found by the Appellate Assistant Commissioner.	

FORM B (T)—*contd.*

Amount of loss as found by the Appellate Assistant Commissioner.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notice should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any)

Verification.

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of 19 at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM C (T)

Form of Section 25 (2) Penalty Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

25 (2) P. A. No. of 19 .*

versus.

Appellant.	Respondent.
Province from which the appeal is filed.	
Description of the business, profession or vocation discontinued.	
Assessment year, and in the case of an assessment under section 34 the year in which income should have been assessed.	
Previous year.	Commencing the day of 19 and ending the day of 19 .
Income-tax Officer making the original order.	
Date of receipt of notice of demand.	
Amount of penalty imposed.	
Amount of tax assessed for the period between the end of the previous year and the date of discontinuance.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed or cancelled or varied on appeal, and if varied, in what respect.	

*(To be filled in by the office.)

FORM C (T)—*contd.*

Date of the appellate order.	
If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any.)

Verification

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of 19 at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM C (1) (T).

Form of Section 25A Assessment after Partition Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

25A. A. P. A. No. of 19 .*

versus.

Appellant.	Respondent.
Province from which the appeal is filed.	
Income-tax Officer making the original order.	
Date of intimation of the refusal to pass an order under sub-section (*1*) of section 25A.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed on appeal or cancelled and the Income-tax Officer directed to make an assessment in the manner laid down in sub-section (*2*) of section 25A.	
Date of the Appellate Order.	
If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	
Postal address on which the appellant undertakes to receive notices.	

*(To be filled in by the office.)

FORM C (1) (T)—*contd.*

Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any.)

Verification.

I, , the appellant, do hereby declare that what I have stated above is true to the best of my information and belief. Verified today the day of 19 at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM D/E (T).

Form of Section 28 Penalty Appeal :

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

28 P. A. No. of 19 .*

versus.

Appellant.	Respondent.
Province from which the appeal is filed.	
Assessment year, and in the case of an assessment under section 34 the year in which income should have been assessed.	
Officer making the original order.	
Date of receipt of notice of demand.	
Amount of the penalty ...	
Reason for imposing the penalty	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed or cancelled or varied on appeal, and if varied in what respect.	
Date of the order of the Appellate Assistant Commissioner.	

* (To be filled in by the office.)

FORM D/E (T)—*contd.*

If the appeal is by the assessee the date on which the assessee was served with notice of the Appellate Assistant Commissioner's order.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal ...	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any.)

Verification.

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM D (1) (T).

Form of Section 26A Registration Appeal :

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

26A Reg. A. No. of 19 .

versus.

Appellant.	Respondent.
Province from which the appeal is filed.	
Date of the application to Income-tax Officer.	
Name of the firm registration of which was applied for.	
Income-tax Officer making the original order.	
Date of intimation of the order refusing to register the firm.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed on appeal or cancelled and the Income-tax Officer directed to register the firm.	
Date of the appellate order ..	
If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	

(To be filled in by the office.)

FORM D (1) (T)—*contd.*

Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal ...	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any.)

Verification.

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM F (T).

Form of Section 23A (1) Company Appeal :

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

23A. (1) C. A. No. of 19 .*

versus.

Appellant.	Respondent.
Province from which the appeal is filed.	
Previous year ...	Commencing the day of 19 and ending the day of 19 .
Total Assessable income of the company as found by the Income-tax Officer.	
Proportion of the assessable income (as determined by the Income-tax Officer) distributed as dividends by the company.	
Income-tax Officer making the original order.	
Date of the intimation of the original order under sub-section (*1*) of section 23A.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed, cancelled or varied on appeal, and if varied, in what respect.	

* (To be filled in by the office.)

FORM F (T)—*contd.*

Date of the appellate order ..	
If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notice should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant).

Signed

(Authorised representative, if any).

Verification.

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM G (T).

Form of Section 26 (2) Succession Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

26 (2) S. A. No. of 19 .*

versus.

Appellant.	Respondent.
Province from which the appeal is filed.	
Assessment year, and in the case of assessment under section 34 the year in which income should have been assessed.	
Previous year.	Commencing the day of 19 and ending the day of 19 .
Income-tax Officer making the original order.	
Date of receipt of notice of demand.	
Amount of tax assessed for the previous year and the period between the end of the previous year and the date of succession.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed on appeal or cancelled or varied, and if varied in what respect.	

*(To be filled in by the office.)

FORM G (T)—*contd.*

Date of the appellate order.	
If the appeal is by the assessee, the date on which the assessee, was served with notice of the Appellate order.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant).

Signed

(Authorised representative, if any.)

Verification.

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM H (T)

Form of Section 44E (6) Penalty Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

44E. (6) P. A. No. of 19

versus

Appellant.	Respondent.
Province from which the appeal is filed.	
Period specified in the notice.	
Particulars required by the Income-tax Officer.	
Income-tax Officer making the original order.	
Amount of the original penalty.	
Amount of further penalty, if any.	
Date of receipt of notice of demand.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed, cancelled or varied on appeal, and if varied, in what respect.	
Date of the order of the Appellate Assistant Commissioner.	

*(To be filled in by the office.)

FORM H (T)—*contd.*

If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be witten in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any).

Verification.

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompained by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompained by a Treasury receipt for Rs. 100.

FORM H (1) (T)

Form of Section 44F (5) Penalty Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

44 F. (5) P. A. No. of 19

versus

Appellant.	Respondent.
Province from which the appeal is filed.	
Period specified in the notice.	
Particulars required by the Income-tax Officer.	
Income-tax Officer making the original order.	
Amount of the original penalty.	
Amount of further penalty, if any.	
Date of receipt of notice of demand.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed, cancelled or varied on appeal, and if varied, in what respect.	
Date of the order of the Appellate Assistant Commissioner.	

*(To be filled in by the office.)

FORM H (1) (T)—*contd.*

If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	

Relief claimed in appeal.

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant).

Signed

(Authorised representative, if any).

Verification.

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM I (T).

Form of Section 46 (1) Penalty Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

46 (1) P. A. No. of 19———. *

versus

Appellant.	Respondent.
Province from which the appeal is filed.	
Assessment year, and in the case of an assessment under section 34 the year in which income should have been assessed.	
Income-tax Officer making the original order.	
Amount of tax determined.	
Amount of tax in arrears.	
Period during which default continued.	
Amount of the penalty.	
Date of receipt of notice of demand.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed, or cancelled or varied on appeal, and if varied in what respect.	

* (To be filled in by the office.)

FORM I (T)—*contd.*

Date of the appellate order.	
If the appeal is by the assessee the date on which the assessee was served with notice of the Appellate order.	
Date of filing appeal in the Tribunal.	
Postal address on which the appellant undertakes to receive notice.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant).

Signed

(Authorised representative, if any).

Verification.

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM J (T).

Form of Section 48 Refund Appeal and Section 49 Refund Appeal.

(This form is to be used for section 49F Refund Appeal only when the original claim to refund arose under section 48.)

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

48 R. A./49 F.R.A. No. of 19 *.

versus

Appellant.	Respondent.
Province from which the appeal is filed.	
Income-tax Officer making the original order.	
Date of intimation of the original order.	
Amount of refund claimed if ascertainable.	
Amount ordered to be refunded.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed, cancelled or varied on appeal, and if varied in what respect.	
Date of the appellate order.	
If the appeal is by the assessee, the date on which the assessee was served with notice of the appellate order.	

*(To be filled in by the office.)

FORM J (T)—*contd.*

Postal address on which the appellant undertakes to receive notices.	
Whether the appellant claims in his own right or in a representative capacity, and in the latter case the nature of the representative capacity.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant).

Signed

(Authorised representative, if any).

Verification.

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

Signed ( ).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

FORM J(1) (T)

Form of Section 49 Refund Appeal and Section 49F Refund Appeal.

(This form is to be used for section 49F Refund Appeal only when the original claim to refund arose under section 49.)

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

49R A./49F.R.A. No. of 19 .*

versus

Appellant.	Respondent.
Province from which the appeal is filed.	
Income-tax Officer making the original order.	
Date of intimation of the original order.	
Relief obtained under section 27 of the Finance Act, 1927.	
Amount of refund claimed, if ascertainable.	
Amount ordered to be refunded	
Appellate Assistant Commissioner determining the appeal.	
Date of the appellate order. ...	
If the appeal is by the assessee, date on which the assessee was served with notice of appellate order.	

*(To be filled in by the office.)

FORM J (1) (T)—*contd.*

Postal address on which the appellant undertakes to receive notices.	
Whether the appellant claims in his own right or in a representative capacity, and in the latter case the nature of the representative capacity.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal. ...	

(To be written in English on a separate Government water marked foolscap size paper.)

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any).

Verification.

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified today the day of at .

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

2. After Rule 22, the following rule shall be added, namely :—

"22-A. An application under sub-section (*1*) of section 66 requiring the Tribunal to refer to the High Court any question of law shall be in the following form :—

FORM R (T)

Form of Section 66(1) Reference application.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

66 R. A. No. of 19 (to be filled in by the office).

versus

Appellant.	Respondent.
Province from which the application is filed.	
Name and number of the appeal which gives rise to the reference.	

The applicant states as follows :—

1. that the appeal noted above was decided by the Bench of the Tribunal on .
2. that notice of the order under sub-section (4) of section 33 was served on the applicant on .
3. that the Bench has arrived at the following findings of fact in its order :

(Here state in serial and appropriate order the relevant findings of fact arrived at by the Bench.)

1.
2.
3.
4.

4. that in arriving at the findings of fact mentioned at No. in para. 3 of this application this Bench committed an error of law, namely,—(here state concisely the error of law)

   and but for this error of law the correct findings ought to have been (here state the findings to to which the Bench should have come)

5. Here state any other fact that may in the circumstances be considered necessary.

6. that on the findings of fact recorded by the Bench, the following question of law arrises :
(here formulate concisely the question ol law)

or

that on the findings of fact to which the bench should have come as detailed in para. 4 of this application, the following question of law arises
(here formulate concisely the question of law)

7. that the applicant, therefore, prays that as required by section 66 of the Income-tax Act a statement of the case be drawn up and referred to the High Court.

Signed

(Applicant).

Signed

(Authorised representative, if any).

N.B.—The application must be accompanied by a Treasury receipt for Rs. 100.

Rule 22-A. An application under sub-section (*1*) of Section 66 requiring the Tribunal to refer to the High Court any question of law shall be in the following form :—

FORM R (T)

Form of Section 66 (1) Reference application.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

66 R. A. No. of 19 (to be filled in by the office)

versus

Appellant. Respondent.

Province from which the application is filed.

Name and number of the appeal which gives rise to the reference.

The applicant states as follows :—

1. that the appeal noted above was decided by the Bench of the Tribunal on .
2. that notice of the order under sub-section (4) of section 33 was served on the applicant on .
3. that the Bench has arrived at the following findings of fact in its order :

(Here state in serial and appropriate order the relevant findings of fact arrived at by the Bench.)

1.
2.
3.
4.

4. that in arriving at the findings of fact mentioned at No. in para. 3 of this application the Bench committed an error of law, namely,—(here state concisely the error of law)
and but for this error of law the correct finding ought to have been . (Here state the findings to which the Bench should have come).
5. Here state any other fact that may in the circumstances be considered necessary.
6. that on the findings of fact recorded by the Bench, the following question of law arises :
(Here formulate precisely the question of law)

or

that on the findings of fact to which the Bench should have come as detailed in para. 4 of this application, the following question of law arises :
(Here formulate concisely the question of law).
7. that the applicant, therefore, prays that as required by section 66 of the Income-tax Act a statement of the case be drawn up and referred to the High Court.

Signed
(Applicant).
Signed
(Authorised representative, if any).

N.B.—The application must be accompanied by a Treasury receipt for Rs. 100.

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

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

(*a*) Where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

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

(1) the expenses of cultivation ,

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

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

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

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

25. Omitted.

26. Omitted.

27. Omitted.

28. Omitted.

29. Omitted.

30. Omitted.

31. Omitted.

32. Omitted.

33. In any case in which the Income-tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India 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 cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income-tax may be calculated on such percentage of the turnover so accruing or arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable.

34. The profits derived from any business carried on in the manner referred to in section 42 (*2*) of the Act may be determined for the purposes of assessment to income-tax according to the preceding rule.

35. Omitted.

36. In the case of a person residing in British India, an application for a refund of tax under section 48 of the Act shall be made in the following form :—

Application for Refund of Income-tax/Super-tax :

I,.....of.....do hereby declare that my total income computed in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922), during the year ending on.....being the previous year for the assessment for the year ending on the 31st March 19 , amounted to Rs. ....., that the total income-tax and super-tax chargeable in respect of such total income is Rs. .....and that the total amount of income-tax and super-tax paid, or treated as paid under sub-section (*5*) of section 18, is Rs. .....

I therefore pray for a refund of Rs. .....

Signature.

I hereby declare that I am *resident and ordinarily resident / resident but not ordinarily resident in British India, and that what is stated in this application is correct.

Dated.....19 .

Signature.

36-A. (*a*) In the case of a person not resident in British India, an application for a refund of tax under section 48 of the Act shall be made in the following form :—

Application for Refund of Income-tax/Super-tax :

I, ...*of*.....residing at .. .. (country) do hereby state that my total income and world income computed in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922), during the year ending on ..... . being the previous year for the assessment for the year ending on the 31st March 19 , amounted to Rs. .....and Rs. .....respectively ; that the total income-tax and super-tax chargeable in respect of such total income is Rs. . ..... and that the total amount of income-tax and super-tax paid, or treated as paid under sub-section (*5*) of section 18, is Rs. .....

I therefore pray for a refund of Rs. .....

Signature.

I hereby declare that I am a British subject (See note 2)/ subject of.....State being a State in India or Burma (See note 3). I also declare that what is stated in this application is correct.

Dated.....19 .

Signature.

Sworn before me (Name)

Designation Signature at on

Seal

*Delete whichever description is inappropriate.

NOTE 1.—The above declaration shall be sworn (*a*) before a Justice of the Peace, a Notary Public or Commissioner of Oaths if the applicant for refund resides in any part of His Majesty's Dominions outside British India, (*b*) before a Magistrate or other official of the State or a Political Officer if he resides in a State in India, (*c*) before a British Consul if he resides elsewhere.

NOTE 2.—"British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted.

NOTE 3.—If the applicant is neither a British subject nor a subject of a State in India or in Burma he should delete the first sentence in the above verification.

(*b*) An application for such a refund from a person not resident in British India who has made a similar application as a non-resident in the preceding year shall, unless the Income-tax Officer directs in any particular case that the application be made in the form prescribed in sub-rule (*a*), be made in the following form .—

Application for Refunds of Income-tax/Super-tax :

I,.....of .....residing at.....in..... (country) do hereby state that my total income and total world income computed in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922), during the year ending on.....being the previous year for the assessment for the year ending on the 31st March 19 , amounted to Rs. ..... and Rs. ..... . respectively ; that the total income-tax and super-tax chargeable in respect of such total income is Rs. ..... and that the total amount of income-tax and super-tax paid or treated as paid under sub-section (*5*) of section 18 is Rs. .....

I therefore pray for a refund of Rs. ....

Signature.

I hereby declare that I am a British subject (See note 1)/ subject of.....State, being a State in India or Burma (See note 2). I also declare that what is stated in this application is correct and that I duly applied for a similar refund as a non-resident last year.

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

Signature.

NOTE 1.—"British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalisation has been granted.

NOTE 2.—If the applicant is neither a British subject nor a subject of a State in India or in Burma he should delete the first sentence in the above verification.

37. The application under rule 36 shall be accompanied by a return of total income and under rule 36-A by a return of total income and total world income in the form prescribed under section 22 unless the applicant has already made such a return to the Income-tax Officer.

37-A. Omitted.

38. Where any part of the total income of a person making an application under section 48 for refund of income-tax or super-tax (or both) consists of dividends from companies, or income from which income-tax or super-tax (or both) has been deducted under the provisions of Section 18, the application shall be accompanied by the certificates prescribed under section 18(9) or under section 20 as the case may be.

39. The application under rule 36 or rule 36-A shall be made as follows :—

(*a*) If the applicant is resident in British India, to the Income-tax Officer of the District in which the applicant is chargeable directly to income-tax, or if he is not chargeable directly, to the Income-tax Officer of the District in which he ordinarily resides ;

(*b*) If the applicant is resident outside British India, to the Income-tax Officer appointed by the Central Board of Revenue.

39-A. *Omitted.*

40. An application for refund of income-tax under section 49 of the Act shall be made in the following form :—

Application for relief from double Income-Tax under section 49 of the Indian Income-tax Act, 1922.

I, of , do hereby state that I have paid (or under the provisions of section 49B of the Act must be deemed to have paid) United Kingdom income-tax and super-tax amounting to £ for the year ending 19 , on an income of £ and that Indian income tax/income-tax and super-tax of Rs. has also been paid (or under the provisions of Section 49B of the Act must be deemed to have been paid) on the same income/income from the same source amounting to Rs. . I have obtained relief under the provisions of section 27 of the Finance Act, 1920, at the rate of in accordance with the attached certificate from His Majesty's Inspector of Taxes.

I now pray for a further relief at the rate of amounting to Rs. under section 49 of the Indian Income-tax Act, 1922, to which I am entitled. My income from all sources to which this Act applies during the "previous year" ending on the 19 . amounted to Rs. only—see Return of income attached already submitted.

Signature.

I hereby declare that what is stated herein is correct.

Signature.

Dated.....19 .

40-A. An Application for refund of income-tax under the India and Burma (Income-tax Relief) Order, 1936, shall be made in the following form :—

Application for relief from double/triple income-tax under the India and Burma (Income-tax Relief) Order, 1936.

I, of , do hereby state that I have paid* Burma Income-tax/income-tax and super-tax amounting to Rs. Burma Income-tax/income-tax and super-tax and United Kingdom income-tax/income-tax and super-tax amounting to Rs. and £ respectively for the year ending/ended 31st March 19 on an income† of Rs. Rs. and £ respectively and that Indian income-tax and super-tax of Rs. has also been paid on the same income/part of the same income amounting to Rs. . I am therefore entitled to relief under the provisions of the India and Burma (Income-tax Relief) Order, 1936 at the rate of .

*[I have obtained relief under the provisions of section 27 of the Finance Act, 1920 at the rate of in accordance with the attached certificate from His Majesty's Inspector of Taxes].

I now pray for relief amounting to Rs. under the India and Burma (Income-tax Relief) Order, 1936. My income from all sources to which the Indian Income-tax Act, 1922, applies during the previous year ending on the 19 , amounted to Rs. only—see return of income attached/already submitted. I attach the official receipt of the Burma

*For claimants for relief from triple income-tax only.

†Where the income on which income-tax has been charged differs from that on which super-tax has been charged both amounts must be specified.

income-tax paid and the notice of assessment, showing the basis on which the liability has been computed (‡as also copies of the appellate order of the Assistant Commissioner and of the Order on revision by the Commissioner).

Signature.

I hereby declare that what is stated herein is correct. §I further declare that as regards my Burma assessment, I have no intention to appeal to the Assistant Commissioner or to approach the Commissioner to revise it.

Signature.

Dated.....19 .

40-B. An appeal under the India and Burma (Income-tax Relief) Order, 1936, shall be in the following form :—

Form of appeal against an order refusing to grant a refund under the India and Burma (Income-tax Relief) Order, 1936.

To

The Appellate Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of

post office, District, sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the India and Burma (Income-tax Relief) Order, 1936, of Rs. . The Income-tax Officer has by his order dated the of which a copy is attached rejected the / granted a application / refund of only Rs. . Intimation of this order was received by your petitioner on .

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed

‡In cases in which no appeal to the Assistant Commissioner or petition to revise the assessment to the Commissioner has been made these words or the appropriate part thereof may be struck off.

§In case an appeal and a revision petition have been made or only an appeal has been made, these words or the appropriate part thereof may be struck off.

Grounds of Appeal.

Form of verification.

I, , the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed

Dated..... 19 .

41. The Application under rules 36, 36-A or rule 40 may be presented by the applicant in person or through a duly authorized agent or may be sent by post.

42. A return shall be furnished by the principal officer of a company under section 19-A in respect of a dividend or aggregate dividends if the amount thereof exceeds one rupee in the case of a shareholder which is a company and in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs. 5,000 in the case of any other shareholder.

42-A. A return shall be furnished by the person responsible for paying interest not being interest on securities in respect of amounts of interest or aggregate interest exceeding Rs. 400.

43. The return by the principal officer of a Company under section 19-A shall be in the following form and shall be delivered to the Income-tax Officer who assesses the company :—

Return under section 19-A of the Indian Income-tax Act, 1922, for the year 1st April 19 to 31st March 19 .

Name of Company

Address of Company

(1) Resident Shareholders/Non-Resident Shareholders.

Serial number.	Name of Shareholder.	Address of shareholder.	Date of declaration of dividends.	(2) Amount of dividends.	
				Net.	Gross.
1	2	3	4	5	6

I, , the principal officer of the Company, hereby certify that the above statement contains a complete list of :

(1) the resident/non-resident shareholders which are companies and to whom a dividend was distributed in the period from the 1st April 19 to the 31st March 19 , and

(2) other resident/non-resident shareholders of the Company to whom a dividend or aggregate dividends exceeding Rs. 5,000 was or were distributed in the period from the 1st April 19 to the 31st March 19 .

Signature.

Dated..... 19

NOTE 1.—Separate form should be used for resident and non-resident shareholders.

NOTE 2.—Where dividends are issued "free of income-tax", the figure to be entered in column 5 is the sum actually paid, and the figure to be entered in column 6 is the aggregate of the sum so paid and the amount of income-tax payable by the Company in respect of the dividends.

43-A. The return under section 20-A shall be in the following form and shall be delivered to the Income-tax Officer in whose jurisdiction the person responsible for paying interest resides :—

Return under section 20-A of the Indian Income-tax Act, 1922, for the year 1st April 19 to 31st March 19 .

Name of payer.

Address of payer.

Serial No.	Name of payee.	Address of payee.	Date of payment.	Amount of interest or aggregate interest.

I hereby certify that the above statement contains a complete list of persons to whom interest or aggregate interest exceeding Rs. 400 was paid during the period 1st April 19 to 31st March 19 .

Signature.

Dated 19 .

44. The following bodies are recognised by the Central Board of Revenue as associations of accountants for the purposes of clause (iii) of sub-section (*2*) of section 61 of the Indian Income-tax Act, 1922 :—

1. The Institute of Chartered Accountants in England and Wales ;
2. The Society of Accountants in Edinburgh ;
3. The Institute of Accountants and Actuaries in Glasgow ;
4. The Society of Accountants in Aberdeen ;
5. The Institute of Chartered Accountants in Ireland ;
6. The Society of Incorporated Accountants and Auditors, London.

45. The following accountancy examinations are recognised by the Central Board of Revenue for the purpose of sub-clause (*b*) of clause (*iv*) of sub-section (*2*), of section 61 of the Indian Income-tax Act, 1922 :—

1. Government Diploma in accountancy examination conducted by the Accountancy Diploma Board, Bombay ;
2. Diploma in Commerce issued under the authority of the Provincial Governments in Madras, Bengal, Punjab and Delhi ;
3. The First Examination conducted by the Central Government under the Auditor's Certificates Rules, 1932.
4. Examinations conducted by the Association of Certified and Corporate Accountants, London.

46. The following educational qualifications are prescribed by the Central Board of Revenue for the purposes of sub-clause (*c*) of clause (*iv*) of sub-section (*2*) of section 61 of the Indian Income-tax Act, 1922 :—

A degree in Commerce, Law, Economics or Banking including Higher Auditing conferred by any of the following Universities :—

I. *Indian Universities* :

Any Indian University incorporated by any law for the time being in force.

II. *Rangoon University* :

III. *English and Welsh Universities* :

The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales.

IV. *Scottish Universities* :

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews.

V. *Irish Universities* :

The Universities of Dublin (Trinity College) and the Queen's University, Belfast.

Income-tax Appellate Tribunal :

No. 2-D.—The following extracts from rules made by the Income-tax Appellate Tribunal in exercise of the powers conferred on it by sub-section (*8*) of section 5-A of the Indian Income-tax Act 1922 (XI of 1922), regulating its procedure and the procedure of Benches of that Tribunal are published for general information :—

2. In these rules, unless there is anything repugnant in the subject or context,—

(*i*) "Act" means the Indian Income-tax Act, 1922 (XI of 1922).

(*ii*) "Authorised Representative" means—

(*a*) a person duly authorised by the assessee to attend before the Tribunal under section 61 of the Act ;

(*b*) in the case of an appeal by the assessee, a person duly authorised by the respondent to represent him before the Tribunal ; and

(*c*) in the case of an appeal under sub-section (*2*) of section 33, a person duly authorised by the Income-tax Officer to represent him before the Tribunal ;

(*iii*) "Bench" means a Bench of the Tribunal constituted under sub-section (*5*) of section 5-A of the Act ;

(*iv*) "Chief Ministerial Officer" at the headquarters of the Tribunal means the Superintendent, and at the headquarters of a Bench the Head Clerk ;

(*v*) "Full Bench" means a Bench of more than two members of the Tribunal ;

(*vi*) "Member" means a member of the Tribunal ;

(*vii*) "President" means the President of the Tribunal ;

(*viii*) "Province" means a Governor's Province or a Chief Commissioner's Province as defined by the Government of India Act, 1935, or any territorial jurisdiction treated as a separate entity for Income-tax statistical purposes ; and the expression "provincial" shall be construed accordingly ;

(*ix*) "Registrar" means the person who is for the time being discharging the functions of the Registrar of the Tribunal ;

(*x*) "Section 66 Reference Application" means an application under sub-section (*1*) of section 66 of the Act, requiring the Tribunal to refer to the High Court any question of law ;

(*xi*) "Signed" has the same meaning as in the General Clauses Act, 1897 (X of 1897) ;

(*xii*) "Third-Member Case" means a case referred by the President to a third member under sub-sction (*7*) of section 5-A of the Act on difference of opinion between the members of the original Bench ;

(*xiii*) "Tribunal" means the Appellate Tribunal constituted by the Central Government under section 5-A of the Act.

PART III

Headquarters and Places and Times of Sitting :

8. The Headquarters of the Tribunal shall be at Delhi.

9. (*1*) Out of the Benches constituted by the President from time to time under sub-section (*5*) of section 5-A of the Act, one Bench shall have its headquarters at the Headquarters of the Tribunal, one at Bombay, and one at Calcutta. Each of these Benches shall hear and determine such appeals as are assigned to it by the President by a general or special order.

(2) Nothing in this Rule shall preclude a Bench from entertaining and determining any *interim* application that may be made direct to it.

10. The President may by a general order direct that all appeals from a particular area shall be heard and determined by a particular Bench, and on the making of any such order all appeals from that area shall, in the absence of a special order to the contrary, be heard and determined by that Bench.

11. Each Bench shall hear the appeals on its file at its headquarters , but may, in its discretion, hear all or any of the appeals from a particular Province at the Provincial Headquarters, or, at any other town which may appear to the Bench to be convenient.

12. The office of the Tribunal at Delhi, subject to any order by the President, shall be open daily from 10 A.M. to 4 P.M., except on Saturdays when the offices shall be open from 10 A.M to 1 P.M.

13. The office of the Tribunal at Delhi shall observe the same holidays as are observed by the Civil Courts at Delhi.

The offices of the Benches having their headquarters at places other than Delhi shall, subject to any contrary order by the Bench concerned, observe the same office hours and holidays as are observed by the Civil Courts of their headquarters :

Provided that no case shall be heard or the attendance of a party required in a place on a day which is a local holiday in that place.

PART IV

Presentation, Form, Registration and Notices of Appeals.

Presentation :

14. An appeal to the Tribunal shall be presented in person or by a representative to the Registrar at Delhi, or some officer authorized in this behalf by the Registrar :

Provided that an appeal which is received in the office of the Registrar by post within the prescribed period of limitation shall be deemed to have been validly presented.

15. The Registrar or some officer authorized by him in this behalf shall endorse on the memorandum of appeal the date on which an appeal is received in the office.

Form :

16. The Forms prescribed by the Central Board of Revenue when applicable, and where they are not applicable, forms of the like character, as nearly as may be, shall be used for all appeals referred to the Tribunal.

17. Every appeal shall be preferred in the form of a memorandum signed by the appellant and his authorised representative, if any, and verified by the appellant.

18. The memorandum shall be written in English and shall set forth concisely and under distinct heads, on a separate Government water marked foolscap size paper, the grounds of appeal, without any argument or narrative ; and such grounds shall be numbered consecutively.

19. The memorandum shall be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal.

20. Where a new fact which cannot be borne out by, or is contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

21. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground of objection not set forth in the grounds of appeal ; but the Tribunal, in deciding the appeal, shall not be confined to the grounds of objection set forth in the grounds of appeal or taken by leave of the Tribunal under this rule :

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

22. (*1*) Where the memorandum of appeal is not drawn up in the prescribed manner, it may be rejected, or, on such terms as the Tribunal may think fit, be returned to the appellant for the purpose of being amended within a time to be fixed by the Tribunal or be amended then and there.

(*2*) Where the Tribunal rejects any memorandum, it shall record the reasons for such rejection.

(*3*) Where a memorandum of appeal is amended, the Tribunal, or such officer as the Tribunal appoints in this behalf, shall sign or initial the amendment.

23. In an appeal by the assessee under sub-section (*1*) of section 33 of the Act, the officer or authority making the original order shall be made a respondent to the appeal.

24. In an appeal under sub-section (*2*) of section 33 of the Act, the party who was the appellant before the Appellate Assistant Commissioner shall be made a respondent to the appeal.

25. Where the memorandum of appeal is signed by an authorised representative, such representative shall annex to the memorandum of appeal the writing constituting his authority and his acceptance of it. The acceptance shall be signed and dated by the representative and shall state whether he is a lawyer, an accountant or an income-tax practitioner, or is a person who is a relative of, or regularly employed by, the assessee. If the representative is a person regularly employed by the assessee, he shall state the capacity in which he is at the time employed ; if he is a relative of the assessee, he shall state his relationship with the assessee ; and if he is an income-tax practitioner, he shall state his qualifications under clause (*iv*) of sub-section (*2*) of section 61 of the Act.

26. In the case of an appeal under sub-section (*2*) of section 33, the Income-tax Officer shall append a certificate to the memorandum of appeal that the appeal has been preferred under the direction of the Commissioner.

27. An authorised representative appearing for a party at the hearing of an appeal shall, unless he has already filed his authority and his acceptance of it under rule 26, before the commencement of the hearing file his authority ; and if the party by whom he has been appointed to represent is the assessee he shall also file his acceptance of the authority containing the particulars required by rule 26.

33. (*1*) A notice under these rules 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 (Act V of 1908).

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

Provided that where a memorandum of appeal states that a Hindu undivided family, firm or other association of persons has

appealed through a particular person, notice of the hearing of the appeal shall be served on that person ; and where the appeal is against such family, firm or association and a particular person is mentioned in the memorandum of appeal as the person representing the respondent family, firm or association, the notice shall also be served on that person.

34. If an authorised representative of a party has filed his authority in the appeal, the notice of the hearing of the appeal may be served on such representative.

PART V

Hearing, Adjournment and Judgment :

35. On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Bench shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

36. Where on the day fixed, or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the appeal unless adjourned to some other day, shall nevertheless be determined on the merits.

37. Where the appellant appears and the respondent does not appear when the appeal is called on for hearing, the appeal shall be heard *ex-parte*.

Adjournment :

38. The Bench may, (on such terms as it thinks fit) and at any stage adjourn the hearing of the appeal.

PART VI

Applications for Reference :

44. Section 66 Reference application shall be in the prescribed form and shall be accompanied by a copy thereof.

45. Subject to the special provisions of this Part, the provisions of Parts III and IV of these rules shall apply to the presentation, notices and hearing of a Reference Application as if it were an appeal :

Provided that an authorised representative need not comply with the provisions of Rule 26 if he has already filed his authority and its acceptance in the appeal which gives rise to the application.

46. Where the application is by the assessee, the opposite party to the appeal which gives rise to the application shall be made a respondent.

47. Where the application is by the Commissioner of Income-Tax, the assessee shall be made a respondent.

48. The application shall formulate in a concise form the the question (or questions) of law that arises (or arise) and is (or are) required to be referred to the High Court and state the findings of fact which raise the question, or questions.

49. Where the correctness of a finding of fact is questioned on the ground that in arriving at that finding the Bench determining the appeal committed an error of law, the application shall state the precise error of law and allege what, but for that error of law, the finding ought to have been.

52. On the day fixed or any other day to which the hearing may be adjourned, the Bench shall hear the appllicant or his authorised representative in support of the application and may, without sending notice to the respondent, dismiss the application if it is of the opinion that no question of law arises out of the appellate order.

53. Where the Bench does not dismiss the application under Rule 52, it shall send notice of the date of hearing the application to the respondent and require him to submit, within such time as it may fix, a reply in writing to the application :

54. The reply to the application shall specially admit or deny whether the question formulated by the applicant arises out of the appellate order or not and whether it is a question of law or not. If the question formulated by the applicant is defective, the reply shall state in what particular the question is defective and what is the exact question of law which arises out of the appellate order. The reply shall be accompanied by a copy thereof.

55. On the day fixed for the hearing of the application or on any other day to which the hearing may be adjourned, the Bench shall, after perusing the application, the reply and the record, try to obtain from the parties an agreed statement of facts and the question involved.

56. If the parties agree to the question, the Bench shall consider whether such question does in fact arise out of the appellate order or not and whether the question is one of law or not.

57. If the Bench considers that the question agreed upon by the parties is a question of law and does arise out of the appellate order, the Bench shall draw up a statement of the case and together with the records send it to the headquarters of the Tribunal.

58. Where the parties are not agreed, the Bench shall decide whether the question formulated by the applicant does arise out of the appellate order and whether it is a question of law. If the Bench decides that the question formulated by the applicant does arise and is a question of law, it shall draw up a statement of the case and together with the records send it to the headquarters of the Tribunal.

59. Where the Bench is of the opinion that the question formulated by the applicant does not arise or that the question is not one of law, the Bench shall dismiss the application.

President's Standing Order No. 1 :

In exercise of the powers conferred on him by sub-section (5) of section 5-A, of the Income-tax Act, 1922, and Rule 10 of the Appellate Tribunal Rules, the President directs that all appeals from the following Provinces, namely :—

Delhi,
United Provinces,
The Punjab,

North-West Frontier Province,

Sind,

British Baluchistan,

Mount Abu, and

Ajmer Merwara,

shall be heard and determined by the Delhi Bench . all appeals from the following Provinces namely :—

Bengal,

Madras,

Assam,

Bihar,

Orissa,

Coorg, and

Civil and Military Station, Bangalore,

shall be heard and determined by the Calcutta Bench , and all appeals from the following Provinces, namely :—

Bombay, and

Central Provinces and Berar

shall be heard and determined by the Bombay Bench.

PART III

MISCELLANEOUS

CHAPTER I

INTERPRETATION OF STATUTES

A statute is the expression of the will of legislative enactment. Indian Statute simply means an Act or Regulation of the Indian Legislature. It is said that Judges "are not responsible for Acts passed by the Legislature." Their duties are to expound laws and not to make laws. They are to construe laws as they are, they can make observations but certainly this does not empower them to make any alteration or amendment or a new innovation.

Chief Justice Sir Barnes Peacock observes : "All that I have to do, is to ascertain the intention of the Legislature by the ordinary and legal rules of interpretation, and, having ascertained what that intention was, to carry it into effect." It is said : "however unjust, arbitrary, or inconvenient the intention conveyed may be, it must receive its full effect when once the intention is plain ; it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable but to expound it as it stands according to the real sense of the words." If the words of an Act are clear, they must be followed, even though they lead to manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity. When once the meaning is clear and plain, it is not the province of the Court to scan its wisdom or its policy. Its duty is not to make the law reasonable but to expound it as it stands, according to the real sense of the word—*The Queen* v. *The Judge of the City of London Court*, 1 Q. B. 273.

Intention of the Legislature :

Whenever an Act or Regulation is passed, a statement of objects and reasons underlying the enactment is placed before the Committee. The ordinary principle of construction is to find out the intention of the Legislature. "In all cases the object is to see what is the intention expressed by the words used." It is a common knowledge that language of Act is not always accurate, precise and perfect. Where there is no ambiguity and possibility of double interpretation, construction must be according to its

ordinary and natural meaning. But where the wordings are ambiguous and equivocal, construction must be on the basis of the intention of the Legislature.

The intention of the Legislature is to be ascertained by ordinary legal rules of interpretation. This is possible after a reference to the 'objects and reasons' of the enactment. The object which the Legislature had in view is often a guide for interpretation. History of Legislation may be ransacked. "In short, when the words admit of but one meaning, a court is not at liberty to speculate on the intention of the Legislature and to construe them according to its own notion of what ought to have been enacted. Nothing could be more dangerous than to make such consideration the ground of construing an enactment that is unambiguous in itself."

"In a word, then, it is to be taken as a fundamental principle, standing as it were, at the threshold of the whole subject of interpretation, that the intention of the Legislature is invariably to be accepted and carried into effect, whatever may be the opinion of the judicial interpretor, of its wisdom or justice. If the language admits of no doubt or secondary meaning, it is simply to be obeyed. If it admits of more than one construction, the true meaning is to be sought, not on the wide sea of surmise and speculation but from such conjectures as are drawn from the words alone or something contained in them."

Headings of Chapter :

Where the wording of an Act admits of any reasonable doubt, the heading of the chapter may be looked into for proper interpretation. It has been said that no reference is permissible to heading of chapter as part of an Act except where the Act specially states that the Act must be divided into heads. But this view has not been accepted.

Heading of a chapter may be referred to for proper interpretation of any section provided it does not clash with the plain language of the section or where the intention of the legislature is quite clear. "The title, though it has been occasionally referred to as aiding in the construction of an Act, is certainly no part of the law and instructions ought not to be taken into consideration at all."

Marginal Notes :

Under the English Law, marginal notes of any section do not construe the section or cannot be considered as part of the sections for the purpose of interpretation. The view of the English law has been adopted in the case of William Hastie.

Chief Justice Stred observed: ".....even if this marginal addition was a correct reading of the section with which it is printed, it has no legal authority, and is in fact no part of the Act. It is only useful in assisting the reading of this particular section with which it is printed, if that section is open to any doubt as to its true meaning.....On the other hand nothing can be more reasonable than to allow such marginal additions to clear up the text of the written law, when such text was in any respect ambiguous." In *Claydon* v. *Green*, (1868) 37 L. J. C. P. 256, it has been held that marginal notes cannot he used in construing Acts of Parliament. In *Balraj Kanwar* v. *Jagat Pal Sinha*, 26 All. 393, it has been held: "It is well settled that marginal notes to the section of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes of an Indian statute any greater authority than the marginal notes of an English Act of Parliament. Justice King is of opinion that in India marginal notes can properly be regarded as giving a *contemporane exposition* of a meaning of the section when the language of the section is obscure and ambiguous."

But it is submitted that where there is no ambiguity in the text reference to marginal notes for proper interpretation is justified.

Schedule of Acts :

Schedule of Acts contains enactments. prescribed rules and forms which should be considered as part of the enacted portion of the Act. These forms are said to be 'statutory forms' as opposed to forms contained in Rules framed by authorities empowered by the Act to do so.

In the interpretation of Acts the elementary principle of law is to give full effect to every word. In treating a particular case as an exception to the general rule, the observation of Mr. Justice Spankie may be a guide: "When the language of an Act is free from doubt, it best declares without more language the intention of the law-givers and is decisive of it. The Legislature in such a case must be intended to mean what is plainly expressed and consequently there is no room for construction. This is the rule, and a safe one. Where the language is clear and plan, to say that it is surplusage is to suggest that the Legislature did not know its own meaning and purpose."

It is elementary principle of rule of construction that the definitions contained in an Act are to be applied only when there is nothing repugnant in the subject or context.

Same construction to be given to same words in an Act :

Whenever a word occurs more than once in the same Act, one must give it the same meaning throughout the Act, unless some definition in the Act or the context shows that the Legislature used the word in different senses. "It has been justly remarked that when precision is required, no safer rule can be followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is intended for the same expression in every part of an Act. Accordingly, in ascertaining the meaning of an Act, though the proper course would seem to be to ascertain that meaning if from a consideration of the section itself, yet, if the meaning cannot be so ascertained, then on the principle, that, as a general rule a word is to be considered as used throughout an Act in the same sense, other sections may be looked at to fix the sense in which the word is there used."

Justice Kernal observes : "It is an ordinary canon of construction that, whenever a particular word is used, having in an Act a defined meaning, and is used afterwards in the Act, the same meaning shall be given to it all through, unless from the context or otherwise, the word, when elsewhere used, appears to have been used in a different sense from that in which it was formerly used."

"In Domat's Civil Law it is said that two classes of cases occur in which it is necessary to interpret the laws. One, when we find in a law some obscurity, ambiguity or other defect of expression, for in this case it is necessary to interpret the law in order to discover its true meaning. And this kind of interpretation is limited to the expression that it may be known what the law says. The other is, when it happens that the sense of a law, how clear soever it may appear in the words, would lead us to false consequences and to decisions that would be unjust, if the laws were indifferently applied to everything that is contained with this expression."

It is thus clear that when the section admits of ambiguity and the intention of Legislature is not clear, it becomes necessary to consider which of the two constructions is reasonable.

But the intention of the Legislature can only be discovered from the term used and Courts are not competent to speculate upon the existence of any intention not consistent with the plain and obvious meaning of such terms. Construction of statute must be made from what appears to have been the intention of the Legislature but intention must be used from the words used and not from any general inferences to be drawn from the nature of the objects.

Justice Jervis remarks : "If the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it does lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of Legislators where we depart from the ordinary meaning of the precise words used merely because we see, or fancy an absurdity or manifest injustice from an adherence to their literal meaning. Court cannot refuse to give effect to a clearly expressed statute because it may lead to hardship. Where the wording of an Act is plain and unambiguous question of hardship should not influence the Judges." Mr. Kempe observes : "A sense of the possible injustice of an interpretation ought not to induce judges to do violence to well settled rules of construction, but it may properly lead to the selection of one rather than the other of two possible interpretations. Whenever the language of the legislature admits of two constructions and if constructed in one way would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended unless the intention had been manifested in express word."

"I take it, we are bound to construe the section according to the plain meaning of the language used, unless we can find either in the section itself or in any other part of the statute, anything that will either modify or qualify or alter the statutory language even if the result of such construction lead to anomalies or be productive even of a absurdity."

"The construction of the Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the Legislature, we cannot aid, the legislature's defective phrasing of the statute, we cannot add, and mend, and, by construction make up deficiencies which are left there. If the Legislature did intend that which it has not expressed clearly, much more, if the Legislature intended something very different, if the Legislature intended something pretty nearly the opposite of what is said, it is not for judges to invent something which they do not meet with in the words of the text ; it is not for them to supply a meaning, for, in reality, it would be supplying it ; the true meaning in this case is, to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of this word is, either by the Preamble or by the context of the words in question, controlled or altered and therefore if any other meaning was intended than that which the word purports plainly to import, then let another Act supply that meaning, and supply the defect in the previous."

Beneficial Construction :

It is the general rule of construction that where the language of a statute is clear and unambiguous, judges are bound to follow the languages and not regard the anomalies it may produce and intention of the legislature must be determined "from the words used, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute."

Mr. Kempe remarks : "It is said to be the duty of the judges to make such construction of a statute as shall suppress the mischief and advance the remedy. Even when the usual meaning of the language falls short of the whole object of the legislature. a more extended meaning may be attributed to it, if fairly susceptible of it. If there are circumstances in the Act showing that words are used in the larger sense than the ordinary meaning, that sense must be given to them."

It is hardly necessary to remind the reader that beneficial construction is not to be strained so as to include cases mainly omitted from the natural meaning of the words. For instance, an Act which requires the public houses shall be closed at certain hours on Sundays, cannot be construed as extending to Christmas day.

"The effect of the rule of strict construction might almost be summed up in the remark, that where an equivocal word or ambiguous sentence leaves a reasonsable doubt of its meaning which the canons of interpretation fails to solve, the benefit of the doubt should be given to the subject, against the legislature which has failed to explain itself."

One of the elementary rules of construction of statutes is that nothing is to be added to or to be taken from a statute unless there are adequate grounds to justify the inference that a Legislature intended something which it omitted to express : *Ram Chandra* v. *Ram Lal*, 191 I. C. 745.

In interpreting provisions of a statute relating to machinery or procedure, the rule is that that construction should be preferred which makes the machinery workable, *utres valeat potius quam pereat* : *C. I. T., Bengal* v. *Mahilaram Ramjidas*. 44 C. W. N. 929 (P. C.).

Anomalies in an Act :

"It is a rule that every attempt should be made to avoid inconsistency of meaning. When judges have to construe an Act of the legislature it is their duty so to construe it, if it be possible, as to make the povisions of the Act consistent with each other, to give effect, not to their own ideas as to what ought to be the law, but to the expressed intention of the Legislature."

Fiscal Statute :

All the fiscal statutes must be construed strictly. "A duty or tax cannot be imposed except by clear and distinct words, and the Act which imposes a tax or charge upon the subject cannot be extended by implication. If the express words of the enactment do not warrant or necessitate a demand of duty or charge, it is not competent to a Court of law in construing such enactment, to extend it, or to give the word a meaning beyond their strict and literal signification, so as to include any case which may reasonably come within the spirit of the enactment."

All fiscal statutes should be interpreted in a manner most favourable to the subject, provided when the meaning of the enactment is doubtful. The principle of all fiscal legislation is this : "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free however apparently within the spirit of the law the case might otherwise appear to be. In other words if there be ambiguity in any statute, what is called an equitable construction is not admissible in a taxing statute where you can simply adhere to the words of the statute."

"If there is a doubt in the matter, we are bound to decide in favour of the applicant as the subject cannot be taxed except by clear language."

"Statutes which impose pecuniary burdens, also, are subject to the rules of construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalty. The subject is not to be taxed unless the language of the statute clearly imposes the obligation. A construction, for example, which would have the effect of making a person liable to pay the same tax twice in respect of the same subject matter, would not be adopted unless the words were very clear and precise to the effect. In a case of reasonable doubt the construction most beneficial to the subject is to be adopted. Thus, in estimating a bank manager's 'total income from all sources' for the purpose of ascertaining whether he is entitled to partial relief from income-tax, the yearly value of his free residence in the bank premises, where he resides is not to be taken into account as 'income'."

Rule Making Power :

"It is a recognised principle of law that rules made in pursuance of a delegated authority to that effect must be consistent with the statute under which they came to be made. The

authority is given to the end that the provisions of the statute may be better carried into effect and not with the view of neutralising or contradicting those provisions."

The principle of strict construction is applicable to enactments granting power. "However high the authority may be, when a special statutory power is exercised, the person must take care to bring himself within the terms of the statute."

Mr. Kempe remarks: "Rules made under an Act which prescribes that they shall be laid before Parliament for 40 days during which period they may be annulled by a resolution of either House, but that even not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise, exactly as if they were in the Act. If there is a conflict between one of these rules and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act should be dealt with. If reconciliation is impossible, the subordinate provision must give way, and probably the rule would be treated as subordinate to the section."

CHAPTER II

MATHEMATICAL CALCULATIONS

Some Income-tax formulæ :

In income-tax calculations some problems occasionally present themselves in the solution of which mathematics of an order higher than the four simple operations is involved.

The following formulæ may be found useful in solving those problems.

1. Gross amount of salary where tax on salary is a perquisite. Where an employer agrees by contract to bear whatever tax becomes due on the salary paid to an employee such tax becomes perquisite and taxable, and the series continues till the amounts become negligible.

If S = salary actually drawn by the employee,

G = gross salary (including the perquisite) taxable under section 7.

t = tax on G,

r = rate of tax per Rupee, applicable to S (expressed as a fraction)

then $G = S(1 + r + r^2 + r^3 + \cdots\cdots) = \frac{S}{1-r}$

$$t = Sr(1 + r + r^2 + r^3 + \cdots\cdots) = \frac{Sr}{1-r}$$

The following values of $\frac{1}{1-r}$ and $\frac{r}{1-r}$ for various rates are helpful calculating G and t in respect of different salaries,—

rate	$\frac{1}{1-r}$	$\frac{r}{1-r}$	rate	$\frac{1}{1-r}$	$\frac{r}{1-r}$
5 pies	$\frac{192}{187}$	$\frac{5}{187}$	$16-\frac{12}{11}=\frac{1}{11}$		
6	$\frac{32}{31}$	$\frac{1}{31}$	18	$\frac{32}{29}$	$\frac{3}{29}$
9	$\frac{64}{61}$	$\frac{3}{61}$	19	$\frac{192}{173}$	$\frac{19}{173}$
10	$\frac{96}{91}$	$\frac{5}{91}$	23	$\frac{192}{169}$	$\frac{23}{169}$
12	$\frac{16}{15}$	$\frac{1}{15}$	25	$\frac{192}{167}$	$\frac{25}{167}$
15	$\frac{64}{59}$	$\frac{6}{69}$	26	$\frac{96}{83}$	$\frac{13}{83}$

Example—

An employee drawing Rs. 24,000 a year (taxable @ 19 pies) under the said contract has an assessable salary income of Rs. $24,000 \times \frac{19}{175} =$ Rs. 26,636 and the tax amounts to Rs. 2,636. These figures are also obtained as below :—

Rs. 24,000 as salary bears a tax Rs. 2,375 at 19 p.
again, Rs. 2,375 as perquisite ,, ,, 235/1
,, Rs. 235/1 ,, ,, ,, 23/5
,, Rs. 23/5 ,, ,, ,, 2/5
,, Rs. 2/5 ,, ,, ,, -/3
and so on

Salary Rs. 26,635/11 Tax Rs. 2,635/14

Note—

When the rate for gross salary is higher than the rate for *S* and section 17 applies, the calculation becomes complicated.

2. Income of Dwelling House.

If O = other incomes, excluding the dwelling house income (but including the income from other properties).

D = total of admissible deductions on account of dwelling house, under section 9 (*1*) (*iii*), (*iv*), (*v*).

V = *bona fide* annual value of dwelling house

then (*i*) where $V <$ or $= \frac{6}{5}(O - D)$ and $\frac{5}{6} V < D$
the dwelling house income $= \frac{5}{6} V - D$.

(*ii*) where $V >$ $\frac{6}{5}(O - D)$ and $\frac{1}{12} O$ not $< D$

The dwelling house income $= \frac{1}{11}(O - 12 D)$.

This income will in general be a mixed fraction ; so the nearest whole number is to be taken.

Examples :—

(*a*) In an assessment the business income is Rs. 5,200
and income from other properties is Rs. 1,800
so $O =$ Rs. 7,000

D or admissible deductions = Rs. 125 } for dwelling
and V or *bona fide* annual value = Rs. 3200 } house.

Here $\frac{5}{6}(7000 - 125) = 750$ and V or 320 is less than 750 so formula under (*i*) applies here which gives dwelling house income $= \frac{5}{6} \times 320\text{-}125 =$ Rs. 142

and the assessment would be as below

Business Rs. 5,200
Property (1800 + 142) = Rs. 1,942
Total income Rs. 7,142

(*b*) If V exceeds 750 and is, say, 800, and the other values are the same as above, formula under (*ii*) applies and dwelling house income $= \frac{1}{11}$ $(7000 - 12 \times 125)$ = Rs. 500 and the assessment would be as below :

Business	Rs. 5,200
Property (1800 + 500) =	2,300
Total income	Rs. 7,500

It is to be seen that 10% of total income is Rs. 750/- from which are to be deducted $\frac{1}{6} \times 750$ or Rs. 125 and other deductions Rs. 125 leaving net income Rs. 500.

(*c*) If O = Rs. 7,000
D = Rs. 267
V = Rs. 320
dwelling house income $= \frac{5}{6} \times 320 - 267 = 0$.

If D were more than $\frac{5}{6}$ V the income would be negative, but according to section 9(*2*) the income should be taken at zero.

(*d*) If O = Rs. 7,000
D = Rs. 584
V = Rs. 800
dwelling house income $= \frac{1}{11}$ $(7,000 - 7008) = 0$

If D were more than $\frac{1}{11} \times O$ the income would be negative, but according to section 9 (*2*) the income should be taken at zero.

3. Gross Taxable Dividend :

Some companies pay tax not on their entire income which is distributed later on as dividend but on only certain portion of it, because interest on securities has been fully taxed and agricultural income is exempt. The net dividend received by a shareholder of any such company represents the difference between the gross dividend and the tax at maximum rate on the taxable portion of gross dividend.

If D = amount of dividend income to be included in the total income of the shareholder-assessee,

G = gross dividend on which abatement of tax, if any, is to be allowed,

N = net dividend actually received by the shareholder-assessee and shown in the dividend warrant,

x = percentage of taxable income of the company to its entire income,

y = percentage of agricultural income of the company to its entire income,

r = rate of tax per rupee for company (expressed as a fraction) at the time of declaration of dividend,

then $D = \frac{N}{1 - Xr}(1 - y)$,

$G = \frac{NX}{1 - Xr}$ and tax deducted $= Gr$.

Special cases—

(*i*) Where agricultural income is nil, $y = 0$

and $D = \frac{N}{1 - Xr}$ and $O = \frac{Nx}{1 - Xr}$

(*ii*) Where agricultural income is 60% and $x = 40\%$

$D = \frac{N}{2.5 + r}$ and G is also the same.

(*iii*) Where $y = 0$ and $x = 100\% = 1$

$D = G = \frac{N}{1 - r}$.

Examples—

(*a*) If $N =$ Rs. 7,200
$x =$ 66·6% = 2/3
$y =$ 10% = 1/10
$r = 18$ pies per Re. $= \frac{18}{192} = \frac{3}{32}$

then $D =$ Rs. $\frac{7,200}{1 - \frac{2}{3} \times \frac{3}{32}}(1 - \frac{1}{10}) =$ Rs. 6,912.

$G =$ Rs. $\frac{2}{3} \times \frac{7,200}{1 - \frac{2}{3} \times \frac{3}{32}} =$ Rs. 5,120

tax deducted $= Gr =$ Rs. $\frac{3}{32} \times 5120 = 480$.

Entire dividend = N + tax deducted = Rs. 7,200 + 480
= Rs. 7,680

and is composed of agricultural income 10% = Rs. 768
taxable non-agricultural dividend 66·6% = Rs. 5,120
non-taxed balance (non-agricultural) = Rs. 1,792
Rs. 7,680

(*b*) If $N =$ Rs. 2,652,
$x =$ 80% = 4/5,
$y = 0$,
$r = 19$ pies per Re. $= \frac{19}{192}$

then $D =$ Rs. $\frac{2652}{1 - \frac{4}{5} \times \frac{19}{192}} =$ Rs. 2,880,

$G =$ Rs. $\frac{4}{5}\frac{2652}{1 - \frac{4}{5} \times \frac{19}{192}} =$ Rs. 2,304,

tax deducted $= Gr =$ Rs. $\frac{19}{192} \times 2304 =$ Rs. 228.

Entire dividend = Rs. (2,652 + 228) = Rs. 2,880.

G = 80% of Rs. 2880 = Rs. 2,304.

(*c*) If N = Rs. 865,

$X = 100\% = 1$,

$Y = 0$,

$r = \frac{19}{192}$,

then $D = G = \text{Rs.}\frac{\frac{865}{19}}{1 - 192} = \text{Rs. } 960.$

(*d*) An assessee received Rs. 5,750 as dividend from a company 5% of whose income was from agricultural sources and only 60% was taxable, the balance being non-taxable. Here

N = Rs. 5,750.

x = 60%,

y = 5%,

r = 26 pies and 25% surcharge = $32\frac{1}{2}$ pies in the Re.

Hence $$D = \frac{5750}{1 - \frac{60}{100} \times \frac{32\frac{1}{2}}{192}}\left(1 - \frac{5}{100}\right) = \text{Rs. } 6{,}080,$$

$$G = \frac{5750 \times 60}{10^0\left(1 - \frac{60}{100} + \frac{32\frac{1}{2}}{192}\right)} = \text{Rs. } 3{,}840.$$

Tax deducted = Rs. 650.

Entire dividend = N + tax deducted = 5750 + 650 = 6,400

and is composed of agricultural income = 320

non-taxable = 2240

Taxable = 3840

Rs. 6,400

4. Amount of Compound Interest :

If C = capital lent out,

r = rate of interest per Re. per annum (expressed as a fraction),

t = the number of times the interest is added to capital in a year,

y = years during which the loan remains in force,

I = accrued interest,

then $I = C\overset{(I+r)}{_t}{}^{yt} - I).$

Examples—

(*a*) Rs. 500 lent at 18% per annum, interest added to capital every six months, will yield in $3\frac{1}{2}$ years interest $= \text{Rs. } 500\ [(1+\frac{18}{100}\times\frac{1}{2})^{7}_{2}\times{}^{2}-1]$

$= \text{Rs. } 500\times(1{\cdot}09)^{7} - \text{Rs. } 500.$

the value of the first term may be conveniently obtained with the help of logarithm tables ;

thus, let $E = 500\times 1{\cdot}09)^{7}$

log $F = \log 500 - 7 \log 1.09$

$= 2.6990 + 7\times{\cdot}0374$

$= 2.6990 + {\cdot}2618$

$= 2{\cdot}9608$

$= 913{\cdot}5$

and interest $= \text{Rs. } 413/8.$

(*b*) Rs. 200 lent at 15% per annum, interest added to capital every year, will yield in 3 years

interest $= \text{Rs. } 200\ [(1+\frac{15}{100})^{3}-1]$

$= \text{Rs. } 200\dfrac{(115^{3}-100^{3})}{(100^{3})}$

$= \text{Rs. } 200\dfrac{15\times 34725}{100^{3}}$

$= \text{Rs. } 104{\cdot}175$

(*c*) In the particular case of continuous compound interest, t should be taken as approaching infinity and

$I = C\,(e^{yr}-1)$ where e = Naperian base

Rs. 1,000 lent at 12% per annum, interest added to capital continuously, will yield in 5 years interest

$= \text{Rs. } 1{,}000\ (e^{\cdot 6}-1)$

$= \text{Rs. } 1{,}000\times{\cdot}822$

$= \text{Rs. } 822/\text{-}$

5. Range for Marginal Relief under section 17 :

If L = a limit of income where a higher rate of tax begins,

r = rate of tax per Re. for lower incomes
R = rate of tax per Re. for higher incomes
} expressed as fractions.

X = range of income exceeding L.

then $X = \frac{L(R-r)+r-1}{1-R}$

the result will in general be a mixed fraction of which only the integral portion is to be taken. The following table gives the ranges for different rates—

L	rates		X	range for Sec. 17	
	lower	higher			
2,000	0 pies	5 pies	52	2,000	2,052
,,	0	6	64	2,000	2,064
5,000	5	6	25	5,000	5,025
,,	6	9	81	5,000	5,081
10,000	6	9	162	10,000	10,162
,,	9	12	166	10,000	10,166
15,000	9	10	81	15,000	15,081
,,	12	16	340	15,000	15,340
20,000	9	12	332	20,000	20,332
,,	16	19	346	20,000	20,346
30,000	12	15	507	30,000	30,507
,,	19	23	709	30,000	30,709
40,000	15	18	688	40,000	40,688
,,	23	25	478	40,000	40,478

In cases where the total income includes an amount exempted from tax, the relief under section 17 is *NECESSARY* only when

$(L - E)(P - p) - X(192 - p) + p > 193$,

where L = the limit where higher rate begins

X = excess of total income above L

E = amount exempted from tax

P = pies of tax for L

p = pies of tax for income below L.

Examples—

	(*a*)	(*b*)	(*c*)	(*d*)
L	5,000	15,000	20,000	30,000
X	60	150	290	617
E	1,215	2,000	3,500	8,000
P	9 pies	16	19	23
P	6	12	16	19
range availabe	5,081	15,340	20,346	30,709

(*a*) Testing value or $(L-E)\ (P-p)-X\ (192-p)+p$
$=2,785\times 3-60\times 186+6$
$=201$ which is greater than 192,

so relief is necessary, for

tax without relief = Rs. (5,060 − 1215) @ 9 pies = Rs. 180/4

tax with relief = Rs. (4,999 − 1215) @ 6 pies + Rs. 61
= Rs. 179/4, which is less.

(*b*) Testing value $=13,000\times 4-150\times 180+12$
$=25012$, which is greater than 192,

so relief is necessary, for

tax without relief = Rs. (15,150 − 2,000) @ 16 pies
= Rs. 1,095/13

tax with relief = Rs. (14,999 − 2,000) @ 12 pies + Rs. 151
= Rs. 963/7 which is less.

(*c*) Testing value $=16500\times 3-290\times 176+16$
$=-1524$, which is less than 192,

so relief is unnecessary, for

tax without relief = Rs. (20,290 − 3,500) @ 19 pies
= − Rs. 1661/8

tax with relief = Rs. (19,999 − 3,500) @ 16 pies + Rs. 291
= Rs. 1,665/14 which is greater.

(*d*) Testing value $=22000\times 4-617\times 173+19$
$=-18722$, which is less than 192,

so relief is unnecessay, for

tax without relief = Rs. (30,617 − 8,000) @ 23 pies
= Rs. 2,709/5

tax with relief = Rs. (29,999 − 800) @ 19 pies + Rs. 618
= Rs. 2795, which is greater.

TAX TABLES FOR DIVIDENDS.*

Net Rs.	@18 P.	@ 19 P.	@ 26 P.	@ 29¼ P.	@ 32½P.
1	·1034483333	·1098265896	·1566265006	·1797235023	·2037617554
2	·2068966666	·2196531792	·3132530012	·3594470046	·4075235108
3	·3103449999	·3294797688	·4698795018	·5391705069	·6112852662
4	·4137933332	·4393063584	·6265060024	·7188940092	·8150470216
5	·5172416665	·5491329480	·7831325030	·8986175115	1·0188087770
6	·6206899998	·6589595376	·9397590036	1·0782410138	1·2225705324
7	·7241383331	·7687861272	1·0963855042	1·2580645161	1·4263322878
8	·8275866664	·8786127168	1·2530120048	1·4377880184	1·6300940432
9	·9310349997	·9884393064	1·4096385054	1·6175115207	1·8338557986

*With the kind permission of Mr. J. N. Set B.A. (Harvard), Income-tax Officer, Bengal.

CHAPTER III

Stamps and Court-fees in Income-tax Proceedings : Who can apply for copies :

An income-tax return is not a "public document" and therefore no one has any right to inspect or to receive a copy of it. The following persons should, however, in practice be allowed to do so :—

(*a*) in any case the person who actually made the return ;

(*b*) any partner (known to be such) in a firm registered or unregistered to whose income the return relates, and

(*c*) the manager of a Hindu undivided family to whose income the return relates, or any other adult member of such family who has been treated as representing it, that is, on whom a notice or requisition has been served under section 63 of the Act.

In civil and criminal courts, any persons other than parties to the suit, are allowed to take copies on application ; in view of section 54 of the Income-tax Act, copies cannot be granted to persons other than assessees.

An agent is entitled to apply for copy, if he is so authorised, but the application for copy must bear a court-fee stamp of two annas—In re *Basantalal Ramjidas*, 13 P.L.T. 437 : 136 I.C. 342.

Procedure for obtaining copies :

As there is no prescribed form for application for copies, an assessee can file an application for copy in a blank paper stating the copy he wants with a court-fee stamp of two annas only. If certified copies are applied for, an application with -/2/- court-fees with -/12/- court-fees for certification is sufficient. For certified copies, searching and copying fees are leviable.

[In some Provinces particular forms are insisted on.]

Copies of Orders of Assessment :

When an assessment order has been passed under section 23, any assessee who applies to the Income-tax Officer must be supplied with a copy, free of charge, subject to the following conditions :—

(*a*) that not more than one copy of an assessment order be supplied free, and

(*b*) that a copy of an assessment order applied for more than one year after the order was passed should not be supplied free of charge unless the applicant satisfies the Income-tax Offier that it is required for his use in some proceedings which are pending under the Indian Income-tax Act, 1922, with reference to the particular assessment covered by the order and which are not time-barred.

Proposed representations to higher authority which are not covered by any provision of the Act will not be regarded as proceedings under the Act.

When copies are available without application :

Whenever an appeal is preferred against the amount of income assessed or against the amount of tax charged or against any penalty imposed under any of the sections *25 (2), 28, 44E (6) 44F (5) and 46 (1), the notice of demand* received by the applicant must be attached to the form of appeal. The forms prescribed for appeal against (a) the Income-tax Officer's order refusing to reopen an assessment under section 27, the amount of loss computed under section 24 (*2*) the order of rejection of application for refund, (d) the amount of refund granted, (e) the order refusing to pass an order under section 25-A(*1*), (f) the order refusing to register a firm under section 26-A, and (g) the order under section 23-A, require that the copies of the relative orders should be attached to the forms. *One copy of any such order will, therefore, be supplied to the assessee free of cost and without application as soon as the order has been passed. Additional copies would be charged for.*

One copy of any other order will also be supplied to the assessee, on application, free of cost. Additional copies will be charged for. A copy of the Appellate order will be supplied to the assessee on application, free of cost. Additional copies will be charged for.

Uncertified Copy can be certified :

Uncertified copies may be converted into certified copies, after comparison with the originals, upon the application of the person to whom they have been granted, and upon his filing with such application the necessary-court fee stamps of 12 annas as required by law.

Urgent Fees :

There is a practice of granting copy on the day the application for copy is filed, provided that in addition to other fees chargeable, an extra fee of rupee one is credited to the Treasury for each such application which should be marked 'urgent'.

Copies by post :

Application for copy by post is permissible and in such cases, the departments will undertake to bear all necessary costs for transmission.

When a copy is applied for and sent by post in accordance with the rules for supply of copies through post, the period intervening between the computation and the despatch of copies should be included in the time requisite for obtaining copies. It means that the time to be allowed for getting copies should be calculated from the date of application up to the date when copies are despatched and not up to the date when copies are ready for delivery. : *Alla Bakash* v. *Municipal Committee*, 92 I.C. 819.

Branch Income Report :

When an assessee has got branch business, he can apply for branch income report from the Income-tax Officer of the principal place of business. Where there is a reference in the assessment order a copy of the branch income report should be granted to an assessee free of charge on application. No separate copy will be granted when the substance of the report forms a part of the assessment order.

Depreciation allowance :

When an assessee applies with a court-fee of -/2/- for a copy of the depreciation allowance as maintained by the department it will be granted to him on his depositing copying and searching fees

Liability of instruments presented to or issued by Income-tax authorities to Stamp duty and Court-fees :

(*i*) *Affidavits.*—Exemption (*b*) to Article 4 Schedule I, Indian Stamp Act, 1899, does not apply to an affidavit required for the immediate purpose of being filed or used in any Income-tax proceedings or before the Income-tax Officer or the Assistant Commissioner or the Commissioner, because none of these officers is a 'Court.'

(*ii*) *Copies or Extracts.*—Under Article 24, Schedule I, *ibid*, all copies or extracts certified to be true copies or extracts by officers in the Income-tax Department are liable to stamp duty if under the law they are not chargeable with Court-fees.

(*iii*) *Power of Attorney* (*Authorisation Letters*).—A bare letter of authorisation, *i.e.*, written statement by an assessee that a certain person appears on his behalf, does not require to be stamped as a "power of attorney". A "power of attorney" is a document which renders it safe for a third person to treat the agent as though he were the principal. Whether a document that is more than a bare letter of authorisation, does, in fact, entitle the agent to bind the principal is a matter of fact that can only be decided with reference to the facts of each case. If it is a "power of attorney" it is liable to stamp duty. The power of attorney should be stamped as an authority to act in a single transaction [Article 48 (*c*) of Schedule I]. There is, however, nothing to prevent an Income-tax Officer granting permission to a representative to appear without acting on behalf of an assessee, *i.e.*, merely to produce or explain accounts, etc.

(*iv*) *Orders—Copies of.*—Under Schedule I, Article 6, of the Court-fees Act, 1870, every copy of an order passed by an officer in the Income-tax Department in respect of any proceedings under the Act is chargeable with Court-fees.

(*v*) Under Article 9 of the same schedule, every copy of an Income-tax proceeding or order (not otherwise provided for by the Court-fees Act) or copy of any account, statement, report or the like taken out of an offices in the Income-tax Department is liable to Court-fees.

(*vi*) Article 6 of Schedule I of the Court-fees Act applies to quasi-judicial orders, *e.g.*, assessment orders including orders enhancing assessments, orders under section 27, orders imposing penalties under section 25 (*2*) and section 28 (*1*) and all appellate and revisional orders generally ; and Article 9 to other orders.

(*vii*) Under paragraph 99, a copy of the assessment order passed under section 23 is supplied free of copying charges by the Income-tax Officer on an application by an assessee subject to certain conditions. Such a copy is also free of court-fee under item 9 of Government of India Notification No. 4650, dated 10th September, 1899, if for the assessee's private use. But if a copy of the assessment order is filed as an exhibit in support of an appeal, etc., it must be stamped with the proper court-fee stamp. The position is the same in respect of copies of appellate orders under section 31.

(*viii*) *Petitions—Applications.*—Under Article 1 of Schedule II of the Court-fees Act, 1870, every application or petition presented to "any executive officer" (which includes any officer in the Income-tax Department) for the purpose of obtaining a copy or translation of any order passed by such officer or any other document on record in such office is chargeable with Court-fees.

(*ix*) Under Article 1 (*c*) of the same Schedule an application or petition presented to the Central Board of Revenue is chargeable with Court-fee.

(*x*) *Wakalatnama.*—Under Article 10 (*a*) and (*c*) of the same Schedule, a Muktarnama or Wakalatnama presented for the conduct of any one case to an officer in the Income-tax Department or the Central Board of Revenue is chargeable with Court-fee.

(*xi*) *Appeal—Memorandum of.*—An appeal preferred under section 30 of the Indian Income-tax Act, 1922, is liable to Court-fee under Article 11 (*a*) of Schedule II of the Court-fees Act. (*N.B.*—No Court-fee is chargeable on petitions presented under section 33.)

(*xii*) *Refunds.*—Application for refunds under sections 48 and 49 of the Indian Income-tax Act are exempt from payment of Court-fees, under clause (*xx*) of section 19 of the Court-fees Act.

(*xiii*) *Court-fees—Computation of.*—In all those cases where the Court-fee is *ad valorem* the monetary value for the purpose of determining the Court-fee is the amount of tax or penalty levied by the Income-tax Officer.

(*xiv*) *Rates of duties.*—Stamp duties and Court-fees vary from Province to Province. As regards the details of the rates, reference should be made to the various Stamps and Court-fees Amendment Acts in the different Provinces which have been passed in recent years.

The statement below shows the rates in force in the various provinces under Articles 1, 10 (a) and (c) and 11 (a) of Schedule II of the Court-Fees Act, 1870.

Provinces.	Applications or Petitions.				Mukhtarnama or Wakalatnama.		Memorandum of Appeal.	Remarks.
	Art. 1 (a).	Art. 1(b).	Art. 1(c).	Art. 1(d).	10 (a).	10 (c).	11 (a).	
	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	
Madras .	0 2	0 12*	1 8	3 0	1 0	3 0	1 0	*In the case of criminal complaint one rupee.
Bombay .	0 2	0 8	2 0	4 0	0 8	3 0	0 8	
Bengal .	0 2	...	...	...	1 0	2 0	0 8	
U. P. .	0 2	0 12	1 8	3 0	0 12	3 0	0 12	
Punjab .	0 2	1 0	1 0	2 0	1 0	2 0	1 0	
Bihar .	0 2	0 12	1 8	...	1 0	3 0	1 0	
Orissa .	0 2	†0 12	1 8	...	‡1 0	‡3 0	1 0	†In criminal cases Re. 1. ‡Annas twelve and Rs. 2-8 respectively in the C. P. areas.
C. P. .	0 2	0 12	1 8	2 0	0 12	2 8	1 0	
Assam .	0 2	...	1 8	...	1 0	2 0	0 8	
N. W. F. P.	0 2	1 0	1 0	2 8	1 0	2 0	1 0	
Sind .	0 2	0 8	2 0	4 0	0 8	2 0	0 8	

Rules for the grant of copies, Bengal procedure :

1. All applications for copies should be in writing addressed to the Officer concerned and bear a court-fee label of two annas. Applications written on plain papers will be accepted, provided they are otherwise in order.

2. Applications may be sent by post or presented in person or by messenger to the Officer concerned, or to his Head Clerk. Applications intended for presentation to the Officer in person must be presented to him before 1 P. M. on working days.

3. Where the application is for the copy of an order, of which the appellant is entitled to have a free copy ; the copy when ready will be despatched to the applicant by ordinary post at Government expenses unless the applicant wishes it to be made over to him in person or to his duly authorised representative or sends a messenger (about whose *bona fides* there is no doubt) to obtain it. When a messenger is sent he should bring a chit from the applicant authorising him to take delivery.

*NOTE—A chit authorising a messenger to take delivery does not require a stamp.

4. In cases where the copy to be supplied is not a free copy, the applicant (if he has not already sent the necessary fees along with his application) will be informed as soon as possible either by post, telephone or in any other suitable way of the fees payable by him. When such fees have been paid, the copy will be prepared as expeditiously as possible and despatched to the applicant by ordinary post at Government expense unless the applicant wishes it to be made over to him in person or his duly authorised representative or sends a messenger (about whose identity and *bona fides* there is no doubt) to obtain it. When a messenger is sent, he should bring a chit from the applicant authorising him to take delivery.

*NOTE—Such chits do not require stamp.

5. When an applicant requires a copy to be forwarded 'urgently' on the day of the application, an urgent fee of Rupee one will be charged in addition to any other prescribed fees. Copies for which 'urgent' fees are paid will be prepared immediately and will be ready for delivery at a stated time either on the date of application or if that is not possible, on the next succeeding working day.

Changes in the Act, if retrospective or prospective :

Retrospective effect should not be given to an Act unless it expressly provides for it as such a course would deprive vested rights and may convert acts legal when they were done, into illegal acts and *vice versa* (see *Raipur Manufacturing Co.* v. *The Ahmedabad Municipality*, 31 B. L. R. 1224 ; *Attorney-General* v. *Till*, 5 T. C. 440). It is a fundamental rule of English law that no statute shall be construed, so as to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct application —*Ingle* v. *Farrand*, 11 T. C. 468. An amending Act is not retrospective, as has been held in various decisions (see *Nagendranath Bose* v. *Monmohon Sinha*, 34 C. W. N. 1009 , *Phoolchand* v. *Ramnath*, A. I. R. 1928 All. 186.

Procedural laws have retrospective operation unless that construction is textually inadmissible. Provisions which affect a right in existence (*i. e.*, vested right) at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment—*Colonial Sugar Refining Company* v. *Irving*, (1905) A. C. 369 ; *Delhi Cloth and General Mills Co., Ltd.* v. *C. I. T., Delhi*, 2 I. T. C. 439 (P. C.) : 54 I. A. 421.

Declaratory or Explanatory Acts are retrospective in their operation—*Balazi Sinha* v. *Chukta Gangamma*, A. I. R. 1927 Mad.

The question arises whether after the passing of the Amendment Act of 1939, pending cases, that is, cases which should have been assessed normally before 1939-40, should have retrospective operation or not. In view of the judicial findings my humble opinion is, the Amending Act can have no retrospective operation. It has been judicially noticed that enactments which alter substantive law and create or alter rights and liabilities, are always to be interpreted as being prospective, and should not be held to affect existing rights, (*see* A. I. R. 1931 Mad. 831 : A. I. R. 1932 S. 204 ; A. I. R. 1927, Cal. 763, unless a clear intention to that effect is manifest—*Vera Shadrayya* v. *Nagand Nadr*, A. I. R. 1927 Mad. 41.

Thus so far as assessments of cases before 1939-40 are concerned, the cases ought to be governed by the old Act.

It is a well established rule of construction of statutes that no provision should be held to be 'restrospective' unless the words of the statute compel the Court so to hold. The statute can only be held to have retrospective effect if it is expressly stated that it is to have such effect or if by necessary implication such effect must be given to it.—*Rai Bahadur H. P. Banerjee* v. *C. I. T., B. & O.*, 9 I. T. R. 137.

Effect of Repeal :

Effect of repeal has been enumerated in section 6 of the General Clauses Act, 1897, which is quoted in extenso :

Effect of Repeal.

6. Where this Act, or any Act of the Governor-General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect ; or

(*b*) affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder ; or

(*c*) affect any right, privilege, obligation or liability acquired or incurred under any enactment so repealed ; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, or remedy, may be instituted, continued or enforced, and any such penalty, forfeiture or punishment, may be imposed as if the repealing Act or regulation had not been passed.

Duties and Obligations of Persons disbursing "Salaries" :

The Amendment Act of 1939 has revolutionised the basis of taxation and from the 1st of April, 1930, the duties and obligations of persons responsible for paying salaries etc., are as below :

(*1*) To deduct income-tax and super-tax on any income chargeable under the head "salaries" at a rate representing the average of the rates applicable to the estimated total income. [*vide* section 18(*1*).]

(*2*) The disbursing officer has been given power to adjust any excess or deficient deduction by decrease or increase in the deduction as the case may be.

(*3*) Under the previous Act, salaries could not be deducted when paid to a non-resident employee ; but owing to a change in the basis of taxation, section 18 (*2-B*) enacts that it is incumbent on the disbursing officer to deduct income-tax at the maximum rate and super-tax at the rate applicable to the estimated total income of the non-resident employee for any income chargeable under the head "salaries" [section 18 (*2-B*) read with section 4, Expl. 2].

(*4*) Income-tax and super-tax are to be deducted on "salaries due"—no matter whether it is paid or not. "Advance" or "loan" taken by an employee shall be deemed to be salary when received.

(*5*) Leave salaries paid without British India from British Indian Exchequer or from British India, shall no longer enjoy any exemption and necessarily there must be deduction of tax at source. (But pension payable outside British India does not attract tax.)

(*6*) It is imperative on the person responsible for paying salaries to include the following payments within the word "salaries" whenever due ;

(*a*) any payment of bonus, commission, allowance, perquisites, gratuity, profits in lieu of or in addition to salaries ,

(*b*) employer's contributions to the Provident Fund with interest thereon shall be deemed to be salary of the employee, provided it is paid on the termination of his service or where it is paid by way of remuneration for his past services (section 7, Expl. 2).

Note :—Payment by way of remuneration for past services is exempted. Similarly any payment from a Provident Fund to which the Provident Funds Act of 1925 applies, any payment from a Recognised Provident Fund within the meaning of chapter IX-A or any payment from an Approved Superannuation Fund, do not attract liability.

(*i*) Abatement for Life Insurance premium should be given up to $\frac{1}{6}$th but not exceeding Rs. 6000/-, whichever is less in the case of individuals, but so far as Hindu undivided family is concerned, up to $\frac{1}{6}$th but not exceeding Rs. 12000/-, whichever is less.

(*ii*) Contributions and premiums up to $\frac{1}{6}$th and rebate of income-tax alone and not super-tax is to be calculated at a rate representing the average of rates applicable to the total income of the employee.

(*iii*) Sums deducted from the salary of Government servants with a view to secure for them deferred annuity and any provision for their wives and children.

(*iv*) Contributions to a Recognised Provident Fund within chapter IX-A and contributions to an Approved Superannuation Fund as laid down in chapter IX-B.

(*vi*) Life Insurance premiums for self and wife should be allowed but no rebate is premissible for Life Insurance premiums and Provident Fund contributions, so far as super-tax is concerned.

6. Where no deduction is made or when tax is not paid, the persons responsible for paying salaries shall be deemed to be assessees in default in respect of the tax [*vide* section 18 (*7*)]. Income-tax Officer may in such cases impose penalty under section 46 (*1*), if he is satisfied that failure to deduct and pay tax is wilful.

Illustrations :

A. *A* is an assessee having an annual income of Rs. 3,100. The income-tax payable by him is to be calculated in the following way :

Income.			Tax payable.
First Rs. 1,500	...	at nil	Nil
Next Rs. 1,600	...	at 9 pies in the rupee	Rs. 75
Total Rs. 3,100			Rs. 75

The average rate applicable to the whole tax is, therefore, $\frac{\text{Rs. } 75}{3100}$ in the rupee.

that is, $\frac{75 \times 16 \times 12}{3100}$ or 4·64 pies in the rupee.

Now if *A* pays Rs. 300/- annually as L. I. P., he will be allowed deduction amounting to

$(300 \times 4{\cdot}64)$ pies or Rs. 7-4 as.

The net tax payable by *A* is Rs. 75 – Rs. 7-4 = Rs. 67-12 as. Deduction per month at source will be

$$\frac{\text{Rs. } 67\text{-}12 \text{ as.}}{12} = \text{Rs. } 5\text{-}10\text{-}4 \text{ only.}$$

B. *A*, an assessee, has an annual income of Rs. 48,000/- and he pays L. I. P. Rs. 9,000 annually.

Calculation of Tax.

Income.			Tax payable
First Rs. 1500	...	at nil	Nil.
Next Rs. 3500	...	at 9 pies	164-1 -0
Next Rs. 5000	...	at 1a. 3p.	390-10-0
Next Rs. 5000	...	at 2 as.	625/-
Next Rs. 33,000	...	at 2as. 6p.	5156-4-0
Total Rs. 48,000			Rs. 6,335-15-0

Average rate of tax in this case

$$= \text{Rs.}\ \frac{6336}{48000} \text{ or } \frac{6336 \times 16 \times 12}{48000} \text{ pies} = 25{\cdot}34\text{p.}$$

If *A* is an individual the relief he gets on account of L. I. P.

= 25.34p × 6000 (maximum allowable) = Rs. 791-14 as.

Tax payable Rs. 6335-15 minus Rs. 791-14 as.

= Rs. 5544-1-0 only.

Super-tax shall be calculated in the following way.

Income.			Tax payable.	
First Rs.	...	25,000	.....	Nil.
Next Rs.	...	10,000	at 1 anna	Rs. 625
Next Rs.	...	13,000	at 2 annas	Rs. 1,625
Total	...	48,000		Rs. 2,250

Income-tax	...	5,544	1	0
Super-tax	...	2,250	0	0
		7,794	1	0

If the above income is derived from salary, then the monthly deduction at source will be as follows.

Income-tax Rs.	...	462	0	0
Super-tax Rs.	...	187	8	0
	Rs.	649	8	0

Note.—(*a*) No deduction of super-tax is to be given in respect of Life Insurance premiums or Provident Fund contributions.

(*b*) In calculating the amount of tax payable, fraction of a rupee of income should be neglected, similarly fractions of an anna less than 6 pies should be disregarded but if more than 6 pies, it shall be regarded as one anna.

Duties and Obligations of Company :

The Amendment Act of 1939 has revolutionised the whole scheme of the Indian Income-tax Act and it has therefore become necessary to enumerate the duties and obligations of the Company.

1. Section 19-*A* lays down that it is mandatory on the principal officer of every company to furnish to the Income-tax authorities a return in the prescribed form and verified in the

prescribed manner of the names and addresses of persons, together with the amounts to whom dividends exceeding Rs. 1,000 have been paid.

(*a*) on default the principal officer is liable to prosecution under section 51 cl. (*c*)

(*b*) when the false statement in the verification mentioned in section 19-*A* is made, the person making the statement is liable to prosecution under section 52 of the Income-tax Act.

Rule 43 provides the form of Return which is available on mere asking.

2. Section 20 of the Income-tax Act places on the principal officer, a statutory obligation to supply every person receiving a dividend, a certificate to the effect that the company has paid or will pay income-tax on the profits distributed.

(*a*) Non-compliance of the above attracts the provision of section 51 cl. (*b*) (*i.e.*, prosecution can be launched for default).

3. Section 20-*A* provides that the person responsible for paying interest, other than "Interest on securities", shall furnish to the Income-tax authorities on or before the *15th day of June in each year, 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 year aggregate interest exceeding Rs. 400 has been paid.*

(*a*) Failure to furnish the return under section 20-*A* will make the person liable to prosecution under section 51 cl. (*c*).

(*b*) For false verification in the return under section 20-*A*, he is also liable to prosecution under section 52 of the Act.

4. Section 21 lays down that the principal officer or the prescribed person in the case of company, etc., shall prepare and furnish to the Income-tax Officer, by the 30th April each year, a return in the prescribed form and verified in the prescribed manner, of

(*a*) names and addresses of every person chargeable under the head "Salaries"—of every person who was receiving or has received or to whom was due during the year,

(*b*) the amount of income so received or so due by each such person and the time or times of payment or times when due,

(*c*) the amount of income-tax or super-tax deducted from the income of each such person.

In default, he is liable to prosecution under section 51 cl. (*c*), but when there is a false statement in the verification, he is liable to prosecution under section 52 of the Act.

The Annual return is also available on mere asking.

Note—Under the previous Act, it was obligatory only on the principal officer of companies to submit the annual return by the 15th of June each year, but the Amendment Act of 1939 throws it open to all assessees.

5. When there is publication in the press and publication in the prescribed manner by the Income-tax Officer on or before the 1st day of May in each year, it is imperative on *every person* whose income in the previous year exceeded the maximum, to furnish to the Income-tax Officer, a return in the prescribed form and verified in the prescribed manner, within 60 days from the date of publication, *his total income* and *total world income* under section 22 (*1*). [See section 22 (*1*)].

The Income-tax Officer may also serve a notice on any person liable to income-tax, to furnish within 30 days from the date of service, a return in the prescribed form and verified in the prescribed manner. Under both the sections, Income-tax Officer has been given ample discretion to extend the date of delivery of the return.

6. When no return has been furnished under either of the sub-sections (*1*) and (*2*) of section 22 or where any omission of either of the return, amended return or revised return may be submitted at any time before assessment, because for the purpose of assessment, the revised return is to be considered. But it must be understood that a return under section 22 (*3*) is permissible within the period when the return is due, otherwise the penal provision of section 28 is attracted.

Income-tax Officer has power to call for accounts and documents up to three years prior to the assessment year, under section 22 (*4*). Section 22 (*5*) places an obligation on the assessee to furnish the location, style and the principal place of business with the names of partners together with their shares. This information should be furnished at the time of filing the return.

7. Assessment procedure is as detailed below.—

(*a*) If the Income-tax Officer is satisfied with the return furnished, he can accept the return as it is without asking the assessee's presence or the production of

any evidence and he can determine the sum payable by him on the basis of such return under section 23 (*1*).

(*b*) If the Income-tax Officer is not satisfied with the return, he is at liberty to call for evidence under section 23 (*2*) or accounts under section 22 (*4*). After weighing evidence and scrutinising accounts, he shall assess the total income of the assessee and determine the sum payable by the assessee.

(*c*) If there is full compliance the assessment shall be made under section 23 (*3*) but it does not mean the acceptance of the figure shown in the return.

(*d*) When there is a default in complying with the requisition, the assessment shall be made on the best of his judgment under section 23 (*4*) and the assessee may be hit hard even.

8. It is therefore necessary to enumerate consequences of default.

(*a*) Section 23 (*4*) enables the Income-tax officer to make "best judgment assessment" when there is a default to comply with the requisition under sections 22 (*2*), 22 (*3*), 22 (*4*) and 23 (*2*).

(*b*) Besides "best judgment assessment" the Income-tax authorities, in the course of any proceedings, can impose penalty under section 28 for failure without reasonable cause to furnish the return under section 22 (*1*), 22 (*2*) or 34 or 23 (*3*) within time.

(*c*) Non-compliance of the requisition under section 22 (*4*) or 23 (*2*) shall invariably result in summary assessment under section 23 (*4*). Further the penal provision is also attracted for non-compliance.

(*d*) When there is a concealment of income or deliberate furnishing of inaccurate particulars, penalty under section 28 up to one and a half times income-tax and super-tax is imposable.

9. Under the previous Act, the only remedy available against a summary assessment under section 23 (*4*) was by way of an objection under section 27. But Amendment Act, of 1939 has retained the right of filing an objection under section 27 and has also provided a right of appeal under section 30. As to whether simultaneous objection under section 27 and appeal under section 30 are permissible, the book portion may be referred to.

(*a*) Section 30 provides a right of appeal against imposition of penalty.

(*b*) Where there is a non-compliance of the public notice under section 22 (*1*), penalty under section 28 can be imposed when the income exceeds Rs. 3,500 but this privilege is denied in the case of failure to comply with the requisition under section 22 (*2*).

(*c*) Where an assessee fails to comply with a notice under section 22 (*2*) or 34, but he proves that he has no income liable to tax, still if the tax goes out, a penalty not exceeding Rs. 25 may stand.

(*d*) Income-tax Officer can only impose penalty under section 28 on getting previous approval of the Inspecting Assistant Commissioner.

(*e*) Besides the consequence as stated above, section 34 of the Act lays down that within 8 years or 4 years, where

(*i*) income has escaped assessment,

(*ii*) income has been assessed at too low a rate,

(*iii*) excessive relief was granted in the original assessment, and

(*iv*) where there is an element of fraud,

Income-tax Officer can reopen assessment of last eight years; in other cases unattended with fraud, he can only assess or reassess up to four years. Thus the law of limitation resolves itself into this—(*a*) where there is a commission by the assessee, it is eight years and (*b*) where there is an ommission by the Income-tax Officer it is four years.

10. Any mistake apparent on the face of the record can be rectified under section 35 by the Income-tax authorities *suo motu* or at the instance of the assessee by bringing it to their notice within 4 years (under the previous Act it was four years).

11. When a notice of demand under section 29 is served, it is imperative on the assessee to pay off the demand within due date or extended date, otherwise the Income-tax Officer can impose penalty under section 46(*1*) up to the amount of the tax, which may be realised by certificates and distraint, etc.

(*a*) A right of appeal has been provided against the imposition of the penalty under section 46 (*1*), but such an appeal is permissible after tax has been paid.

(*b*) A right of appeal does not or cannot stay realisation of tax neither does a reference to the High Court.

12. When objection against the principal place of business is not taken at the time of filing the return under section 22 or within the time for submission of the revised return, no such objection can be taken subsequently whether in the original assessment, or appeal, or review or in reference.

13. It is imperative on the principal officer of every company, firm, etc.

(*a*) to deduct income-tax and super-tax at source from salaries paid or due,

(*b*) provision has also been made for deduction of super-tax from dividends paid by the principal officer.

The form of Return is one and the same for all assessees. The procedure of assessment is also the same. For company there is no taxable minimum as the procedure of assessment in all other respects, is identical, it will be superfluous to deal all classes of assessees separately.

Working Method of Recognised and Government Provident Fund :

Under section 58-E annual accretion in the year shall be deemed to have been received by him in that year and shall be included in his total income. In the proviso it is laid down that for the purpose of sub-section (*3*) of section 15, only the employee's own contributions shall be included.

On the other hand, an employee under section 58-F(*1*) shall not be liable to pay income-tax on contributions to his individual account up to $\frac{1}{5}$th and interest on contributions shall be exempt from payment of income-tax.

An assessee gets a salary of Rs. 400/- per month, he contributes Rs. 25 per month, the employer contributing the same amount. He pays Rs. 1,000 as Life Insurance premium. How to work it out.

Gross salary		4,800
Net salary	4,500	
Employer's P. Fund	300	
		4,800
Annual accretion		
300		
300		
600		
Less Employer's contributions	300	300
	300	5,100

Deductions on account of Provident Fund and Life Insurance premium will be $\frac{1}{6}$th of 5,100 – 300 = 4800

Pro. Fund allowed.	800	800

L. I. P. not allowable as already $\frac{1}{6}$th has been allowed.—

	Govt. Pro. Fund
Salary	4,800 (gross)
Less Prov. Fund and L. I. P. up to $\frac{1}{6}$—	800
	Rs. 4000

Under the slab system, the system of computation is different, which has also been shewn by illustration.

Bad and Doubtful Debts :

Before the Amendment Act of 1939, there was no specific provision in the Income-tax Act for bad and doubtful debts. But the practice of making allowance for bad debts was firmly established. Their Lordships of the Privy Council in *C. I. T.* v. *S. M. Chitnavis*, 6 I. T. C. 453 observed :

"Although the Act nowhere in terms authorises the deduction of bad debts of a business, such a deduction is necessarily allowable."

Clause IX of sub-section (*2*) of section 10 as amended makes a specific provision for bad and doubtful debts. It is obvious on reading the section that allowance for bad and doubtful debts are permissible when the books of accounts are on the mercantile basis.

But the section apparently has provided allowance for bad and doubtful debts in banking and money-lending business. There is no mention of the system of accountancy and there is nothing to warrant, that so far as banking or money lending business is concerned, but debts occurring only in mercantile system of accountancy will be allowed—it can, therefore, be said that so far as banking or money lending business is concerned, allowances are permissible, no matter whatever be the basis of accountancy.

The Income-tax officer has been given absolute discretion to estimate the amount which may be allowed. A proviso has been added that where any amount recovered on any such loan or debt is greater than what was allowed on estimate, the difference shall be added as profits, if less, the deficiency shall be a business expense of that year.

Under the English Act, bad debts are allowed as charges in the accounts for the year or other period in which they are found to be bad and irrecoverable, although in strict law the year in which the debts arose should be debited—*Gleaner Co., Ltd.* v. *Jamiaca*, 2 A. C. 168.

Bad debts incurred otherwise than in respect of transactions arising out of the ordinary course of trade are not allowable—*English Crown Spelter Co., Ltd.* v. *Baker*, 5 T. C. 327 ; *Chatis* v. *Oldfield*, 4 A. T. C. 183.

Unless the advancement of money on loan to customers, etc. is an essential part of a business, bad debts incurred on such loans will not be permitted as deductions in adjusting the profits of that business (*Reids Brewery Co.* v. *Male*, 3 T. C. 279 ; *Stott* v. *Hodinott*, 7 T. C. 85 ; *Morley* v. *Lawford and Co*, 45 T. R. R. 30).

Marginal Relief.

The Amendment Act of 1939 has deleted section 17 of the previous Act, which dealt with marginal relief.

But section 6 (*2*) of the Indian Finance Act lays down

> "(*2*) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates specified in Part II of Schedule II."

The rates are subject to the provision that the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

For example, the tax on Rs. 2,024 amounts to Rs. 12- calculated as follows :—

First Rs. 1,500	...	...	nil
On the next Rs. 524			
the tax at 9 pies	...	...	... 24-9-0

But the tax is limited to Rs. 12 (half of the excess of the income over Rs. 2,000/-).

Vakalatnama (Power) filed before the Income-tax Officer, if remain in force until all Proceedings in the suit are ended.

An assessee may be represented by a lawyer before an Income-tax Officer. The lawyer in question is required to file a Vakalatnama or Mukhtarnama, as the case may be, for his appearance.

The Income-tax Officer makes an assessment under section 23 and the assessee wants to prefer an appeal against such an assessment by the lawyer who represented him before the Income-tax Officer, does he require a fresh Vakalatnama to be filed in appeal ?

In my humble opinion a fresh Vakalatnama is unnecessary and an Appellate Assistant Commissioner cannot ask for a fresh power. There is no specific decision but the provision of Civil Procedure Code stands authority. Order 3, Rule 4 of the Civil Procedure Code runs as below :

Appointment of Pleader.

4. (*1*) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing by such person or by his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment.

(*2*) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(*3*) For the purposes of sub-rule (*2*) an application for review of judgment, an application under section 144 or section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies or documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit shall be deemed to be proceedings in the suit.

(*4*) The High Court may by general order, direct that when the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(*5*) No pleader who has been engaged for the purpose of pleading shall plead on behalf of any party unless he has filed in Court a memorandum of appearance signed by himself and stating

(*a*) the names of the parties to the suit,

(*b*) the name of party for whom he appears, and

(*c*) the name of the person by whom he is authorised to appear :

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

Power of pleader remains in force in all stages of the suit—*Purna Chandra Dutta* v. *Shaikh Dhalu*, 54 C. W. N. 914 : 52 C. L. J. 87. Authority of pleader engaged in trial Court unless specifically revoked subsists up to appellate stage. In fact clauses (*2*) and (*3*) of Order 3, rule 4 provide that every appointment of a pleader, continues and is valid for appellate purposes unless specifically revoked—*Totaram Kalyaram Jawa* v. *Musamat Isri Bai and others*, 146 I. C. 363.

Registration under the Act :

Rule 2 of the Central Board of Revenue lays down that any firm constituted under an Instrument of Partnership specifying the individual shares of the partners may, under the provisions of section 26-*A* of the Indian Income-tax Act, 1922, register with the Income-tax Officer, the particulars contained in the said Instrument on application made in this behalf.

The Amending Act of 1939 has enacted that such application shall be signed by all the partners, (under the previous Act, an application could be presented with the signature of one partner).

Various case laws have been discussed in the main portion, yet for the sake of clarity the following cases have been quoted by way of illustration.

Where a document (instrument of partnership) is executed merely with the object of supporting the false plea of dissolution of partnership but is never intended to be acted upon, it entitles the Income-tax Officer to refuse registration—*Lala Tribeni Ram of Gorakpur*, 6 I. T. R. 510. Registration on the strength of a certificate from the Registrar of Joint Stock Companies under the Partnership Act, is not operative for the purpose of registration and registration can be rightly refused—*In the matter of Hazi Noor Mahamad Hazi Alumullah*, 10 I. T. C. 426. It must be understood that partners are not bound to register under the Indian Partnership Act and as such taxing authorities are not entitled to impose a condition that the document should be registered under the Partnership Act : *C. I. T.* v. *Chamanlal Mangaldas & Co., Managing Agents of Girdhardas Harvallavdas Mills Ltd.*, 10 I. T. C. 58. Assessees are to see that the recital in the application is in accordance with facts, otherwise registration will be refused—*Rai Saheb Chiranjilal & Sons* v. *C. I. T.*, A. I. R. 1937 L. 415.

Motive with which a partnership may be formed is immaterial (see *Ayrshire Pullman Motor Service and David M. Ritch* v. *Commissioner of Inland Revenue*, 8 A. T. C. 531). But it must be understood that the Income-tax Officer is not bound to accept such a document at its face value and can require the applicant to adduce evidence from which he may satisfy himself of the *bona fides* of the applicant. A deed is not a "magical talisman" (*in re* : *Biseswarlal Brijlal*, I. L. R. 57 Cal. 1936). Where the agreement cannot stand for a minute, if it is possible to say of it on the facts that it is either a fraud or a mere simulative arrangement, registration will be refused.

When Income-tax Officer finds that the instrument of partnership is not real, but is an expedient to evade income-tax liability, he can refuse registration. At the same time it is equally true that where the transfer is real, the mere fact that it results in a lessened income-tax liability does not make ineffective what is lawful—*Mulla Tridu Ali* v. *C. I. T.*

Income-tax Officer is only empowered to register a partnership or rather the partnership which is specified in the instrument of partnership which is put forward or nothing else—*Hossen Kasem Dada* v. *C. I. T.*, 41 C. W. N. 629, refusal to register a firm cannot be made when the instrument of partnership contradicts a previous document—*C. I. T.* v. *Nathalal Badardas & Co.*, 10 I. T. C. 72.

It is open to the Income-tax authorities to go into evidence, both circumstantial and direct, to determine whether the instrument of partnership is a genuine document or whether it merely embodies a bogus transaction (see *Dickenson* v. *Gross*, 11 T. C. 614)—*Firm Hazi Ghulam Rasul Khuda Baksh* v. *C. I. T.*, 181 I. C. 332 ; A. I. R. 1939 L 305. It is true that no partnership can be registered if any partner under the deed is liable to have a variation of his shares. But "share" does not mean net receipts. It is the basis of computation from which, after other necessary factors are considered, one is going to arrive at them. Where the partnership deed is genuine and the shares of each partner are definite and determinable and the deed definitely specifies these individual shares and the profits of each current year are shown and credited in accordance with the shares shown in the partnership deed, the deed is registrable under section 26-*A*, even though the deed provides that what the partners actually get will depend upon the time which they have devoted to the business or their absence therefrom—*C. I. T., Burma* v. *Seth Mangoomal*, 79 T. R. 208.

Where an assessee produces a deed of partnership which is registered under the Registration Act, but not registered under the

provision of section 59 of the Partnership Act, and shows entries from books of accounts, it is ineffectual : *Mahamad Asha* v. *B. K. Halder*, A. I. R. 1938 R. 130 ; *Abba Dada & Co.* v. *C.I.T.*, 180 I. C. 675.

Association of Persons :

The Amending Act of 1939 has substituted "Association of persons" in place of "Association of individuals" the insertion of the word "persons" is quite happy All the cases reported so far deal mainly with "association of individuals" but apparently these decisions are binding even to "association of persons."

It can therefore be safely said that the words "association of persons" in section 3 should be construed *ejusdem generis* with all the other groups of persons mentioned in the section, namely, Hindu undivided family, company and firm and not with firm alone.

When a person inherits a share in property he has an opportunity of deciding whether he will by reason of having inherited that share, form an association of persons or renounce such relationship ; and if there is evidence that he has chosen the former alternative it is for the Income-tax Officer to decide their course of action.

By merely inheriting a share of property, however, no person can become a member of an association of persons unless there is some forbearance or act on his part to show that his intention and will accompained the new status which he has been asked to receive.

The amended sub-section (*3*) of section 9 has made the position clear now (see the following cases, *e. g.*, *B. N. Elias and others* v. *C. I. T., Bengal*, 40 C. W. N. 476 ; *C. I. T., Bombay* v. *Laxmidas Debidas and another*, 5 I. T. R. 584 : 39 B. L. R. 910 ; *In re Dwaraka nath Harish Chandra Petale*, 5. I.T.R. 716 ; *In re Keshardeo Chamaria*, 8 *I. T. C. 472* ; 3 I. T. R. 418 , *Meufty Mohamad Aslam Khalifa Mundy* v. *C. I. T.*, 4 I. T. R. 412 : 10 I. T. C. 26 ; *C. I. T., Burma* v. *M. A. Baporia & others*, 7 I. T. R. 225).

Difference between an assessment on estimate under section 23 (3) read with section 13 and best judgment assessment under section 23 (4) :

In the case of an assessment under section 23 (*3*) or section 23 (*4*) the Income-tax Officer must have materials on which to base his assessment. The only difference between the two sub-sections is that an assessment under sub-section (*4*) is by a

more summary method by reason of the deliberate default of the assessee. The assessment must be to the best of his judgment based on consideration of facts relating to the income of the assessee gathered by the Income-tax Officer under the powers given to him under the Act. Though the Act does not require the Income-tax Officer to disclose to the assessee the materials on which he proposes to act or to refer to it in his order giving him an opportunity of showing, if he can, that the Income-tax Officer has been misinformed. He cannot make an assessment under section 23 (*4*) capriciously.

The Income-tax Officer should indicate in his order of assessment under section 23 (*3*), the materials on which he has made his assessment. Section 13 adds nothing to or takes nothing away from section 23 (*3*). The Income-tax Officer, if he is not satisfied with the method of accounting employed by the assessee, can adopt his own method, but he must have reference to the accounts before him as section 13 does not contemplate rejection of the accounts *Subbaya* v. *C. I. T.*, 1939 I. T. R. 21. (19 Lah. 10 and 7 R. 281 *not followed*)

Local Authority :

The following quotation from Lord Halsbury's book, 2nd Edition, Vol. XVII, is instructive and illuminating on the subject.

"Local authorities who levy rates on the inhabitants of a locality are not assessable to tax in respect of balance of such rates after meeting outgoing. The principle is that the rating authority collects money from the inhabitants of the district for the purpose of application to the expenses incurred on behalf of the inhabitants, and any surplus belongs to the inhabitants themselves, who receive the benefit of the surplus because it is carried forward towards the expenses of the ensuing year. (*Forth Conservancy Board* v. *C. I. R.*, (1931) A. C. 540 ; as regards interest payable out of rates, proper officer having management of the accounts may be charged with the tax payable thereon. [I. T. Act 1918 (8 & 9 Geo. 5. C. 40) Sch. D Misc. rule, r. 6].

"Local authorities are frequently empowered to, and in fact "do carry on trading activities, *e.g.*, manufacture and sale of gas or electricity. To the extent that the product of such activities is used for the provision of public amenites in the area of the local authority, *e.g.*, street lighting, the principle of mutual trading applies and no profits emerge. To the extent, however, that the product or services are supplied to customers who contract for such supplies the balance of profit is liable to

tax [Re : *Glassgow Gas Commissioner*, (*1876*) I. T. C. 122. Distinguishing *Glassgow Corporation Water Commissioner* v. *Miller*, (1886) 2 T. C. 131].

"Where water is supplied within an area of compulsory supply and the expense is met by a rate, the result is the same as in the case of rate levied to meet any other expense and any balance is not profit liable to tax. Re : *Glassgow Corporation Water Works*, (1875) 1. T. C. 28. [Supply of water compulsory in area and the expense met by a rate ; the balance of receipts over expense of supply is not liable to tax] when, however, water is supplied on a contract basis within the area of compulsory supply or is supplied on a voluntary and not on a compulsory basis [*Allan* (*Surveyor of taxes*) v. *Hamilton Water Works Commissioner*, (1887) 51 J. P. 272 : 2 T. C. 194 ; (supply of water by meter and by rate, the balance of profit liable to tax)], or is supplied on basis outside the area of compulsory supply, the profits liable to tax [*Glassgow Corporation Water Commissioner* v. *Miller* water supply outside compulsory area : the Commissioners were held liable to tax on profits] *Dublin Corporation* v. *M. Adam* (*Surveyor of tax*) (1887) 20 L. R. Ir. 497 : 2 T. C. 387. (Supply of water on contract outside compulsory area, profits liable to tax) *Harris* v. *Irvine Corporation*, (1900) 65 J. A. 663 : 4 T. C. 221 (supply of water outside compulsory area in return for annual sums ; the profits were held liable to tax).

"The supply of water within the area of compulsory supply or the supply of street lighting is separate activity from the supply of water etc, on a contract basis or outside the area of compulsory supply (*Dillon* v. *Haverfordwest Corporation* (1891) 1 Q. B. 575 : 3 T. C. 31 (cost of street lighting cannot be charged against receipts from sale to provide consumers) *Wakefield Rural Council* v. *Hall*, (1912) 3 K. B. 328 : 6 T. C. 181 (supply of water to seven contributory parishes ; on four a profit was made and on the other three a loss ; the local authority had no power to divert profits in one parish for the benefit of another parish, it was held that the losses on the three parishes could not be set off against the profit of the four parishes **(p. 105)**.

"Receipts from compulsory rates are not assessable to tax (re : *Glassgow Corporation Water Works*, (1875) 2 R. (Ct. of "Sess.) 708 : I. T. C. 28. *Mathews* (*Surveyor of Taxes*) v. *Cork County Council* (1910), 2 I. R. 521 : 5 T. C. 545), but where for example, water is supplied voluntarily in an area of compulsory supply, or outside an area of compulsory supply, the receipts are taken into account in arriving at profits assessable to tax : *Glassgow Water Corporation* v. *Miller*, (1886) 13 R. (Ct. of Sess.)

489 ; 2 T. C. 131 ; *Alla* v. *Hamilton Water Works Commissioner*, (1887) 24 Sc. L. R. 360 : 2 T. C. 194 ; *Dublin Corporation* v. *M. Adam* 20 L. R. I. 497 ; 2 T. C. 387, even if the receipts for supply outside an area of compulsory supply arise from a rate imposed by a local authority of that area. (*Mullengar Rural District Council* v. *Rowles*, (1913) 2 I. R. 44 : 6 T. C. 85.) The cost of supply of gas for street lighting by a local authority who carry out gas works is not deductible as an expense of the gas undertaking : *Dellon* v. *Haverfordwest Corporation*, (1893) 1 Q. B. 675 : 3 T. C. 31.

"The mere fact that a supply of water, gas, etc. is carried out by a physical unity of supply does not mean that a local authority carries on one undertaking only. Thus, where different bodies of persons are interested in the profits or losses of different parts of an undertaking each such part constitutes a separate undertaking for income-tax purposes. (*Wakefield Rural Council* v. *Hall.* (Water supply to contributory parishes outside the area of compulsory supply ; each parish account had to be kept separately and a credit balance on one account could not by law be set against a debit balance of another account ; each supply was a separate subject of assessment, and losses in one supply could not be set against profits on another supply : *Dillon* v. *Haverfordwest Corporation* (supplies to private customers and supply for street lighting were separate activities). *Leeds Corporation* v. *Sugden*, 104 L. T. 166 (necessity of keeping separate accounts approved by House of Lords) *Sugden Leeds* v. *Corporation*, (1914) T. C. 483 ; 6 T. C. 211.

"Where interest is paid out of rates not chargeable to tax, the officer having the management to the accounts is chargeable to tax on such interest [I. T. Act 1918 (8&9 Geo. 5, C. 40) Misc. Rule Sched. D r. 6.]

"Local authorities who carry on trading operation at a profit or who receive income from investments are liable to tax in respect of such profits or income in the same way as any other persons. The local authority who own property (*A. G.* v. *London County Council* (1907), A. C. 131 : 5 T. C. 242), *sel water* (*Glassgow Corporation Water Commissioner* v. *Miller* (1886) 13 R. (Ct. of Sess.) 489 ; 2 T. C. 131 ; *Allan* v. *Hamilton' Water Works Commissioner* (1887), 24 Sc. C. R. 360 ; 2 T. C. 194 ; *Dublin Corporation* v. *M' Adam*, 20. C. R. I. 497 ; 2 T. C. 387 ; *Harris* v. *Irvine Corporation* (1900) 2 F. (Ct. of Sess.) 1080 ; 4 T. C. 221 ; *Mullengar Rural District Council* v. *Rowles* (1913), 2 I. R. 44 ; 6 T. C. 85), or gas [re : *Glasgow Gas Commissioner*, (1876) 3 R. (Ct. of Sess.) 857 : 1 T. C. 122.], carry on a Tramway (*London County Council* v. *Edwards*, (1900) 100 L. T. 444 ; 5 T. C. 383 : the question was one of computation of Depre-

ciation ; profits were held liable to tax, or receive profits from markets etc. (*A. G.* v. *Black*, (1871) L. R. 6 Exch. 308 ; 1 T. C. 54 : (coal duties), Re *Birmingham Corporation*, (1875) 1 T. C. 26. (market hall, fish market, vaults, meat market), *Adam* (*Edinburgh City Chamberlain*) *Mangham* (1889), 27 Sc. C. R. 64 ; 2 T. C. 541 (market slaughter house) or untaxed interest (*Mathews* v. *Cork County Council*, (1910) 2 I. R. 521 : 5 T. C. 545. (interest on Bank deposit), *Phillips* v. *County of Limerick County Council* (1925), 2 I. R. 139 ; *Galmorgan Quarter Session* v. *Wilson* (1910), 1 K. B. 725, 5 T. C. 537 , *London County Council* v. *Grove* (1896), 61 T. P. 52 ; 3 T. C. 508, C. A.) are assessable to income-tax in respect thereof. **(p. 137).**

"General expenses of a local authority are not chargeable against items of income assessable under a particular provision of the I. T. Act. The proper principle is to tax each item or head of income separately, and to assess tax upon the net income arising from each source, deducting from the gross receipts the cost of earning those receipts [*A. G.* v. *Scott* (1873), 28 I. T. 302 : 1 T. C. 55 ; *Webber* v. *Glassgow Corporation* (1893) 30 Sc. L. R. 255 · 3 T.C. 202 ; *Adam* v. *Maughan* (1889), 2 T. C. 541, re : *Birmingham Corporation* (1875), 1 T. C. 26 ; *Dillon* v. *Haverfordwest*, (1891) 1 Q. B. 575 : 3 T. C. 31 ; *Alloa Magistrate* v. *I. R. Commissioner*, (1931) S. C. 656 · 16 T. C. 451.] **(p. 156).**

"Whatever may be the motive the profit is taxable. Where charity carries on purely charitable non-commercial activities, *e g.*, distribution of subscription to deserving objects, and also a trade, the profit of which are applicable to such objects, the trade profits are severable from the rest of the funds and any balance is assessable to tax. No deduction is allowable in respect of the loss incurred in carrying on other non-trading activities (*Religious Tract and Book Society of Scotland* v. *Forbes* (1896), 60 J. P. 393 , 3 T. C. 415 ; *Grove* v. *Youngmen's Christian Association* (1903), 88 I. T. 696 , 4 T. C. 613). The same principle applies to local authority **(p. 107).**

Gas Works :

"The sale of gas to persons residing within the area by a local authority empowered to carry on gas undertaking and apply the profits to the credit of its general purposes account constitutes trading, and the profits are liable to tax [Re : *Glasgow Gas Commissioners*, (1876) 3 R. (Ct. of Sess.) 857 ; 1 T. C. 122 (distinguishing Re : *Glasgow Corporation Water Works*, (1875) 2 R. (Ct. of Sess.) 708 ; 1 T. C. 28] ; and where the surplus of a gas undertaking is applicable to an electric light undertaking, both of which undertakings are carried on by local

authority, the surplus of gas undertakings is assessable to tax [*Alloa Magistrate* v. *I.R. Commr.*, (1931) S. C. 656 ; 16 T. C. 451] Where the local authority is, under the term of local Act, obliged to provide gas for the purpose of street lighting, the cost of that supply is not admissible as a deduction in arriving at the amount of the profit from the sales to private customers [*Dillon* v. *Haverfordwest Corporation*, (1891) 1 Q. B. 575 : 3 T. C. 31] where a corporation purchased a gas plant in a defective condition, the amount set aside out of the profits annually to a depreciation fund to be expended in future years in the restoration of the plant was not allowed as deduction [*Clayton* v. *New-castle under-Lyme Corporation*, (1888) 2 T. C. 416]. The deduction of one-sixth allowed in respect of mills, factories, etc., is confined to such buildings (the annual value of which is apparently to be computed according to No. 1 of Sched. A) [*Lurgo and Lundin Links Gas Co., Ltd.* v. *Smith* (1922), S. C. 616 : 8 T. C. 296 (the deduction does not extend to the annual value of the undertaking as a whole.)" **(pp. 144-48).**

Under the Amended Act of 1939, income of Local authorities is exempt except income from trade or business carried outside their jurisdictional area.

Previous Year :

Under section 2 (*11*) the term 'previous year' has been defined. Income-tax is charged on an assessee on his income, profits or gains of the previous year. Ordinarily it denotes the year ending with 31st March next preceding the year in which an assessment is made. Whenever an assessee makes up his accounts for 12 months ending in any day other than the 31st of March, such period is his previous year. But once a previous year is adopted, it cannot be changed without the express approval and sanction of the Income-tax Officer.

Section 2 (*11*) is meant to cover all sorts of years, and we have the following years :—1931-32 (*Assessment year*).

(1) Financial year—1st April to 31 March.
(2) Calendar year—January to December.
(3) Bengali calendar year—Baisakh to Chaitra.
(4) Tripura year—1740.
(5) Maghi—1292.
(6) Sambat,—Chaitra to Chaitra.
(7) Ramnavami—Chaitra to Chaitra, 1986-1987.
(8) Akshoy-Tritia—Baisak to Chaitra.
(9) Rathjatra—1986-1987 Aswin to Aswin.

(10) Dashahara—Aswin to Aswin.

(11) Dewali—Kartick to Aswin.

(12) Mahajani—Kartick to Aswin.

(13) Ramjan.

(14) Fasli.

(15) Salvahan, etc.

In fact any 12 months that a firm has pitched upon as its accounting year.

The scheme of the Act is generally to have a year from April to March. But as there is no hard and fast rule of starting a business, firms adopt their year according to their custom or to local calendars.

Liquidator if liable to tax for carrying on trade at the time of winding up business :

In *Baker* v. *Cook* (*H. M. Inspector of Taxes*), 7 I. T. R. 284, the liquidator of a company was assessed to pay tax on the profits of business carried on by him during the winding up operation.

There is vitally no difference between an English Income-tax Act and the Indian Income-tax Act on this point. It is therefore thought advisable to give the details.

The liquidator of a company can carry on business so far as is necessary for the winding up, and if he does so, the profits or gains, derived from the business so carried on are assessable to income-tax in his hands.

A company which made and distributed cinema films went into liquidation, and the liquidator sold to two newly formed companies its stock, plant, machineries, etc. Thereafter the liquidator made no new films and entered into no new contracts but he retained the benefits of existing contracts for exhibiting films. These contracts were performed by the new companies who paid 80 to 90% of the proceeds to the liquidator retaining a commission for themselves.

It was held that so far as the existing contracts were concerned, the liquidator was carrying on a trade through the agency of new companies and that he was liable to be assessed to income-tax on the profits made. (See *Cohan's Executors* v. *C. I. R.*, 12 T. C. 602 ; *Hillerns and Fowler* v. *Murray*, 17 T. C. 77 ; *Lord Advocate* v. *Hugh Gibb*, 5 T. C. 194 ; *O'kane and Co.* v. *C. I. R.*, 12 T. C. 303 and *Wilson Box* (*Foreign Rights*) *Ltd.* v. *Brice*, 20 T. C. 736).

"Receipts of a Casual and Non-recurring Nature" :

The word 'casual' connotes occasional, accidental or incidental. This clause exempts receipts which are of casual and of non-recurring nature. *In re Chunnilal Kalyan Das*, 1 I. T. C. 419, A. I. R. 1925 All. 469, it was held that as the receipt arose out of a business, it did not come within the scope of the exemption.

In *Gayaprasad Choteylal* v. *C. I. T.*, 8 I. T. C. 64, their Lordships held "we are unable to hold that this income was of a purely casual nature, on the contrary, we think that it represents a return on the money invested by the assessee. To hold otherwise would imply that the income, profits or gains accruing from a single transaction or investment which is not akin to the assessee's trade or a vocation is not income, gain or profit from business which in our opinion, is contrary to the plain meaning of the words employed in the Act. That a single transaction or investment may be business admits of no doubt. Any receipt excluding the capital must be treated as profit.

In *C. I. T.* v. *Johnstone*, 12 R. 477, A. I. R. 1934 R. 377, it has been held that where payment of gratuity is made on termination of service by an outsider on the event of the insolvency of the employer, the payment is a mere windfall and is therefore exempt under section 4 of the Act.

In order to take a case out of the exemption provided for it is not necessary that the receipts should arise from a business continuously carried on during the year. A single transaction may attract liability. The mere fact that the receipt arises from an exceptional transaction does not make it exempt from tax. In this connection the case of *C.I.T.* v. *Parshotamdas Thakurdas*, A. I. R. 1925 B. 318, may be read with advantage.

Where a profit is made out of a single transaction the test to be applied in deciding as to whether there was a gain made in an operation of business in carrying out a scheme for making profits : *C. I. T.* v. *B. B. Jubb*, 177 I. C. 630 : A. I. R. 1938 Rang. 315.

Book-Keeping :

Book-keeping is the art of recording business transactions in such a systematic way that the trader may know the results of his trade at any period, when all his dealings in regard to money or money's worth have been recorded correctly in the books of account.

In course of business, a trader is to perform numerous transactions and it is impossible for him to keep them all in memory,

and to have a permanent record of all the dealings, they should be systematically recorded in books wherefrom the true financial position of the trade may at any time be ascertained and necessary information to keep due control over the business affairs may be obtained.

Principles of Single Entry and Double Entry :

Under the Single Entry system, the personal aspects of transactions are recorded and others are left unrecorded. The only books kept under this system are personal ledgers and a cash book generally. The system fails to deal with the two-fold aspects of every transaction, and the maxim "every debit must have its credit" is ignored.

Under the Double Entry system, every transaction is recorded in terms of its two aspects : the one involving the receiving of a benefit by one account and the other the yielding of that benefit by another account. The account that receives the benefit is debited and the account that yields the benefit credited so that there is a debit for every credit.

Yielding and receiving both take place in the some set of books, and refer to accounts and not to persons. As a result of the fact that every transaction is recorded from both points of view under Double Entry, a complete record of the impersonal aspects of all the transactions during a given period is obtained.

Debtor and Creditor :

Every transaction involves the transfer of value either in form of goods, money or service, and two parties are necessary to perform a transaction—one that receives the benefit is called Debtor and the other that yields the benefit is called Creditor.

Every transaction is concerned with two accounts of which one must be debtor and the other creditor.

Accounts—Personal, Real and Nominal :

Personal Accounts are those to which transactions with persons or firms with whom a trader deals are recorded, *viz.*, Smith A/c, Bengal Central Bank Ltd. A/c, Sinha & Mookerjee A/c.

Real Accounts are those to which properties, possessions or things owned by a trader are recorded, *viz.* Cash, Buildings, Furniture, etc.

Nominal Accounts are those which are related to the proprietors of the business, have no existence and are income or expenses for carrying out of the business, *viz.*, Travelling Expenses, Rent, Salary, Wages, Interest, Commission, etc.

Personal Accounts :

Value or benefit received by an account is debited while the account which yields such value or benefit is credited.

Real Accounts :

When properties, possessions or things are acquired or received either by purchase or any other way they are debited while they are credited when they are sold or the possession lost in any way.

Real Accounts, when coming in are debited and when going out they are credited.

Nominal Accounts :

All expenses are debited and gains are credited.

Debit and Credit Balance :

When the debit side of an account exceeds the credit, the balance is called debit balance and when the credit side of an account exceeds the debit, the balance is called credit balance.

Assets and Liabilities :

What a trader has of value and what is owing to him by his debtors are called his assets and what he owes to others are his liabilities.

Debit balances of personal and real accounts are assets while credit balances are liabilities.

Revenue Expenditure and Capital Expenditure :

Expenditure incurred for the purpose of carrying on of the business is Revenue Expenditure.

Expenditure incurred in purchasing, contracting or equipping any kind of property which helps in earning revenue is treated as Capital Expenditure.

Capital :

The capital of an individual or private firm is the term employed to signify the Excess of assets over liabilities. If the Capital at the close of a certain period after the proper adjustment of withdrawals and additions, exceeds the Capital at the commencement of that period, the excess will represent profit, and if it decreases, the decrease will represent loss.

Books of single entry are (*a*) Ledger for keeping the personal accounts of debtors and creditors (*b*) Sales Book ; the details are posted to customers' personal account (*c*) Cash Book, items relating to personal accounts are posted, but no postings are made to nominal accounts (*d*) Creditors' accounts are posted from a waste book as no purchase book is kept.

The Ascertainment of profit under Single Entry :

In order to ascertain the capital of an individual or a private firm at any given date, a Statement of Affairs is prepared. Schedules of debtors and creditors are extracted from the personal ledgers, the bank balance is agreed with the pass book and the cash in hand is counted ; stock is taken on a proper basis (the figure is shown at cost or market price whichever is lower) ; assets are valued or estimated ; and a schedule made of creditors for loans and of all creditors not appearing in the sundry creditors ledger including outstanding expenses such as rent etc. accuerd to sale. The assets and liabilities now being obtained are set out on the right hand and left hand side respectively of the Statement of Affairs, difference of the two sides representing capital or deficiency. The ascertainment of profit during a given period, a Statement of Affairs is drawn out at commencement of the period and another at the close and thus opening and closing capitals respectively are obtained. All drawings made during the period are added to the closing capital and any addition to capital during the period is deducted. Thus the excess of closing capital over the opening is profit made during the period and if the closing capital is less than the opening, there is loss.

Books mainly required for recording transactions of a trading concern and their function under the Double Entry System :

1. Cash Book. 2. Ledger (*a*) Personal Ledger, (*i*) Sundry Debtors Ledger, (*ii*) Sundry Creditors Ledger, (*b*) Impersonal or General Ledger, 3. Sales Book, 4. Return Inward Book, 5. Purchase Book, 6. Returns Outward Book, 7. Bills Receivable Book, 8. Bills Payable Book, 9. Journal.

Cash Book

(*a*) Single column.

Cash Book is necessary for recording cash receipts and payments. The pages are divided. The left side of the book which is called debit side is used for recording receipts and the right side which is called cerdit side is used for recording payments. The principle "value coming into, Debtor, value going out, Creditor" is applied to record transactions relating to cash received

and paid. On the debit side of the cash book balance brought forward from previous period is entered as "To Balance", or "To Capital" in case of a new business and afterwards as moneys are received cash is debited and credit given to the ledger accounts on which they are received. So, when cash is received on cash sale, on personal accounts, such as, S. Mookerjee A/c, S. Ghosh A/c etc. or on nominal accounts, such as, interest, commission, etc., it is recorded in the debit side of the cash book as "To S. Mookerjee", "To S. Ghosh", "To Interest", "To Commission" respectively and so on. Similarly when cash is paid it is credited and the account on which it is paid is debited. Thus when cash is paid it is recorded in the credit side of the Cash Book as "By S. Mookerjee", "By S. Ghosh", "By Commission" and so on. When cash is deposited into Bank it is entered in the credit side of the Cash Book as "By Bank" and when cash is withdrawn from Bank it is entered in the debit side of the Cash Book as "To Bank".

For proof of arithmetical accuracy at a date, the opening balance together with all receipts entered in the debit side of the Cash Book for a certain period must be equal to the payments entered in the credit side together with the balance in hand at the closing of that period. As payments can never exceed the receipts, the cash account can never show a credit balance.

(*b*) Double column.

It is a kind of book with separate columns for entering transactions on Cash and Bank. At the beginning of the period, cash-in hand and at Bank brought forward from previous period is entered in the cash and bank column on the debit side of the cash book as "To Balance." When a cheque is drawn in favour of a person or in respect of real or nominal accounts it appears on the credit side, Bank column, as "By B. Sinha, "By Furniture", "By Wages" and so on. When cash or cheque is received and paid into Bank the same day it is entered on the debit side, Bank column, as "To S. Mookerjee", "To Commission", etc. Similarly, when Bank interest is allowed it is entered on the debit side, Bank column as "To Interest", and when incidental expenses are charged by Bank, it is entered on the credit side, Bank column as, "By Bank Charges." When cash is deposited into Bank it is recorded in the debit side, Bank column as "To amount deposited into Bank" and at the same time on the credit side, cash column as "By amount deposited into Bank". Similarly when cash is withdrawn from Bank it is recorded on the debit side, cash column as "To amount withdrawn from Bank" and at the same time on the credit side, Bank column as "By amount withdrawn from Bank."

Ledger :

Transactions of similar nature are collected together under respective groups and such classified records are kept in a book which is called Ledger. It is defined as "the book which contains a condensed and classified record of all the pecuniary transactions of the business, generally brought, transferred, or posted from the books of original entry."

(*a*) Personal Ledger.

(i) *Sundry Debtors Ledger*—It contains the personal accounts of those to whom goods are sold on credit. The various items entered in the Sales Book are posted to the debit of the personal accounts concerned in this ledger and the cash received and entered in the debit side of the cash book on various personal accounts are posted to the credit of the personal accounts concerned in this ledger. The difference of the debit and credit side of individual accounts after adjustments for credit balances, if any, bad debts, discount, etc., at the end of a certain period denotes the balances due from these person and the total of the balances appear on the asset side of the Balance Sheet as "Sundry Debtors" and is carried over to next period.

(ii) *Sundry Creditors Ledger*.—It contains the personal account of the creditors from whom goods are purchased on credit. The various items entered in the Purchase book are posted to the credit of the personal accounts concerned and the cash paid and entered on the credit side of the cash book on various personal accounts are posted to the debit of the personal accounts concerned in this ledger. The difference of debit and credit side of individual accounts at the end of a certain period denotes the balance due to them. The total of the individual credit balance in this ledger, after making necessary adjustments for debit balance, if any, and discount, etc., is carried to Balance Sheet where it appears on the Liability side as "Sundry Creditors." These balance are carried over to next period.

(iii) *Impersonal and General Ledger*—It contains nominal and real accounts only. The various items of real and nominal accounts entered in the debit side of the cash book or in Journal are posted to the credit of the real and nominal accounts concerned and those entered in the credit side are posted to the debit of the nominal accounts concerned in this ledger. All nominal accounts in this ledger are closed by transferring their balances to Manufacturing, Trading and Profit and Loss accounts at the end of the period. The debit balances are transferred to the debit and the credit balances to the credit side of these Accounts. All real accounts are closed by transferring their

balances to Balance Sheet at the close of the period. The debit balances which are assets are within on the right-hand side and the credit balances which are liabilities on the left-hand side of the Balance Sheet. These balances are carried over to next period.

Sales Book :

It is used for entering goods sold on credit. Full particulars regarding the name of the party, date, description and quantity of goods sold, rate and the total amount due are entered in it. The various items entered in this book, are posted in the Sundry Debtors ledger to the debit of the personal accounts concerned and the double entry is completed by posting the total amount in this book to the credit of Sales A/c in the Impersonal ledger.

Returns Inward Book :

It is used for recording returns from customers, *i.e.*, detors for goods sold to them and already entered in the Sales book. Whenever goods are returned, they are taken into stock and a debit note is issued to customers containing full particulars of the goods returned. The various items entered in this book are posted to the credit of the personal accounts concerned in the Sundry Debtors ledger. The total of this book is debited to Sales A/c in the Impersonal Ledger at the end of the period.

Purchase Book :

It is used for entering goods purchased on credit. Full particulars regarding the name of the party, date, description, quantity of goods purchased, rate and the total amount due are entered in it. The various items entered in this book are posted in the Sundry Creditors Ledger to the credit of the personal a/c concerned and the double entry is completed by posting the total amount in this book to the debit of Purchase a/c in the Impersonal Ledger.

Returns Outward Book :

It is used for recording returns to creditors of goods purchased. The various items entered in this book are posted to the debit of the personal accounts concerned in the Sundry Creditors ledger. The total of this book is credited to Purchase A/c in the Impersonal ledger at the end of the period.

Bills Receivable Book :

It is used for entering bills of exchange drawn and accepted by customer. Full particulars regarding the names of parties, amount, due date etc., are entered and periodically the total

amount of the bills are posted to the debit of Bills Receivable A/c in the Impersonal ledger. While the respective Debtors A/c are debited in the Sundry Debtors ledger.

Bills Payable Book :

It is used for entering bills accepted and given to creditors. Full particulars regarding the names of parties, amount, due date, etc., are entered and periodically the total amount of bills are posted to the credit of Bills Payable A/c in the Impersonal Ledger while the respective Creditors A/c. are credited in the Sundry Creditors Ledger.

Journal :

It is used for recording transactions which cannot be entered in any of the above books, such as, opening and closing entries, entries relating to depreciation, Interest on capital, etc., and for adjustments.

Bad Debt :

When any amount owing to a trader by his debtors become irrecoverable, it is adjusted by debiting Bad Debt A/c and crediting the personal a/cs of the debtors concerned in the Sundry Debtors ledger. The Bad Debt a/c being a nominal a/c appearing in the Impersonal ledger is closed by transfer by the debit of the Profit and Loss Account at the time of closing books.

Reserve for Bad Debts :

Actual bad debts are written off and those that are believed to be irrecoverable are reserved for in full. The reserve is either calculated separately on each doubtful debt or a percentage of the outstanding debit is calculated and debited to Profit and Loss A/c and credited to Bad Reserve A/c. The balance of Bad Debt A/c is either shown as a liability in the Balance Sheet or shown deducted from the Sundry debtor on the assets side of the Balance Sheet.

It must be noted that such reserve is not a business expense but is an appropriation of profit.

Depreciation :

It is the shrinkage in value of an asset from any cause during a given period. Depreciation being a loss incidental to the holding of certain assets for the purpose of earning income, is set off against such income as a working expense before actual profit is ascertained.

Partner's Capital and Current Accounts :

At the start of a business, the Capital A/c of the partner is credited and the amount of cash invested as capital is debited. During the period, for all drawings from the business by partners, partner's respective Current A/c is debited and cash or Bank is crdited. The Current A/c of partners is debited with (1) cash withdrawn by him from business, (2) value of goods taken by him from business, (3) interest, if any, on withdrawals, and (4) Share of loss ; while it is credited with (*i*) Interest on partner's capital, (*ii*) Salary of partners and (*iii*) Share of profit.

The balance of Current Account at the end of the period is either transferred to Capital A/c or carried over to next period.

Manufacturing, Trading and Profit and Loss Accounts : Manufacturing Account :

Trading Account and Profit and Loss Accounts are the names given to the general summary of the nominl accounts relating to profit and loss during a given period.

A Manufacturing Account is prepared for finding out the cost of output in a manufacturing concern. It is generally debited with raw materials concerned ; freight or carriage on purchases ; wages for production ; power used in the process of manufacturing such as, coal, coke, fuel, gas, etc. ; repairs to machinery and factory ; factory rent etc. The total is transferred to Trading A/c.

Trading Account :

The Trading Account is debited with the value of stock at the commencement of the period with purchases and in the case of manufacturing business (when separate manufacturing account is not prepared) with the prime cost charges. It is debited with such other items of expenses as directly affects the purchase and sale of goods. It is credited with the sales and with the value of the closing stock taken upon a proper basis. The balance of the Trading Account which is either gross profit or gross loss is transferred to Profit and Loss Account.

Gross Profit :

The excess of selling prices over the cost price of any particular article is called gross profit while the amount by which the total of the sale proceeds during a period exceeds the total cost of the goods sold during that period without any deduction in respect of the expenses of distribution and general establishment charges, is the Gross Profit for the period.

Profit & Loss Account :

The Profit and Loss Account is the summary of the income and expenses of a business. It includes nominal accounts dealing with income, earning or profits on one side and expenses or losses on the other. The final balance of the Profit and Loss Account represents the net profit or loss for the period. When it shows a credit balance there is a profit and when a debit belance there is a loss. The balance of this account, whether profit or loss, is transferred to the Capital Account in cases of firms or private individuals, the Capital Account thus being increased by profit and decreased by loss. It is debited with expense of distribution and of the carrying of the business generally that is, debit balances of the nominal accounts left in the Impersonal Ledger after their transfers to Manufacturing and Trading Accounts, such as trade expenses, wages, rent, etc , and credited with the balance of gross profit brought from Trading Account together with other items of profit, *i.e.*, credit balances of nominal accounts in the Impersonal ledger, such as, Bank Interest, discount receipt etc.

The Profit and Loss Account includes revenue items relating to the period it covers, whether the same are received or paid within the period or not, and excludes all items relating to previous or subsequent periods, and all capital items.

Outstanding Liabilities :

At the time of periodical closing of account, there are often several items of expenses, such as rent, salaries, advertisement, etc., that belong to the period under review and have accrued due, but have not been paid. All such outstanding expenses are accounted for by debiting the nominal account concerned and crediting outstanding creditors' A/c. The former is transferred to Profit and Loss Account and the latter appears as a liability in the Balance Sheet and is carried forward next period. At the commencement of the next period, a reverse entry is made debiting outstanding creditors a/c. and crediting the nominal accounts by which the former account is closed.

Payments made in advance :

There are several items of expenses such as, insurance, telephone charges, rent and taxes, etc., that are sometimes paid in advance for the succeeding period. The proportion of the amount paid which relates to the unexpired period is carried forward to next period as the Profit and Loss Account for a given period must not bear any expenditure which does not relate to it, and this is done by debiting Expenses Prepaid A/c and crediting the particular Nominal Accounts with the proportionate amounts. The former being a debit balance appears in the Balance Sheet

as an asset and carried forward to next period while the latter is transferred to Profit and Loss A/c. At the commencement of the next period, a reverse entry is made debiting the nominal accounts and crediting Expense Prepaid A/c. by which the latter A/c is closed.

Net Profit :

"Net profit is the amount available for distribution to the proprietors, partners or shareholders of a business, after all charges that have been incurred in the earning of the revenue for the period under review have been taken into account, and the shrinkage in the value of the assets held by the business has been allowed for".

Receipts and Payments Account :

It is a classified summary of the cash transactions during a given period.

Income and Expenditure Account :

It is, in effect, the Profit and Loss Account of a sole trading concern or of an individual.

Balance Sheet :

The Balance Sheet is a classified summary of the balances remaining open in the ledgers after the extraction of the Manufacturing, Trading, and Profit and Loss Accounts. After closing all the books and accounts at a certain period, and preparing the Mfg., Tr. and P.L. A/cs for the period it is necessary for a trader to prepare a statement in order to exhibit the financial position of his business on the date of closing and for this purpose he is to make a summary of all the balances of the real and personal accounts in his ledgers and which are carried over to next period. The debit balances are written on the right-hand side and the credit balances on the left-hand side of the Balance Sheet and the totals of the two sides must agree.

The items of the Balance Sheet should be so arranged as to clearly exhibit how and of what the capital consists. The items on the assets side of the Balance Sheet consist generally of :— (1) Fixed assets, such as, Land, Buildings, etc. (2) Floating assets such as, stock in hand, book debts (*i.e.*, Sundry Debtors), cash in hand and at Bank, (3) Wasting asset, such as mine, (4) Fictitious assets, such as, debit balance of Profit and Loss Account and Preliminary expeness in case of limited companies. The items on the Liabilities side of the Balance Sheet generally are Capital, Reserve, Loans, Sundry Creditors liabilities for expenes, Bank Overdraft, Bills payable, etc.

In the case of Railway Companies, Assurance Companies etc. and also companies incorporated under the Indian Companies Act the forms of Balance Sheet are prescribed by the Act and Balance Sheet in those cases are prepared strictly according to the forms prescribed, but in the case of concerns owned by sole traders partnership, etc., there are no prescribed forms but certain principles are only observed in these cases. Generally, assets are arranged in order of their availability and realisability while liabilities are arranged in such order as they are to be discharged.

Authors and Income-tax :

The question whether payments made by publishers to authors are assessable to income-tax is not infrequently one of considerable difficulty. It is clear that royalty payments must be regarded as income and hence assessable to tax. It is also clear that the price paid for an out-and-out purchase of the copyright of a work, at least in the case of an isolated transaction, is to be regarded as capital and will not be assessable to tax. What is by no means clear is where the line is to be drawn.

The difficulty is, moreover, increased by the fact that the decision of the Courts do not necessarily indicate the view which would have been taken by the Court itself on the facts of any particular case, the matter being determined in light of the consideration whether there was evidence upon which the commissioners could properly decide as they did. That there is ample justification from a practical stand-point for the existing method of deciding cases of this nature will not perhaps be questioned, but the system would render the formulation of a distinction between capital and income payments from (*a*) the decisions of the Courts and (*b*) the facts of the respective cases an exceedingly hazardous undertaking.

The relative functions of the commissioners and the Court were dealt with in an important passage in Lord Justice Scott's judgment in *Inland Revenue Commissioners* v. *British Salmson Aero Engines Limited*, 159 L. T. Rep. 147 ; 1938, 2 K. G. 482. The learned Lord Justice recalled that the commissioners had decided that certain payments in question were capital payments, and said that the question which was raised in that Court was how far the lordships ought, on the facts of the case, to be guided by that finding, or give weight to it or feel bound by it. The rule as to the power of the Court of Appeal, on a case stated upon a question of law, in regard to which the disappointed partly had expressed dissatisfaction before the commissioners, on the point whether it was a question of fact as to which the Court could not inquire, or was an issue involving a question of law, into which the Court could inquire, had been dealt with very fully by Mr. Justice Hamilton, as he then was, in *American*

Thread Company v. *Joyce* (106 L. T. Rep. 171 ; 108 L. T. Rep. 353 ; 6 Tax. Cas. 1 and 163), which was subsequently approved both in the Court of Appeal and in the House of Lords. The gist of what he said was that where the commissioners put before the Court in the special case the whole of the materials from which they drew their final inference, then it was a question of law as to whether, from that material, their inference was correct or not.

Lord Justice Scott continued : "But that conclusion seems to me to be subject to this further qualification, which I do not think that the judgment of Mr. Justice Hamilton, as he then was, and the other courts who agreed with him, intended in any way to exclude. In so far as the Special Commissioners are skilled persons in matters of business, if on an analysis of the business arrangements that have been made, out of which the case has arisen, they come to the conclusion as business men that particular payment has what my Lord (the Master of the Rolls) has called the accountancy quality of a capital payment or an income payment, that is the view to which, in my opinion, the Court is entitled to give great weight. The position is analogous to the case of a trial in the Commercial Court before a City of London special jury, on a question of business and keeping accounts, where the special jury have expressed a view on the issue whether a particular payment is a capital payment or an income payment. In such circumstances, the Court ought to be very slow to disagree with that skilled opinion."

The fact that payment is made by way of a lump sum is not conclusive that it should be regarded as capital. Such a contention would constitute an over-simplification of the problem. This is clear from *Contsantinesco* v. *Rex* (42 Times L. Rep. 685 ; 43 L. Rep. 727 ; 11 Tax. Cas. 730). That was the case of a patentee, not an author, but the relevance of the principles applied in such cases need not be stressed. In this case a patentee was awarded two sums amounting together to £ 70,000 by the Royal Commission on awards to inventors in respect of the use of an invention by the Government. It was held that the claim put forward was for royalty in respect of the successive uses of the invention, and that the sum awarded was to be treated as profits or gains, and annual profits and gains, for income-tax purposes.

Mills v. *Jones* (45 Times L. Rep. 31 ; 46 Times L. Rep. 118 ; 14 Tax. Cas. 769), was another case where an award had been made to an inventor. It was sought to distinguish the case from that just considered in that the amount awarded (£37,000) included payment for the right to use the invention in the future, and was not merely in respect of past user. The argument was negatived on the ground that, having regard to the findings of

fact by the commissioners, the amount included in the payment in respect of future user was negligible.

Another attempt at what may be described as an over simplification of the problem is represented by the Crown's argument in *Inland Revenue Commissioners* v. *British Salmson Aero Engines Limited* (*sup.*). The respondent company acquired the sole licence to manufacture and sell, for a period of ten years, in the United Kingdom and its Dominions, Colonies and Dependencies aeroplane engines manufactured by French company. The licensees were to pay a sum of £25,000 – £15,000 on the signing of the agreement, £5,000 six months, and £5,000 twelve months thereafter—and in addition as royalty £2,500 twelve months after the signing of the agreement, and a like sum each twelve months during the following nine years. The Special Commissioners decided that the respondent company was not liable to tax on the lump sum of £25,000 payable by instalments as above indicated but that it was liable in respect of the royalty payments. The Crown argued, as against the first part of the decision, that the words used in rule 21 of the General Schedules Rules stamped the character of income on any sum paid in respect of the user of a patent. Sir Wilfrid Greene, M. R., intimated that rule 21 was a mere collecting section and did not authorise the taxation of capital. If the Crown's argument were sound a ready answer to the taxpayers' contentions in the two cases just considered would have been available. But the judgments in those cases did not proceed on that footing. In *Constantinesco's* case Lord Cave had stated that in view of the facts he was satisfied that the sum awarded was to be treated as profits or gains, and annual profits or gains, within the meaning of the Income-tax Act. "I find great difficulty," the Master of the Rolls said, "in understanding how it can be said, in the light of that passage and that reasoning, directed as it was to the specific argument that the sum was a capital sum, and resulting in the conclusion, based on an examination of the facts, that it was not a capital sum, but was annual profits and gains, that that case is an authority for the proposition that the matter is concluded once and for all, once you assert of a payment that it is a payment in respect of the user of a patent." The same conclusion was reached from an examination of the arguments and judgments in *Mills* v. *Jones* (*sup.*). In the result the decision of the commissioners and that of Mr. Justice Finlay to the same effect were affirmed.

Before leaving this case reference should be made to two passage in the judgment of the Master of the Rolls which throw light upon the nature of the distinction with which we are concerned.

First, the case was not merely one of an agreement under which the respondent company received the right to use a patent.

It was entitled to restrain the patentees themselves from exercising the right in the respondent's territory and to call upon the patentees to restrain others from so doing. "Those rights," Sir Wilfrid Greene, M. R., said "are to my mind in essence different from the mere right of user."

Secondly, in the article of the agreement relating to payment there was a fundamental difference in the nature of the two classes of sums. The first started by being a lump sum payment, definite and fixed which was then to be payable by instalments. The other class was not of that description. No lump sum payment was referred to, and it was on the face of nothing but an undertaking to pay yearly sums as royalty. The judgment continues: "Speaking quite apart from any close examination of authority, and simply regarding the distinction between those two things, it would appear on the face of it that, with regard to the latter class, the parties are creating an obligation as between themselves which they choose to describe as a royalty payable each year at a fixed date. I should have found it very difficult, in the face of so strong an indication as that, to appreciate an argument which said that those sums were not in the nature of income payments. They do not start from a capital sum which is afterwards split up into instalments; their existence from beginning to end is an annual existence, and nothing else, and the parties have indicated what to their minds, is the nature of that annual payment."

Inland Revenue Commissioners v. *Longmans, Green and Company Limited* (17 Tax Cas. 272) was the case of an agreement made between a French author and the respondent publishers for the acquisition of the exclusive rights of translation and publication in English of a book written in French. The respondents agreed to pay the sum of 500,000 francs for the right to sell 28,000 copies of the best edition of the work, and the agreement also provided for annual payments to be made to the author at a proportionate rate for copies of the best edition sold in excess of the above mentioned figure, and for a royalty of ten per cent. on the published price of all copies of any cheaper edition. Only 7,000 copies of the book were sold. Mr. Justice Finlay held that the sum of 500,000 francs was assessable to income-tax on the ground that the payment was one of or on account of, royalties. The learned judge reached this conclusion by considering the amount of the lump sum payment and comparing it with the other payments which were to have been made and would admittedly have been royalty payments if the book had been a success.

A recent case in which the problem was discussed is that of *Beare* (*Inspector of Taxes*) v. *Carter*, [190 L. T. Jour. 19; (1940) 2 K. B. 187]. The respondent was the author of a book originally

published in 1892. Four further editions, of 1,000 copies each. had been published prior to the events giving rise to the present question. In 1935 arrangements were made for the publication of a sixth edition. There was no written agreement as to terms, but in 1938 the following letter was written by the publishers to the author, "I am writing to confirm that, with regard to the sixth edition of your book on legal history, under the agreement between us we paid you the sum of £1050 for licence to publish that edition of 1,050 copies of that book, which sum included such editorial work as was necessary to ensure the accuracy of the edition. The copyright remains in you, but we had a licence to publish that edition, and you agreed to prepare the edition for press to our approval." The book needed so little revision and the services rendered by the author in this respect were so small that the appeal from the decision of the General Commissioners to the effect that the £150 was in the nature of a capital payment and not assessable to income-tax was argued on the basis that the sum was to be treated as having been paid merely for permission to publish the edition. It is also to be observed that no other book had been published by the author, who could not therefore be said to be carrying on a trade within case I of Schedule D.

In the course of his judgment Mr. Justice Macnaghten observed that when the Commissioners said that the terms of the agreement were set out in the letter, it was plain that they did not mean all the terms. When one in the position of the author was arranging with a publisher for the publication of such a work as that concerned, it was obvious that both the publisher and the author undertook obligations in addition to the mere payment of money on the one hand and permission to publish the edition on the other. The author was concerned that his work should be presented to the public in available form. The publishers had already published five previous editions and it might well be that there was a written agreement in the case of the first edition and that subsequent editions were subject to the same conditions. There would be obligations on the part of the author in addition to the giving of permission to publish the edition, and it was a fair inference that the licence to publish the sixth edition carried with it the obligation on the part of the author to give no licence to anybody else to publish the work for a period of time. If the parties had been asked the question : "Was there any such obligation ?" both would have replied : "Of course there was."

The learned judge went on to indicate that in his view there was no question of principle in the case at all. The only question was whether, on the particular facts, there was any evidence which could support the decision of the Commissioners. If it were the case merely of a lump sum payment for permission to

publish so many copies of the work the decision of the Commissioners would have been wrong. His Lordship cited *Inland Revenue Commissioners* v. *Longmans, Green and Company, Limited* (*sup.*) which conferred with *Curtis Brown Limited* v. *Jarvis* (14 Tax. Cas. 744) where Mr. Justice Rowlatt had observed that copyright royalties were annual profits or gains as being the annual receipts from the property and not instalments of the price, and with *Mills* v. *Jones* (*sup.*) and *Constantinesco* v. *Rex* (*sup*).

His Lordship then cited *Inland Revenue Commissioners* v. *British Salmson Aero Engines Limited* (*sup.*) as showing how very fine the distinction was between payments which were to be regarded as capital and payments which were to be regarded as income. Applying that case to the case before him, and in the view which he had formed of the agreement made between author and publisher the learned judge concluded that there was evidence to support the conclusion at which the Commissioners had arrived. The appeal was accordingly dismissed.

The foregoing decisions, though far from providing a complete answer to the question where precisely the line of distinction between capital and income payments is to be drawn, bring to light a number of general considerations of practical importance in regard to cases of this nature.—*L. T.*

Partnership between Firms :

The decision of a Full Bench of the Allahabad High Court in in *Chandrika Prasad Ram Swarup's case*, 1939 I. T. R. 269, lays down that a firm cannot legally be a partner in another firm (*vide Jaydayal Madan Gopal*) ; yet where a firm as such does enter into a partnership with another firm, the larger partnership is not an illegal body but is a partnership between the partners of the two firms. A partner firm in such cases is entitled to set off against its own profits its share of the loss incurred by the bigger firm of which it is a partner ; thereby over-ruling *Shiv Narain and Son's case*, 8 I. T. C. 117.

There is a provision in the Income-tax Manual, that 'a firm in which another firm purports to be a partner cannot be legally registered for income-tax purposes'. But in view of the decision in *Chandrika Prosad Ram Swarup's* case, 1939 I. T. R. 269, the interpretation in the Manual cannot stand.

The Bengal Professions, Trades, Callings and Employments Taxation Rules :

The Finance Act (Bengal) has provided an ungraduated tax of Rs. 30 on persons who are assessed to tax on business, profe-

ssion and vocation. Persons drawing pension, although income-tax has been deducted therefrom, are not liable. Provision has also been made to grant exemptions in cases where the assessment is on a margin. It may be illustrated thus :—where the income of an assessee is Rs. 2040 and income-tax payable is Rs. 20 and the Finance tax is Rs. 30, the person is not liable to pay the Finance tax ; because the income-tax payable and the Finance tax payable will reduce the total income of Rs. 2040 by Rs. 50 which brings the total income below Rs. 2000 which amount is not liable to tax.

Similarly Limited companies assessed on an income below Rs. 1000 is not liable to pay the Finance tax.

Transfer of Assets to Wife prior to 1st April 1937 for natural love and affection :

The Patna High Court in the case of *Rai Bahadur H. P. Banerjee* v. *C. I. T., B. & O.*, 9 I. T. R. 137, has made a judicial pronouncement. The provisions of section 16 (*3*) (*a*) (*iii*) of the Act inserted by section 2 of the Amending Act, IV of 1937, is applicable to all assessments for the years subsequent to the 1st April 1937, and apply to all income from assets transferred by husband to his wife otherwise than for adequate consideration whether such transfers were effected before or after the 1st of April 1937.

Transfers by a husband to his wife of assets otherwise than for adequate consideration, cover all transfers in the nature of gifts or transfers made exclusively on the ground of natural love and affection. The word 'consideration' has not been defined and it must be given a meaning similar to the meaning which it has in the Indian Contract Act.

As 'natural love and affection' is no consideration in the eye of law, a transfer on account of natural love and affection is not a transfer for consideration, adequate or otherwise, but is purely a gift. The words 'adequate consideration' does not mean good consideration. There is a line of demarcation between good consideration and adequate consideration. A transaction may well be valid, though the consideration might appear to be wholly inadequate. Even if it is assumed that 'natural love and affection' amounts to consideration, it cannot amount to adequate consideration as required in the Act.

Section 16 (*3*) so far from avoiding the transfers made by a husband in favour of his wife, assumes that such transactions are valid and that the income from the assets transferred is in fact the income of the wife. All that the sub-section provides

is that for the purpose of taxation, the wife's income will not be assessed in the hands of the wife but will be added to the husband's income for the purpose of ascertaining the total income to be taxed. The following cases may be read with advantage *Hitendra Singh* v. *Maharaja of Darbhanga*, A. I. R. 1928 P. C. 112 ; *Curlewis* v. *Clark*, (1849) (18 L. J. Ex. 144) and *Administrator-General of Bengal* v. *Joggeswar Ray*, 3 Cal. 192.

Examination report :

Assessment year G. I. No.

I. 1. Name and address of the assesee.

2. Status of the assessee.

3. Whether—

Resident and ordinarily resident.

Resident but not ordinarily resident.

Non-resident.

4. (*a*) Has the return been properly filled in including the Property Schedule and Depreciation Form ?

(*b*) Has the verification been dated and properly signed by the person entitled to sign it ?

(*c*) Is the necessary information required under section 38 furnished ?

5. Sources of income with exact nature of business, profession or vocation.

(*a*) Sources of income in British India.

(*b*) Sources of income outside British India.

6. Branches :—

(*a*)

(*b*)

(*c*)

7. Shares of the assessee in :—

(*a*) Registered firms with G. I. R. Nos.

(*b*) Unregistered firms with G. I. R. Nos.

(*c*) Association of persons with G. I. R. Nos.

8. Partners :—

(*a*) Names with shares.

(*b*) Are they separately assessed ?

If so, where ?

(If in your jurisdiction, quote G. I. No. If in another jurisdiction, state by which Income-tax Officer).

9. Income assessed in :—

19 -19 .
19 -19 .
19 -19 .

10. Income returned :—(*a*) Total income.
(*b*) Total world income.

II. 11. Reference to I. T. 54 and definite facts therein (state whether they tally).

12. Information regarding interest and other payments (I. T. 93).

III. 13. (*a*) Name of the person present.

(*b*) Account books produced.

(*c*) Accounting periods. (To be shown separately for each source of income).

14. General comments on accounts :—

(*a*) Whether the accounts are closed or unclosed.

(*b*) Stocks, how valued? (Cost price or market price).

(*c*) Method of accounting.

(*d*) Whether a balance sheet has been filed signed by the assessee.

(*e*) Whether personal accounts have been examined. (Copies of these accounts to be reproduced in the report).

15. Whether income from subsidiary sources is recorded in accounts.

Details of Examination.

Income-tax Department :

District.

1. Year of assessment.
2. Name of assessee (with complete address).
3. Status—(whether individual, Hindu undivided family, company, local authority, registered or unregistered firm or other association of persons).

4. Whether—

Resident and ordinarily resident.
Resident but not ordinarily resident.
Non-resident.

5. Method of accounting.

6. Accounting periods. (To be shown separately for each source of income.)

7. Section and sub-section under which the assessment is made.

ASSESSMENT ORDER.

Finance Act, 1941.

1. (*1*) This Act may be called the Indian Finance Act, 1941.

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

(1) Subject to the provisions of sub-sections (2) and (3)—

(*a*) income-tax for the year beginning on the 1st day of April, 1941, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939, increased in each case by a surcharge for the purposes of the Central Government amounting to one-third of each such rate ;

(*b*) rates of super-tax for the year beginning on the 1st day of April, 1941, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule II to the Indian Finance Act, 1939, increased—

(*i*) in the case of the rate applicable to a company by a surcharge amounting to one-third of that rate, and

(*ii*) in the case of every other rate by a surcharge for the purposes of the Central Government amounting to one-third of each such rate :

Provided that in the case of an association of persons being a co-operative society, other than the Sanikatta Saltowner's Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st

day of April, 1941, shall be the rates of super-tax specified in the proviso to clause (*b*) of sub-section (*1*) of section 7 of the Indian Finance Act, 1940, increased in each case by a surcharge for the purposes of the Central Government amounting to one-third of each such rate.

(*2*) In making any assessment for the year ending on the 31st day of March, 1942,—

(*a*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1940, read with sub-section (*1*) of section 3 of the Indian Finance (No. 2) Act, 1940, on his total income the same proportion as the amount of such inclusions bears to his total income ;

(*b*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (*2*) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1940, read with sub-section (*1*) of section 3 of the Indian Finance (No. 2) Act, 1940, on his total income the same proportion as the amount of such inclusions bears to his total income.

(*3*) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (*1*) of this section, and in accordance with the provisions of sub-section (*2*) of this section where applicable.

(*4*) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total

income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

2. (1) In sub-clause (*a*) of clause (*6*) of section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1941," the words and figures "31st day of March, 1942," shall be substituted.

(*2*) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall in respect of any chargeable accounting period beginning after the 31st day of March, 1941, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

The Schedule containing Rules for assessment of Insurance Business.—Sub-section (*7*) of section 10 provides that notwithstanding anything 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 the Act.

Rule 1 to 5 of this Schedule contain the provisions for assessment of life insurance business, Rule 6 deals with the assessment of non-life insurance business while Rule 7 deals with the assessment of "Dividing society or assessment business". Rule 8 applies to non-resident companies doing both life and non-life insurance business. Rule 9 provides that the manner and procedure of assessment of mutual insurance business will be the same as those applicable to a non-mutual insurance business.

Rule 2 provides for the greater of the following two amounts [(*a*) and (*b*)] to be taken as the income for assessment purposes of a life insurance business :—

(*a*) the gross external incomings *of the preceding year* [as defined in clause (ii) of Rule 5]

less management expenses *of the preceding year* [as defined in clause (iii) of Rule 5]

and

(*b*) the annual average surplus of the last *inter valuation period* ending before the assessment year

less one-half of the amount paid to or reserved for or expended on behalf of policy holders.

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

In respect of single premium policies	7½ per cent. of the premiums received in the preceding year ;

plus	
In respect of policies for which the number of annual premiums received is less than 12 . .	a percentage of *first year's premiums* received during the preceding year equal to 7½ times the *number* of such annual premiums and 8½ per cent. of *renewal premiums* received during the preceding year ;
plus	
In respect of policies for which the number of years during which premiums are payable is less than 12	a percentage of *first year's premiums* received during the preceding year equal to 7½ times the *number* of such years and 8½ per cent. of *renewal premiums* received during the preceding year.
plus	
In respect of all other policies . .	85 per cent of *first year's premiums* received during the preceding year and 8½ per cent. of *renewal premiums* received during the preceding year.

It is important to note that in calculating the amount (*b*),—

(*i*) any expenditure which cannot be allowed under section 10 must be disallowed,

(*ii*) the deficit or unappropriated surplus of any period preceding the inter-valuation period under consideration must be excluded from the deficit or surplus shown on the face of the actuarial valuation Balance Sheet on the last day of the inter-valuation period.

(*iii*) In the first computation under the rule, in allowing one-half of the amounts paid to or reserved for or expended on behalf of the policy holders no account is to be taken of any such amount to the extent to which, it is paid out of or is in respect of the unappropriated surplus of a previous inter-valuation period. If, for example, the amount of bonus recommended to be distributed is Rs. 3½ lakhs, but the actuarial valuation includes previous unappropriated surplus of Rs. 1 lakh, one-half of the balance of Rs. 2½ lakhs (*i.e.*, Rs. 1¼ lakhs only) is to be allowed as a deduction, and

(*iv*) depreciation of or loss on realisation of securities or other assets and appreciation of or gain on realisation of securities or other assets should be taken into account.

In calculating amount (*b*) the whole of the interest on tax-free securities of the Central Government is to be deducted from the adjusted surplus of the inter-valuation period under consideration for income-tax purposes only *and not for super-tax*. The net amount of adjusted annual surplus arrived at after excluding the interest on tax-free securities will represent "the profits and gains of *life insurance business*" and not the total income of the company. The annual average of the interest on tax-free securities will then have to be added to the above "profits and gains" and super-tax will be leviable on the whole income. Further if the inter-valuation period exceeds 12 months, then credit is to be given (against the tax computed on the annual average adjusted surplus) for the amount of the *annual average tax* deducted at source from Interest on Securities or otherwise paid during the said inter-valuation period. *This provision renders obsolete the Calcutta High Court judgments in re : North British and Mercantile Insurance Co. Ltd., and Phoenix Assurance Co., Ltd.*

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

In dealing with non-life insurance business (fire, marine, motor car, burglary, etc.) a fair and proper reserve for unexpired risk are to be allowed with proper safeguard to prevent manipulation of accounts. And, where, as not infrequently occurs, the reserve is divided into two parts the first of which is intended to cover normal unexpired risks and is generally reckoned at a fixed percentage of the premiums and the second is intended to cover exceptional losses from widespread calamities, which a reserve may also be allowed. The following points have to be borne in mind :—

(1) All sums on account of unexpired risks, which a Company wishes to have treated as expenditure for income-tax or super-tax purposes, must actually be credited to a Fund in the accounts of the Company ;

(2) They must also be specifically appropriated to meet liabilities under existing contracts ; and

(3) The contracts must be with policyholders.

Companies carrying on Dividing Society or assessment business are in a different position from that of insurance companies

proper in that they have not to build up funds similar to the Life Assurance Fund of ordinary Life Assurance business, and their profits are not ordinarily ascertainable by actuarial valuation. Some arbitrary method of determining the taxable income of companies transacting these kinds of business has been fixed and under rule 7 of this schedule this is done by taking 15 per cent. of the premium income in the "previous year".

The exemptions granted to Provident Insurance Societies which comply with the provisions of the Provident Insurance Societies Act, 1912, or which have been exempted from its provisions, were withdrawn by the Income-tax (Amendment) Act, 1924 (XI of 1924), but Provident Insurance Societies to which the Provident Insurance Societies Act applies, or which have been exempted from its provisions and which were in existence before 1st April 1924 will continue to enjoy the exemptions under 4 (*3*) (*iv*) and section 15 (*1*) to which they were entitled under Act XI of 1922 before it was amended by Act XI of 1924. These concessions cannot be claimed by any other Provident Insurance Societies.

RULE 24.

In assessing the profits of tea concerns there will be allowed, as a charge against profits, the whole of the cost of the upkeep (*e.g.*, weeding and draining) of extensions of the estate which are not in bearing ; but no capital expenditure in connection with such extensions. Once the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business expense even though the estate is not in bearing.

The question as to what is capital or revenue expenditure in respect of tea gardens is one the answer to which depends on certain general principles. The English decision in the case of *Vallambrosa Rubber Co.*, versus *Farmer* (5, English Tax Cases, 329) establishes certain principles which are applicable to their case. The main is that the cost of the upkeep (*e.g.*, weeding and draining) of an area that is not in bearing may be charged to revenue. While expenditure on the maintenance of an area that has not reached maturity may be classified as revenue expenditure, any income derived from the sale of tea at this stage is on the same footing as income from the sale of tea at any other stage and should be taken into account in computing the taxable income of the concern.

Under section 15 of the Indian Tea Control Act, 1933, the owner of a tea estate may transfer his right to obtain export

licenses in whole or in part to any party. Where the export or production quotas are transferred by the owner of a tea estate to which they appertain, the price realised should be treated as if it were income derived from the sale of tea grown and manufactured by the seller, and 40 per cent. of the income derived from the sale of the rights will be held liable to tax. Where, however, a further transfer is made by a person other than the owner of the tea estate to which the quota has been allotted, whether or not such person is himself the owner of a tea estate to which another quota has been allotted, his profits on that transaction cannot in any sense be said to have resulted from the growth by him of tea and will have to be treated as wholly taxable in the assessment of the seller. The same applies to the profits made by an owner of a tea estate out of a transaction in which he buys a quota and uses it for the export of tea grown in an estate not his own (*e.g.* after manufacturing tea in his factory from green tea grown elsewhere). If a quota is purchased by the owner of another tea estate and is utilised by him for the exportation of tea grown on his own estate, such purchase enables the purchaser to market the product of his own tea estate, and it follows that the cost of buying the quota will have to be debited to the income of the concern before apportionment under Rule 24. Where the quota is purchased by a person who is not the owner of a tea estate or if purchased by the owner of a tea estate is resold by him, or is used by him for the export of tea grown on an estate not his own, the expenditure will be allowed in full in computing the purchaser's profits, which, however, are not covered by Rule 24, and are, therefore, taxable in full.

RULE 33.

This rule provides the manner of ascertaining the income, profits or gains of a non-resident person when the actual amount of his income, profits, or gains chargeable to tax in British India cannot be arrived at.

In respect of foreign shipping companies carrying on business in British India the following method will be followed for the purpose of calculating their income from shipping business in respect of assessment for the year 1939-40 and for earlier years :—

(i) If a company furnishes annual accounts for the whole of its business, Indian and foreign, the second method provided by Rule 33 will reasonably be applied. Depreciation has only to be considered in calculating the world-profits. These are to be calculated according to the Indian Income-tax Act. Profits calculated according to the United Kingdom Act will, therefore, require certain adjustments. Deductions permitted in the United

Kingdom but not permitted in India will have to be added back and deductions permissible in India but not permissible in the United Kingdom will have to be allowed. If any company however prefers to claim the depreciation allowed by the United Kingdom Income-tax authorities, the Commissioners of Income-tax may adopt that figure. Otherwise depreciation will have to be calculated according to the Indian rules. What follows applies to the calculation of depreciation according to the Indian rules. For this purpose, a complete depreciation record has to be maintained for the entire fleet. Depreciation begins to run from the first year in which the Company is "assessed" in India, that is, the first year in which its profits or (loss) were determined for the purpose of deciding whether it was liable to Indian Income-tax. Unabsorbed depreciation, *i.e.*, any balance of depreciation which cannot be allowed in any year owing to the profits not being sufficient to cover the full amount permissible under the Indian rules will be carried forward and allowed as far as possible in calculating the world-profits according to the Indian method in the following year and if necessary in subsequent years provided that unabsorbed depreciation for 1938-39 and earlier years cannot be set against an assessment for 1939-40 or any subsequent year.

The proportion Indian receipts/Total receipts is applied to the world-profits calculated according to the Indian method (if there are any such profits) and the result is the Indian income liable to tax. No further deduction is permissible from the amount thus arrived at on account of depreciation (unabsorbed or otherwise) or anything else. The due proportion of all allowances permissible is automatically set off against the Indian profits by the above method.

This method is equally applicable whether a Company works out the profits for each voyage or follows any other method of account provided that it prepares complete annual accounts for the *whole* business, Indian and foreign, and furnishes the accounts of gross receipts, Indian and foreign.

Some lines do not furnish complete annual accounts for their world business. They keep separate complete annual accounts for their Indian trade—that is, for all "round voyages" to and from Indian ports. The proper course is then to apply the method just described treating the profits of the Indian trade and the gross receipts of the Indian trade as though they were the "world-profits" and the "world receipts" respectively. In fact the business other than the Indian trade is ignored.

(ii) A difficulty sometimes arises in such cases owing to the fact that the ships employed in the Indian trade are constantly being changed. Unless United Kingdom depreciation is accepted

as indicated above a depreciation record will have to be kept for every ship employed at any time in the Indian trade. Depreciation must be allowed on each ship employed in the Indian trade in a given year and the allowance must be a proportion of the annual rate calculated with reference to the number of days spent in the Indian trade whether at sea or in harbour. Any unabsorbed depreciation in any year must be distributed among the ships in the Indian trade in that year in proportion to the capital of each, and the unabsorbed depreciation thus allotted to any ship can only be allowed in any subsequent year against the *same ship*.

The allowance should cease :—

(*a*) on ships which were included in the fleet in the first year in which the company becomes *liable* to assessment in India (irrespective of whether it was actually found to have a taxable income in that year or not), after the twentieth year beginning with that year ;

(*b*) on ships subsequently added to the Company's fleet, after they have been borne on the fleet for 20 years.

In both cases the period may be extended proportionately, where the United Kingdom depreciation is allowed in calculating the "profits of the Indian trade" which take the place as already explained of the "world-profits".

Obsolescence cannot be allowed in these cases.

British Shipping Companies—Assessment of.—When assessing British Shipping Companies, the Income-tax Officers should accept a certificate granted by the Chief Inspector of Taxes in the United Kingdom stating (1) the ratio of the profits of any accounting period as computed for the purposes of the United Kingdom income-tax (computed without making any allowance for wear and tear) to the gross earnings of the Company's whole fleet, and the ratio of the United Kingdom allowance for wear and tear to the gross earnings of the whole fleet, or (2) the fact that there were no such profits. The expression "gross earnings of the Company's whole fleet" means the total receipts of the Shipping Company, excepting only receipts from non-trading sources, such as income from investments.

For the purpose of assessment for 1940-41 onwards the profits will be computed as follows :—

In respect of a company which furnishes annual accounts for the whole of its business, Indian and foreign, the second method provided by Rule 33 will be applied, but for the purpose of calculating depreciation on the whole world assets of the company

the written down value of the assets will have to be arrived at in accordance with the method laid down in section 10 (5). The whole world income and the whole world depreciation having been arrived at according to the Indin Income-tax Act, only the portions thereof in the ratio of Indian freight to world freight should be considered in the Indian assessment.

Whether any of the ships employed in the Indian trade are constantly being changed or not, the written down value of all ships will be arrived at by deducting from the original cost thereof all depreciation appropriate to ships of the class employed since the date of acquisition.

PART IV

THE EXCESS PROFITS TAX ACT, 1940

(XV OF 1940)

THE EXCESS PROFITS TAX ACT, 1940.

CONTENTS

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Excess profits tax authorities.
4. Charge of tax.
5. Application of Act.
6. Standard profits.
7. Relief on occurrence of deficiency of profits.
8. Succession and amalgamations.
9. Inter-connected companies.
10. Artificial transactions.
11. Relief in respect of double excess profits taxation.
12. Allowance of excess profits tax in computing income for income-tax purposes.
13. Issue of notices for assessment.
14. Assessments.
15. Profits escaping assessment.
16. Penalties.
17. Appeals.
18. Appeal to Commissioner against Appellate Assistant Commissioner's orders imposing penalties or enhancing assessments or penalties.
19. Power of revision.
20. Rectification of mistakes.
21. Application of provisions of Act XI of 1922.
22. Income-tax papers to be available for the purposes of this Act.
23. Failure to deliver returns or statements.
24. False statement and declaration.
25. Institution of proceedings and composition of offences.
26. Power of Central Board of Revenue to grant relief in special cases.
27. Power to make rules.

SCHEDULE I.—Rules for the computation of profits for purposes of Excess Profits Tax.

SCHEDULE II.—Rules for computing the average amount of capital.

SCHEDULE III.—Rules for determining the amount of capital held by a company through other companies.

ACT No. XV OF 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor-General on the 6th April, 1940)

An Act to impose a tax on excess profits arising out of certain businesses.

WHEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities ;

It is hereby enacted as follows :—

1. (*1*) This Act may be called the Excess Profits Tax Act, 1940.

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

(*3*) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

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

(*1*) "accounting period" in relation to any business means—

(*a*) where the accounts of the business are made up for successive periods of twelve months, each of such periods ;

(*b*) in any other case, such period as the Excess Profits Tax Officer may determine :

Provided that in determining any accounting period under sub-clause (*b*) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been. determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922 ;

(*2*) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under section 3 ;

(*3*) "average amount of capital" means the average amount of capital employed in any business as computed in accordance with the Second Schedule ;

(4) "Board of Referees" means a Board of Referees appointed under section 3 ;

(5) "business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts :

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society :

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act ;

(6) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1941, and

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term ;

(7) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3 ;

(8) "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 ;

(9) "deficiency of profits" means—

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits ;

(*ii*) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits ;

(*10*) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—

(*i*) is a manager of the company or concerned in the management of the business ; and

(*ii*) is remunerated out of the funds of the business ; and

(*iii*) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company ;

(*11*) "dividend" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922 ;

(*12*) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3 ;

(*13*) "income" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922 ;

(*14*) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax ;

(*15*) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under section 3 ;

(*16*) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

(*17*) "person" includes a Hindu undivided family ;

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

(*19*) "profits" means profits as determined in accordance with the First Schedule ;

(*20*) "standard profits" means standard profits as computed in accordance with the provisions of section 6 ;

(*21*) "statutory percentage" means—

(*a*) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent. per annum :

(*b*) in relation to any other business, ten per cent. per annum :

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent. :

Provided further that where the business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and 6 per cent. to ten, twelve and eight per cent., respectively ;

(*22*) "written down value" has the meaning assigned to that expression in sub-section (*5*) of section 10 of the Indian Income-tax Act, 1922.

3. (*1*) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely :—

(*a*) the Central Board of Revenue ;

(*b*) Commissioners of Excess Profits Tax ;

(*c*) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax ;

(*d*) Excess Profits Tax Officers ;

(*e*) Boards of Referees.

(*2*) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, under the Indian Income-tax Act, 1922.

(*3*) The Central Board of Revenue shall, subject to the provisions of sub-section (*2*), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in respect of such cases as the Central Board of Revenue may assign to them :

Provided that such directions shall be made entirely at the discretion of the Central Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an officer who is not exercising in respect of that case

or class of cases the corresponding functions in relation to the charge of income-tax under the Indian Income-tax Act, 1922.

(4) 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 nothing in this sub-section applies to a Board of Referees :

Provided further 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.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer 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 who has held judicial office for a period of not less than ten years.

(6) Subject to the provisions of sub-section (5), the Central Government may make rules regulating the formation, composition and procedure of Boards of Referees.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act :

Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section :

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in India :

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.

6. (*1*) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (*3*) and (*4*), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period :

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease :

Provided further that in the case of a business which was commenced on or after the 31st day of March, 1936, the standard profits shall, at the option of the person carrying on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(*2*) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be—

(*a*) the 'previous year" as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938 ; or

(*b*) the "previous year" as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939 ; or

(*c*) the "previous year" as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March, 1939 ; or

(*d*) the "previous year" as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March 1940 :

Provided that in no case shall any period of less than nine months be taken as a standard period.

(*3*) If, within the period specified in the notice issued under sub-section (*1*) of section 13, the person carrying on the business makes an application to the Excess Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just :

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Board is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed.

(*4*) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (*1*) are less than this sum :

Provided that if the chargeable accounting period is greater or less than one year the sum of rupees thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

(*5*) Where the standard period includes any period prior to the commencement of Part III of the Government of India Act, 1935, during which Burma was part of British India, there shall, in computing the standard profits of a business under this section, be excluded from the profits of the business during the standard period so much of such profits as arose or accrued or were received in Burma unless such profits are also included in the profits of the business during the chargeable accounting period.

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions :—

(*a*) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;

(*b*) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on.

8. (*1*) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced.

(*2*) Where the change took place before the 1st day of September, 1939, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(*3*) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the 1st day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(*4*) Where, on or after the 1st day of September, 1939, two or more businesses are amalgamated, the resulting business shall

be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—

(*a*) it had been in existence throughout the period during which there were in existence any of the former businesses ;

(*b*) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business ; and

(*c*) any assets of any of those former business had become assets of the resulting business when they became assets of the former business ;

and, in particular, in computing the capital employed in the resulting business, no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(*5*) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly, subject to any necessary modifications :

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Board of Referees, to that Board to be just.

(*6*) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of April, 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of September, 1939, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that

business, subject, however, to such modifications (including modifications as respects the computation of capital) as he may consider just.

(7) Where, on or after the 1st day of September, 1939, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if—

(a) the interest, annuity, annual payment, royalty or rent were not payable ;

(b) any debt in respect of which any such interest is payable did not exist ; and

(c) any asset in respect of which any such royalty or rent is payable were the property of the company paying the royalty or the rent.

(2) Where—

(a) a company (hereinafter referred to as "the principal company") is resident in British India and is not a subsidiary of any other company resident in British India ; and

(b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within British India (hereinafter referred to as "the subsidiary company") is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of section 5, have effect in relation to that chargeable accounting period.

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in—

(i) the chargeable accounting period ; or

(ii) any year constituting or comprised in the standard period of the principal company,

shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be, profits or losses arising from, the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or, as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company.

In this sub-section, the expressions "excess" and "deficiency" mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

(5) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the Central Board of Revenue may direct.

(6) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In this section and the Third Schedule references to ownership shall be constructed as references to beneficial ownership, and the expression "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof

have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(*9*) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.

(*10*) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

10. (*1*) A person shall not for the purpose of reducing any excess profits which are or would be chargeable to excess profits tax enter into a fictitious or artificial transaction, or carry out any fictitious or artificial operation.

Explanation :—For the purposes of this section an artificial transaction or operation includes every device of whatever nature adopted for the purpose of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act.

(*2*) Any such transaction or operation shall be treated as null and void for the purpose of computing the excess profits tax payable under this Act.

(*3*) If the Excess Profits Tax Officer is satisfied that any person has acted in contravention of the provision of sub-section (*1*), he may with the previous approval of the Inspecting Assistant Commissioner direct that such person shall pay, in addition to any excess profits tax for which he is or would be, but for such transaction or operation, liable, a penalty not exceeding the tax evaded or sought to be evaded.

11. (*1*) The Central Government may by notification in the official Gazette make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, in any Indian State, or in any other part of His Majesty's Dominions have been made upon the profits of any business if it appears to the Central Government that the laws of the United Kingdom or of that Indian State or of that other part of His Majesty's Dominions provide for corresponding relief in respect of excess profits tax charged on profits both in the United Kingdom or in that State or in that part and in British India :

Provided that where under section 19 of the Finance (No. 2) Act, 1939, national defence contribution has been paid in the

United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this sub-section, be deemed to be excess profits tax paid in the United Kingdom.

(*2*) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in British India, proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in British India of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country, whichever is the less.

12. (*1*) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of section 11, shall, in computing for the purposes of income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

(*2*) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accouting period to the extent that such profits arose in the said country, after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India, relief is given by way of repayment from the excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (*1*) or sub-section (*2*) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the chargeable accounting period in which the deficiency of profits occurs.

13. (*1*) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be

otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, 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) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with tha provisions of section 6 or the amount of deficiency available for relief under section 7 :

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(*2*) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (*1*), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require :

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937.

14. (*1*) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(*2*) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

(*3*) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(*4*) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person

either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

15. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers, that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or reassess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

16. If the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (*1*) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (*2*) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding—

(*a*) where the person has failed to furnish the return required under sub-section (*1*) of section 13, the amount of the excess profits tax payable ; and

(*b*) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct :

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

17. (*1*) Any person aggrieved by a decision made in pursuance of section 8, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer by way of relief under any provision of this

Act or to any refusal by the Excess Profits Tax Officer to grant relief may appeal to the Appellate Assistant Commissioner :

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the first proviso to rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule :

Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (*5*) of section 8 or against any decision of the Board of Referees under sub-section (*3*) of section 6.

(*2*) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

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

(*4*) The Appellate Assistant Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(*5*) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made in this behalf by the Central Board of Revenue.

18. (*1*) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under section 16 or enhancing his assessment or enhancing a penalty under section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

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

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this section shall cease to have effect.

19. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Appellate Assistant Commissioner subordinate to him, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit :

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

(2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, sub-section (1) shall cease to have effect, but thereafter any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under section 16 or section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922.

20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or Excess Profits Tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies :

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

21. The provisions of sections 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive), 65 to 67A (inclusive) of the Indian Income-tax Act, 1922, shall apply with such modifications, if any, as may be prescribed as if the said provisions were provisions of this

Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (*3*) of section 3 as he exercises in relation to income-tax under the said Act :

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

22. (*1*) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act

(*2*) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922.

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

24. If a person makes in any return required under section 13 any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

25. (*1*) A person shall not be proceeded against for an offence under section 23 or section 24 except at the instance of the Inspecting Assistant Commissioner.

(*2*) No prosecution for an offence punishable under section 23 or section 24 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(*3*) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

26. (*1*) If the Central Board of Revenue is satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the busines in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (*1*) of section 6, and that no relief or insufficient relief has been granted under the provisions of sub-section (*3*) of that section, the Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue thinks just ;

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Central Board of Revenue is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Board of Referees under sub-section (*3*) of section 6 is adequate.

(*2*) Without prejudice to the generality of the provisions of sub-section (*1*) the Central Board of Revenue shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely :—

(*a*) that the capital employed in a business commenced on or after the 1st day of July, 1938, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses ;

(*b*) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax ;

(*c*) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937.

(3) If the Central Board of Revenue is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely :—

(a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs, or

(b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities, or

(c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India ;

the Central Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the Central Board of Revenue thinks just :

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate.

27. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act.

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

(a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds ;

(b) provide for the adaptation to excess profits tax of any of the provisions of the Indian Income-tax Act, 1922, which are made applicable to excess profits tax by section 21 : or of any rules made under any such provision ;

(c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in British India ;

(*d*) provide for any matter which by, or under, this Act is to be prescribed.

(*3*) The power to make rules conferred by this section shall be excercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

SCHEDULE I.

[*See* section 2 (*19*).]

Rules for the computation of profits for purposes of Excess Profits Tax :

1. The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Indian Income-tax Act, 1922 :

Provided that where the profits during any standard period have already been determined for the purpose of an assessment under the Indian Income-tax Act, 1922, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax :

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses, and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period : and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939, computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendment) Act, 1939, may not have been in force in the standard period.

3. (*1*) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(*2*) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

(*3*) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (*2*) of section 24 of the Indian Income-tax Act, 1922.

4. (*1*) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (*2*) and (*4*) of this rule and not otherwise.

(*2*) In the case of the business of a building society, or of a moneylending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under section 10 of the Indian Income-tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax.

(*3*) Notwithstanding anything contained in sub-rule (*2*), where the profits of a subsidiary company are under the provisions of section 9 to be included in the profits of the principal company for the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(*4*) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act.

(*5*) Where the person carrying on a business is the benificial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

5. If at any time after the close of the standard period, any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

6. No deduction shall be made on account of liability to pay, or payment of, income-tax, super-tax, or excess profits tax.

7. (*1*) In the case of a business carried on, in any accounting period which constitutes or includes chargeable accounting period, by a company the directors whereof have a controlling interest therein,—

(*a*) if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of directors' remuneration in excess of the amount paid for directors' remuneration in respect of the standard period or, if the standard period is longer or shorter than the accounting period, in excess of a sum which bears to the sum paid for directors' remuneration in respect of the standard period the same proportion as the length of the accounting period bears to that of the standard period ;

(*b*) if the standard profits are not computed by reference to the profits during a standard period, no deduction shall be allowed in respect of directors' remuneration.

(*2*) In this rule the expression "directors' remuneration" does not include—

(*a*) the remuneration of any director who is required to devote substantially the whole of his time to the

service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than five per cent. of the ordinary share capital of the company, or

(*b*) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax

8. In the case of a business carried by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

9. Where the performance of a contract extends beyond the accounting period, there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein :

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profits, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

10. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

SCHEDULE II.

[*See* section 2 (*3*).]

Rules for computing the average amount of capital.

1. (*1*) Subject to the provisions of this Schedule, the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—

(*a*) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquried, subject to the deductions hereafter specified ;

(*b*) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions ;

(*c*) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(*2*) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value and, in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(*3*) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

2. (*1*) Any borrowed money and debts shall be deducted, and in particular any debt for income-tax or for excess profits tax in respect of the business shall be deducted :

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due—

(*a*) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable under section 45 of the Indian Income-tax Act, 1922 ;

(*b*) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that

the excess profits tax may not have been assessed until after that date.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the chargeable accounting period in which the deficiency occurred.

3. Any investments the income from which is by virtue of the provisions to the First Schedule not to be taken into account in computing the profits of the business, and any moneys not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under the last preceding rule in respect of borrowed money shall be computed as if the principal of the borrowed money where reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

4. Notwithstanding anything contained in rule 3, in the case of the business of shipping, to which this Act applies, the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business :

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

5. For the purposes of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall, except so far as the contrary is shown, be deemed—

(a) to have accrued at an even rate throughout the period ; and

(b) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

6. Where, in accordance with the second proviso to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

SCHEDULE III.

[*See* section 9 (*7*).]

Rules for determining the amount of capital held by a company through other companies :

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

2. In this Schedule—

(*a*) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to as "a series" ;

(*b*) in any series—

(*i*) that company which owns ordinary share capital of another through the remainder is referred to as "the first owner" ;

(*ii*) the other company the ordinary share capital of which is so owned is referred to as "the last owned company " ;

(*iii*) the remainder, if one only, is referred to as an "intermediary" or, if more than one, is referred to as a "chain of intermediaries" ;

(*c*) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an "owner" ;

(*d*) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

5. Where—

(*a*) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related ; or

(*b*) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related ;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either—

(*a*) directly ; or

(*b*) through any intermediary or intermediaries which is not a member or are not members of that series ; or

(*c*) through a chain or chains of intermediaries of which one or some or all are not members of that series ; or

(*d*) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists ;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

THE EXCESS PROFITS TAX RULES, 1940

MADE BY

(1) The Central Board of Revenue

(2) The Central Government

Rules made by the Central Board of Revenue under Section 27 of the Excess Profits Tax Act, 1940.

In exercise of the powers conferred by section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue makes the following rules, namely :—

1. These Rules may be called the Excess Profits Tax Rules, 1940.

2. In these Rules—

(*i*) "the Act" means the Excess Profits Tax Act, 1940 (XV of 1940) ;

(*ii*) "applied section" means a section of the Indian Income-tax Act, 1922, as applied by section 21 of the Act and rule 3 ;

(*iii*) "Form" means a form as set out in the Schedule to these Rules.

3. The provisions of sections 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive) and 65 to 67A (inclusive) of the Indian Income-tax Act, 1922, shall apply with the following modifications, namely :—

(*i*) All references to "this Act," "income-tax" and "the Income-tax Officer" shall be construed as references to "the Act", "excess profits tax" and the "the Excess Profits Tax Officer" respectively.

(*ii*) In section 10—

(*a*) clauses (*b*) and (*c*) of the proviso to clause (*vi*) of sub-section (*2*) shall be omitted ;

(*b*) for sub-section (*7*) the following sub-section shall be substituted, namely :—

"(*7*) Notwithstanding anything to the contrary in this section or in the Excess Profits Tax Act, 1940, the profits of any business of insurance, other than life insurance, shall be computed in accordance with the rules contained in the Schedule to the Indian Income-tax Act, 1922, in so far as they are applicable to such business."

(*iii*) In section 13 the word and figures "and 12" shall be omitted.

(*iv*) In section 24B—

(*a*) in the sub-section (*2*)—

(1) the words and figures "before the publication of the notice referred to in sub-section (*1*) of section 22 or" shall be omitted, and

(2) for the words and figures "sub-section (*2*) of the section 22 or section 34", wherever they occur, the words and figures "sub-section (*1*) of section 13 or section 15 of the Excess Profits Tax Act 1940" shall be substituted ;

(*b*) in sub-section (*3*)—

(1) for the word and figures "section 22" the words and figures "sub-section (*1*) of section 13 of the Excess Profits Tax Act, 1940" shall be substituted ; and

(2) for the words and figures "sections 22 and 23" the words and figures "sub-section (*2*) of section 13 of the Excess Profits Tax Act, 1940" shall be substituted.

(*v*) In section 37, for the words "this Chapter", the words, figures and brackets "sections 8 to 20 (inclusive) of the Excess Profits Tax Act, 1940" shall be substituted.

(*vi*) For section 40 the following section shall be substituted, namely :—

"40. In the case of any agent of any person residing out of British India, being entitled to receive on behalf of such person any profits chargeable under the Excess Profits Tax Act, 1940, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in British India and in direct receipt of such profits, and all the provisions of the said Act shall apply accordingly :

Provided that the tax may be levied upon and recovered from such non-resident person direct."

(*vii*) The provisos to sub-section (*1*) of section 41 shall be omitted.

(*viii*) In the first proviso to sub-section (*1*) of section 42, the words and figures "the income-tax so chargeable, may be recovered by deduction under any of the provisions of section 18 and that" shall be omitted.

(*ix*) For section 44, the following section shall be substituted, namely :—

"44. Where any business carried on by a firm or association of persons has been discontinued, every person

who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respects of the profits of the firm or association, be jointly and severally liable to assessment under section 14 of the Excess Profits Tax Act, 1940, and for the amount of tax payable, and all the provisions of the said Act shall so far as may be apply to any such assessment."

(*x*) In sub-section (*3*) of section 44B, the words "at the rate for the time being applicable to the total income of a company" shall be omitted.

(*xi*) In section 44C, for the words "of his total income in the previous year", the words "of his actual excess profits in the chargeable accounting period" shall be substituted.

(*xii*) In section 45—

(*a*) the words, brackets, figures and letter "under sub-section (*3*) of section 23A or" shall be omitted ;

(*b*) for the words and figures "section 31 or section 32 section 33", the words and figures "sub-section (*4*) of section 17 or section 18 or section 19 of the Excess Profits Tax Act, 1940" shall be substituted ;

(*c*) for the words and figures "under section 30", the words and figures "under section 17 of the Excess Profits Tax Act, 1940" shall be substituted ;

(*d*) in the proviso, for the words "which is due in respect of the amount of his income which", the words "which relates to excess profits arising from such income as" shall be substituted.

(*xiii*) Sub-section (*5*) of section 46 shall be omitted.

(*xiv*) In section 47—

(*a*) the words and figures "sub-section (*2*) of section 25, section 28, sub-section (*6*) of section 44E, sub-section (*5*) of section 44F or" shall be omitted ;

(*b*) after the figures "46", the words and figures "or under the provisions of section 10 or section 16 of the Excess Profits Tax Act, 1940" shall be inserted.

(*xv*) In section 48—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely :—

"(*1*) If any person, to whose business the Excess Profits Tax Act, 1940, applies, satisfies the

Excess Profits Tax Officer that the amount of tax paid by him for any chargeable accounting period exceeds the amount with which he is properly chargeable under the said Act for that period, he shall be entitled to a refund of any such excess."

(*b*) Sub-section (*3*) shall be omitted.

(*c*) In sub-section (*4*), the words, brackets and figures "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" shall be omitted.

(*xvi*) In section 49F for the word and figures "or 49" the following shall be substituted, namely :—

"or under section 7 or section 11 of the Excess Profits Tax Act, 1940."

(*xvii*) For section 50, the following section shall be substituted, namely :—

"50. No claim to any refund of tax under the Excess Profits Tax Act, 1940, shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of of the accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises."

(*xviii*) In section 54—

(*a*) in sub-section (*1*) for the words "this Chapter", the words and figures "sections 23, 24 and 25 of the Excess Profits Tax Act, 1940" shall be substituted :

(*b*) in sub-section (*3*), clauses (*e*) and (*m*) shall be omitted ; and in clause (*i*) for the figures and words "49 of this Act", the figures and words "11 of the Excess Profits Tax Act, 1940" shall be substituted ,

(*c*) sub-section (*4*) shall be omitted.

(*xix*) In sub section (*1*) of section 66 for the words and figures "sub-section (*4*) of section 33", the following shall be substituted, namely :—

"sub-section (*2*) of section 19 of the Excess Profits Tax Act, 1940, read with sub-section (4) of section 33 of the Indian Income-tax Act, 1922."

4. Rules 8, 23, 24, 33, 34, 44, 45 and 46 of the Indian Income-tax Rules, 1922, shall apply subject to the modification

that all references therein to "income-tax" and "the Income-tax Officer" shall be construed as references to "excess profits tax" and "the Excess Profits Tax Officer" respectively.

5. The notice of demand or of determination of a deficiency of profits under applied section 29 shall be in Form E. P. 4.

6. The notice in default of payment of excess profits tax shall be in Form E. P. 6.

7. The return required under sub-section (*1*) of section 13 of the Act shall be in Form E. P. 1.

8. An application to the Board of Referees under sub-section (*3*) of section 6 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as it thinks just, shall be made in Form E. P. 14.

9. An application to the Central Board of Revenue under sub-section (*1*) of section 26 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as it thinks just, shall be made in Form E. P. 15.

10. An application to the Central Board of Revenue under sub-section (*3*) of section 26 of the Act, of a direction that such allowance shall be made in computing the profits of a business during a chargeable accounting period as the Central Board of Revenue thinks just, shall be made in E. P. 16.

11. An appeal under the proviso to sub-section (*5*) of section 8 of the Act shall be made in Form E. P. 8A.

12. An appeal under section 17 of the Act shall be—

(*a*) in Form E. P. 9, if against a decision of the Excess Profits Tax Officer under section 8 of the Act ;

(*b*) in Form E. P. 10, if against the amount of an assessment made or a deficiency of profits under sub-section (*1*) of section 14 of the Act ;

(*c*) in Form E.P. 11, if against an order imposing a penalty under section 10 or section 16 of the Act or under sub-section (*1*) of applied section 46 ;

(*d*) in Form E. P. 12, if in respect of an alleged insufficient relief or refund, or a refusal to grant relief or refund, by the Excess Profits Tax Officer.

13. An appeal under sub-section (*1*) of section 18 of the Act shall be in Form E. P. 13.

14. An application for refund of excess profits tax under section 7 of the Act, in respect of a deficiency of profits shall be in Form E. P. 17.

15. An application under section 11 of the Act for relief in respect of double taxation shall be in Form E. P. 18.

16. The notice under sub-section (*2*) of section 8 of the Act shall be given by the persons concerned within 60 days of the date of service upon them of the notice under sub-section (*11*) of section 13 of the Act.

17. An appeal under the proviso to sub-section (*5*) of section 8 of the Act shall be presented in the office of the Excess Profits Tax Officer by the person carrying on the business prior to the transfer or by the person to whom part of the business was transferred, as the case may be, within 45 days of the date of receipt of the notice of the Excess Profits Tax Officer's apportionments.

18. (*1*) The Excess Profits Tax Officer shall within fifteen days of the receipt of an application under sub-section (*3*) of section 6, or of an appeal under sub-section (*5*) of section 8, of the Act forward it to the Commissioner for being referred to a Board of Referees for decision.

(*2*) The Commissioner shall, in consultation with the Board of Referees appointed by him in accordance with the Excess Profits Tax (Boards of Referees) Rules, 1940, fix the time and place of the first meeting of the Board, and give notice thereof, not being less than one week, together with the names of the members constituting the Board, to the applicant in the case of an application, and to the appeallant and the opposite party in the case of an appeal.

(*3*) When the hearing of an application or appeal is adjourned, the Board of Referees shall inform the applicant or, as the case may be, the appellant and the opposite party, and also the Commissioner, of the time and place of the next hearing.

(*4*) In sub-rules (2) and (3) the expression "opposite party" means the person by whom, or the person to whom, part of the business was transferred, according as the appeal is preferred by the transferee or the transferor.

19. (*1*) At the hearing of any appeal or application under the Act by a Board of Referees or an Appellate Assistant Commissioner, the Commissioner shall have the right to be represented by the Excess Profits Tax Officer or such other person as may be appointed by the Commissioner in that behalf.

(*2*) Notice of the date appointed for the hearing of any appeal or application under the Act shall also be given to the Excess Profits Tax Officer concerned.

SCHEDULE

FORM E. P. 1.

Reference to be quoted in all communications.

EXCESS PROFITS TAX.

NOTICE TO FURNISH RETURN OF PROFITS AND OTHER PARTICULARS.

To

.....

....

.....

In pursuance of the provisions of section 13 (*1*) of the Excess Profits Tax Act, 1940, you are hereby required to furnish WITHIN SIXTY DAYS from the date of the service of this notice, in the from provided overleaf, a Return of the profits arising from the business $\frac{\text{carried on by}}{\text{carried on in the name of}}$ ..... during the chargeable accounting period commencing..... 19.....and ending.....19....., together with such other particulars relating thereto as are specified therein. The Return duly signed by you, and the other particulars required therein, should be delivered to me at the address given below.

Notes for your guidance are contained in the enclosure to this form. If you desire any further information, application should be made to this office.

If you desire to make an application or election :—

(*a*) for increase of standard profits under section 6 (*3*) or 26 (*1*) : [See Notes for Guidance, Notes 4 (v) and (vi)] ;

(*b*) for modification of computation of profits of chargeable accounting period under section 26 (*3*) : [See Notes for Guidance, Note 8] ;

(*c*) in the case of changes of partnership under section 8 (*2*) : [See Notes for Guidance, Note 11 (i)] ;

(*d*) in the case of transfer of business after 1st April 1936 and before 1st September 1939 : [See Notes for Guidance, Note 11 (v)] ;

you are requested to intimate your intention in writing to this office *as early as possible.*

In the case of a company which is the subsidiary of another company resident in British India only the declaration on page 4 need be completed.

Excess Profits Tax Officer.

Address..... .....

Dated the.....19 .

PENALTIES.—Particulars are given on page 1102.

EXCESS PRO

Return of profits arising from Business in the chargeable accoun-

and ending.....19 , and

(1) Name and address of the person by whom the business was carried on in the above chargeable accounting period.

(2) In the case of a person not resident in British India, carrying on business in British India through an agent resident in British India, the full name and address of the agent through whom the business was carried on in the above chargeable accounting period.

(3) Nature of business carried on.

(4) Amount of profits arising in the above chargeable accounting period, computed in accordance with the Act. [See Notes for Guidance, Note 8.]

(5) Amount of standard profits computed in accordance with the Act. [See Notes for Guidance, Note 4.]

(6) Basis of computation of standard profits adopted—

(*a*) the profits of a standard period ; or

(*b*) the application of the statutory percentage to the average amount of capital employed during the chargeable accounting period. [See Notes for Guidance, Note 4.]

(7) In the case of 6 (*a*) above, particulars of the standard period chosen, or in the case of 6 (*b*) above, the date of commencement of the business. [See Notes for Guidance, Note 5.]

(8) Proportionate amount of standard profits in the ratio of the chargeable accounting period to the standard period. [See notes for Guidance, Note 4 (*i*).]

FITS TAX.

ting period commencing.....19

other particulars relating thereto.

(1)

(2)

(3)

(4) Rupees

(5) Rupees

(6)

(7) (*a*)
(*b*)

(8) Rupees

FURTHER PARTI

You are required to furnish—

(*i*) copies of the Trading Accounts, Profit and Loss which the accounts of the business have been made of the chargeable accounting period ;

(*ii*) a copy of your computation of the profits of the charge- standard period is chosen, showing the amount of adjustment thereto required by the provisions of respect of increase or decrease of the capital employed pared with that employed during the standard (see items 3 and 4.....on page 5) ;

(*iii*) the further particulars specified on pages 4 and 5

STATE WHETHER YOU MAKE THE RETURN—

As proprietor of the business ;
As partner in a partnership ;
As Manager or Karta of Hindu undivided family ;
As principal officer of a company ;
As member of an association ;
As legal representative of a deceased person ;
As liquidator of a company which is being wound up ; or
As agent for a person not resident in British India. } .....

CULARS REQUIRED.

Accounts and Balance Sheets of the business for all periods, for up, which constitute or include any part of the standard period or

able accounting period, and of the standard period where a profits as computed for Income-tax purposes, details of each the First Schedule to the Act and of the adjustment due in in the business during the chargeable accounting period as com- period ; and of your computation of the average capital employed

hereof.

DECLARATION.

I hereby declare that, to the best of my knowledge and belief, the information given in this return is correct and complete, and the particulars transmitted herewith are truly stated.

Dated this.....day of.....19 .

.....Signature.

.....Address.

Schedule of further particulars required under section

I. In the Case of a Company

(*a*) The name and address of any company, whether or not resident in British India or trading in British India, which is a subsidiary of the company. [See Notes for Guidance, Note 12.]	
(*b*) The name and address of the company, resident in British India, if any, of which the company is a subsidiary company. [See Notes for Guidance, Note 12.]	
(*c*) In the case of private limited company, the names of the shareholders in the accounting period which constitutes or includes the chargeable accounting period, with full particulars of the shares held by each. [See Notes for Guidance, Note 8.] (If this space is insufficient, please attach a schedule of the required particulars.)	

13 (1) of the Excess Profits Tax Act, 1940.

II. In all cases. (Particulars relating to average capital employed.)

Amount of capital, computed in accordance with the provision of the Second Schedule to the Act :—

1. Standard period :—
   (*a*) Where the standard period is a period of one "previous year"—
      (*i*) as at the commencement of that "previous year",
      (*ii*) as at the end of that "previous year",
      or
   (*b*) where the standard period consists of two "previous years"—
      (*i*) as at the commencement of the first of those "previous years",
      (*ii*) as at the end of the first of those "previous years",
      (*iii*) as at the commencement of the second of those "previous years"
      (*iv*) as at the end of the second of those "previous years".

   NOTE.—Where the standard period consists of two consecutive "previous years". lines (*ii*) and (*iii*) should be treated as one.
2. Chargeable accounting period—
   (*a*) as at the commencement of that period,
   (*b*) as at the end of that period.
3. Average amount of capital employed during the standard period.
4. Average amount of capital employed during the chargeable accounting period.

	Description.	Rs.	Date.
5. Additions (+) or decreases (—) in capital employed— (*a*) during the standard period ; (*b*) during the chargeable accounting period. (See Note 2 below.)			

NOTES :—

1. Where the standard profits are taken to be the statutory percentage

PENALTIES.

1. Failure, without reasonable excuse, to deliver the Return with the other particulars required by the Excess Profits Tax Officer under the provisions of the Excess Profits Tax Act, the concealment of particulars of profits arising from or of capital employed in the business, or the deliberate furnishing of inaccurate particulars of such profits or capital entail penalties under sections 16, 23 or 24 of the Act.

The penalties are, in the case of failure to deliver the Return a sum not exceeding the amount of excess profits tax payable, or, in other cases, a sum not exceeding the amount of the excess profits that tax would have been avoided if the Return made had been accepted as correct. Alternatively, on conviction before a Magistrate, failure to make the Return involves a fine which may extend to Rs. 500, with a further fine which may extend to Rs. 50 for every day during which the default continues, and a false Return is punishable with simple imprisonment which may extend to six months, or with a fine which may extend to Rs. 1,000, or with both.

2. The penalty for entering into any fictitious or artificial transaction, or for carrying out any fictitious or artificial operation for the purpose of reducing any excess profits which are or would be chargeable to excess profits tax is, in addition to such transaction or operation being treated as null and void for excess profits tax purposes, a sum not exceeding the tax evaded or sought to be evaded.

[Section 10.]

---

of the average capital employed during the chargeable accounting period, only items 2, 4 and 5 (*b*) need to be completed.

2. Particulars are required here of, *inter alia*, income from excluded investments paid into and employed in the business; sales of business assets; drawings of proprietor or of partners or, in the case of a company, of dividends paid; income-tax and super-tax liabilities with the dates when such were due for payment.

See also Note 9 in Notes for Guidance.

FORM E. P. 4.

EXCESS PROFITS TAX.

NOTICE OF DEMAND UNDER RULE 5 OF THE EXCESS PROFITS TAX RULES READ WITH SECTION 29 OF THE INDIAN INCOME-TAX ACT, 1922.

To

....

.. ..

.....

1. Take notice that for the chargeable accounting period commencing.....19...and ending.....19 . . . .,

*the sum of Rs... ..... . Excess Profits Tax, as specified overleaf, has been determined to be payable by you.

*a deficiency of profits of Rs.....has been computed as shown overleaf.

2. *You are required to pay the amount on or before.....

..... 19..., to the *Treasury Officer / Sub-Treasury Officer / Agent, Imperial Bank of India / Governor, Reserve Bank of India at . ...

....when you will be granted a receipt.

3. If you do not pay the amount on or before... . ..... 19..., you will be liable to a penalty, under section 46 (*1*) of the Indian Income-tax Act, 1922, as applied to Excess Profits Tax by section 21 of the Excess Profits Tax Act, 1940, which may be as great as the excess profits tax due from you.

4. If you intend to appeal against the assessment, or the amount of the deficiency, you may present an appeal under sub-section (*1*) of section 17 of the Excess Profits Tax Act, 1940, to the Appellate Assistant Commissioner of Excess Profits Tax at..... ....within 45 days of the receipt of this notice in the form prescribed under sub-section (*3*) of section 17 duly stamped and verified as laid down in that form. A copy of the form may be obtained from this office.

5. A copy of my assessment order and of my computations of the standard profits and the profits of the chargeable accounting period is enclosed herewith.

.....Excess Profits Tax Officer.

.....
} Address.
Date.....19..... ... .

*Delete inappropriate words.

Assessment Form.

ASSESSMENT UNDER SECTION 14 OF THE EXCESS PROFITS TAX ACT, 1940, FOR THE CHARGEABLE ACCOUNTING PERIOD COMMENCING ..... 19....., AND ENDING..... ..... 19.....(.. ....MONTHS).

Name of assessee..... .....
Status..... . ... Circle..... . .....
Address..... .. No. in General Index.....
..... No. in E. P. T. Register...

		Rupees.
1.	Profits of the chargeable accounting period as computed for Excess Profits Tax purposes	.....
2.	Profits of standard period of.....months *where standard profits available*—	
	(*i*) as computed for excess profits tax purposes *or* .. .. Rs.....	
	(*ii*) as determined by the Board of Referees under section 6 (3) *or* .. .. Rs.....	
	(*iii*) as determined by Central Board of Revenue under section 26 (1) .. .. Rs.....	
3.	Proportion of (2) appropriate to chargeable accounting period of.....months .. Rs.....	
4.	Average amount of capital employed during chargeable accounting period .. .. Rs.....	
5.	Average amount of capital employed during standard period .. .. .. Rs.....	
6.	Increase (+) or decrease (−) in the average capital employed during chargeable accounting period .. .. Rs.....	
7.	Statutory percentage of.....% per annum thereon for.....months .. .. Rs.....	
8.	Adjusted standard profit in relation to chargeable accounting period (3), + or − (7) *or*	.....
9.	Where percentage standard chosen under the second proviso to section 6 (1).....% per annum for the chargeable accounting period of..... ..... months on the average capital of Rs.....employed during the chargeable accounting period *or*	.....
10.	Where minimum standard of Rs. 36,000 applicable, due proportion thereof	.....
11.	Excess Profits (+) or Deficiency of profits	.....
12.	Excess Profits Tax at 50%	.....
13.	Relief in respect of deficiency of profits .. Rs.....	
14.	Double Excess Profits Taxation relief .. Rs.....	
15.	Net amount of Excess Profits Tax payable	.....
16.	*Add*—	
	(*i*) Penalty under section 10 (3)	.....
	(*ii*) Penalty under section 16	.....

TOTAL SUM PAYABLE (in figures as well as words).

Rs.....as.....(figures) Rs. .....
Annas.....(words).
Dated..... . 19.....

* Delete inappropriate words.

FORM E. P. 6.

Penalty Imposed in default of payment of Excess Profits Tax.

NOTICE OF DEMAND UNDER SECTION 29 OF THE INDIAN INCOME-TAX ACT, 1922, AS APPLIED TO EXCESS PROFITS TAX BY SECTION 21 OF THE EXCESS PROFITS TAX ACT, 1940.

To

.. ..

... .

....

Whereas you have not paid the sum of Rs..... .....Excess Profits Tax, assessed for the chargeable accounting period commencing.....19....., and ending..... 19....., on the prescribed date, *viz*... ....., in accordance with the Notice of demand served on you on..... .....19....., you are hereby informed that a penalty of Rs.....has been imposed upon you under section 46(*1*) of the Indian Income-tax Act, 1922, which is applied to Excess Profits Tax by virtue of section 21 of the Excess Profits Tax Act, 1940.

2. You are further warned that unless the total amount due, including this penalty, is paid on or before..... . ...19....., a further penalty will be imposed on you (and a warrant of distress will be issued for the recovery of the whole amount due with costs).

3. You are required to pay the amount to the *Treasury Officer / Sub-Treasury Officer / Agent, Imperial Bank of India / Governor, Reserve Bank of India at.....when you will be granted a receipt.

4. If you intend to appeal against this penalty you may present an appeal under sub-section (*1*) of section 17 of the Excess Profits Tax Act, 1940, to the Appellate Assistant Commissioner of Excess Profits Tax at..... .....within 45 days of the receipt of this notice, in the form prescribed under sub-section (*3*) of section 17 duly stamped and verified as laid down in that form. A copy of the form may be obtained from this office.

.....
Excess Profits Tax Officer.

Dated . . . . . 19...

....
....
} Address.

*Delete inappropriate words.

FORM E. P. 8-A.

FORM OF APPEAL UNDER THE PROVISO TO SECTION 8 (5) OF THE EXCESS PROFITS TAX ACT, 1940.

To

THE BOARD OF REFEREES,
c/o The Excess Profits Tax Officer,

The.....day of.....19...,

The petition of.....of.....sheweth as follows :—

1. .....transferred as a going concern on..... 19..., a part of his business.....

2. Under the provisions of sub-section 5 of section 8 of the Act the Excess Profits Tax Officer has—

*(a) apportioned the profits of the said business for the "previous years" from which, under section 6 (1), the standard periods of the business retained by.....
.....and of the business transferred to.....
.....may be selected as follows :—

	Business retained. Rs.	Business transferred. Rs.
"Previous year" ended.....19...	.....	.....
"Previous year" ended.....19...	.....	.....
"Previous year" ended.....19..†	.....	.....
"Previous year" ended.....19...	.....	.....

*(b) apportioned the average capital employed in the said business during those "previous years as follows :—

	Business retained. Rs.	Business transferred. Rs.
"Previous year" ended.....19...	.....	.....
"Previous year" ended.....19...	.....	.....
"Previous year" ended.....19...	.....	.....
"Previous year" ended.....19...	.....	.....

3. Your petitioner objects to the apportionment made, as set out above, as follows :—

*(a) Profits of the "previous year" ended.....19...
Profits of the "previous year" ended.....19...
Profits of the "previous year" ended.....19...
Profits of the "previous year" ended.....19...

*(b) Average capital employed during the "previous year" ended ..19...
Average capital employed during the "previous year" ended...19...
Average capital employed during the "previous year" ended ..19...
Average capital employed during the "previous year" ended...19...

4. Your petitioner therefore requests that the apportionment so specified may be modified to the extent set out in the Grounds of Appeal.

(Signed)

GROUNDS OF APPEAL.

FORM OF VERIFICATION.

I, ..., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)

†Insert particulars of the periods in respect of which the appeal made.

FORM E. P. 9.

FORM OF APPEAL AGAINST A DECISION UNDER SECTION 8 OF THE EXCESS PROFITS TAX ACT OTHER THAN A DECISION UNDER THE PROVISO TO SUB-SECTION (*5*) OF SECTION 8.

To

THE APPELLATE ASSISTANT COMMISSIONER OF EXCESS PROFITS TAX,

The.....day of.....19...

The petition of.....of.....sheweth as follows :—

1. Your petitioner is not satisfied with the decision of the Excess Profits Tax Officer made under *sub-section (*2*) / *sub-section (*3*) / *sub-section (*4*) / *sub-section (*5*) / *sub-section (*6*) of section 8 of the Excess Profits Tax Act, 1940.

2. Your petitioner received *a copy of the order / *an intimation of the said decision on..... .. ...19...

3. For the reasons given in the grounds of appeal, your petitioner prays that the decision of the Excess Profits Tax Officer may be modified so as to grant your petitioner the relief prayed for.

(Signed)

GROUNDS OF APPEAL.

FORM OF VERIFICATION.

I....., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)

*Inappropriate items to be deleted.

FORM E. P. 10.

FORM OF APPEAL AGAINST ASSESSMENT UNDER SECTION 14 (*1*) OF THE EXCESS PROFITS TAX ACT, 1940.

To

THE APPELLATE ASSISTANT COMMISSIONNR
OF EXCESS PROFITS TAX,

.. ..

The..... day of ....19...

The petition of.....of.....sheweth as follows :—

1. Under section 14 (*1*) of the Excess Profits Tax Act, *the profits liable to Excess Profits Tax / *deficiency of profits of your petitioner's business for the chargeable accounting period commencing..... ...19..., and ending..... .....19.. , have / has been determined to be Rs. . .....

2. The *notice of demand / *intimation of the amount of deficiency of profits / *intimation of the order of refund attached hereto, was served upon your petitioner on..... .....19...

3. Your petitioner *complied with / *did not comply with the terms of the notice(s) under sub-section (*1*) and/or sub-section (*2*) of section 13 of the Excess Profits Tax Act.

4. Your petitioner claims that during the said chargeable accounting period *the profits liable to Excess Profits Tax / *the deficiency of profits of your petitioner's business amounted to Rs . .....

5. Your petitioner therefore prays

that *the business may be assessed accordingly. / *the deficiency of profits may be determined accordingly. / *he may be granted a refund of Rs.....

(Signed)

GROUNDS OF APPEAL.

FORM OF VERIFICATION.

I, ... , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)

---

*Inappropriate items to be deleted.

FORM E. P. 11.

FORM OF APPEAL TO THE APPELLATE ASSISTANT COMMISSIONER AGAINST IMPOSITION OF PENALTY UNDER SECTION 10 OR SECTION 16 OF THE EXCESS PROFITS TAX ACT, 1940, OR UNDER SECTION 46(*1*) OF THE INDIAN INOOME-TAX ACT, 1922, AS APPLIED TO EXCESS PROFITS TAX BY SECTION 21 OF THE EXCESS PROFITS TAX ACT, 1940.

To

THE APPELLATE ASSISTANT COMMISSIONER OF EXCESS PROFITS TAX,

....

The.....day of.....19...

The petition of.....of.....sheweth as follows :—

1. A penalty of Rs..... ...for which the notice of demand attached herewith was received on.....19..., has been imposed on your petitioner *section 10 of the Excess Profits Tax Act, 1940.
under *section 16 of the Excess Profits Tax Act, 1940.
*section 46(*1*) of the Indian Income-Tax Act, 1922.

2. *Your petitioner did not enter into any artificial transaction for the purposes of avoiding the excess profits tax.

*Your petitioner had reasonable cause for not furnishing the return under sub-section (*1*) of section 13 or for not complying with the notice under sub-section (*2*) of section 13.

*Your petitioner did not conceal particulars of the profits arising or capital employed in the business or deliberately furnish inaccurate particulars thereof.

*Your petitioner was unable to pay the tax within time for the reasons set forth below.

3. For the reasons given in the Grounds of Appeal your petitioner therefore prays that the order of the Excess Profits Tax Officer imposing the penalty may be set aside.

(Signed)

GROUNDS OF APPEAL.

FORM OF VERIFICATION.

I,....., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)

*Delete inappropriate words.

FORM E. P. 12.

FORM OF APPEAL AGAINST THE AMOUNT OF RELIEF OR REFUND OR AGAINST REFUSAL TO GRANT RELIEF OR REFUND UNDER SECTION 7 OR SECTION 11 OF THE EXCESS PROFITS TAX ACT, 1940.

To

THE APPELLATE ASSISTANT COMMISSIONER
OF EXCESS PROFITS TAX,

The.....day of.....19...

The petition of.....of..... sheweth as follows :—

*1. Your petitioner applied to the Excess Profits Tax Officer for relief under section 7 of the Excess Profits Tax Act in respect of a deficiency of profits amounting to Rs.....occurring in the chargeable accounting period commencing.....19,.....and ending..... 19...

*Your petitioner claimed, under section 11 of the Excess Profits Tax Act, relief amounting to Rs .....in respect of excess profits taxation imposed in.....upon the profits of your petitioner's business.

2. The Excess Profits Tax Officer has by his order, dated the..... .....of which a copy is attached *rejected the claim for relief / *granted relief of only Rs... . Intimation of this order was received by your petitioner on..... ... .

3. Your petitioner for the reasons stated in the Grounds of Appeal prays that the full relief due to the petitioner may be granted.

(Signed)

GROUNDS OF APPEAL.

FORM OF VERIFICATION.

I,..... . , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)

*Inappropriate items to be deleted.

FORM E. P. 13.

FORM OF APPEAL TO THE COMMISSIONER OF EXCESS PROFITS TAX AGAINST ENHANCEMENT OF TAX OR PENALTY OR IMPOSITION OF PENALTY BY THE APPELLATE ASSISTANT COMMISSIONER.

To

THE COMMISSIONER OF EXCESS PROFITS TAX,

The.....day of.....19...

The petition of..... .....of..... .....sheweth as follows :—

1. The Appellate Assistant Commissioner of Excess Profits Tax at.....*has imposed on your petitioner under section 16 of the Excess Profits Tax Act, 1940, a penalty of Rs.....

   *has, under section 17 (4) of the Excess Profits Tax Act, 1940, increased the $\frac{*\text{tax}}{*\text{penalty}}$ payable by your petitioner from Rs.....to Rs.....

2. For the reasons stated in the Grounds of Appeal your petitioner prays that *the order imposing the penalty may be set aside. / *the enhancement may be set aside. / *the enhancement may be reduced to Rs.....;

(Signed)

GROUNDS OF APPEAL.

FORM OF VERIFICATION

I,..... ....., the petitioner named in the above petition, do declare that what is stated therein is true to best of my information and belief.

(Signed)

* Inappropriate words to be deleted.

FORM E. P. 14

Excess Profits Tax Act, 1940.

FORM OF APPLICATION UNDER SECTION 6 (3)

To

THE EXCESS PROFITS TAX OFFICER,

.....

The.....day of . .....19...

The application of..... . .....of..... . ..... sheweth as follows :—

1. That the applicant has been served with a notice under section 13 (*1*) of the Act on.....and that the Return required by the said notice is due on.....

2. That the standard period elected by the applicant under section 6 (*2*) of the Act is the "previous year" as determined under section 2 (*11*) of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 193..., being the period commencing..... 19... and ending.....19...,

* and the previous year as determined under section 2 (*11*) of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 19...being the period commencing..... . ...19...and ending..... . 19...

3. That the profits of such "standard period" computed in accordance with the provisions of the First Schedule to the Act are Rs..... ... ..

4. That such profits were less than might at the commencement of such standard period have been reasonably expected owing to the following cause(s) :—

5. That the average amount of capital employed in the business during the said standard period, computed in accordance with the provisions of the Second Schedule to the Act was Rs.....

6. The applicant therefore applies that his case be referred to the Board of Referees under section 6 (*3*) of the Act for a

direction that the standard profits of the business shall be computed as if the profits during the standard period were such greater amount as they may think just.

7. The applicant further applies that such direction shall not be limited to the statutory percentage of the average amount of the capital employed in the business because it is just that a greater amount should be allowed in view of the following specific cause(s) peculiar to the business :—

8. Copies of my computations showing how the sums referred to in paragraphs 4 and 6 are arrived at are attached hereto.

(Signature of Applicant)

FORM OF VERIFICATION

I, ..., the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

(Signature).

* Where a standard period of only one "previous year" is chosen delete this sub-paragraph.

FORM E. P. 15

Excess Profits Tax Act, 1940

FORM OF APPLICATION UNDER SECTION 26 (*1*)

To

THE CENTRAL BOARD OF REVENUE.

The.....day of.....19.....

The application of... . ...of.....sheweth as follows :—

1. That the applicant has been served with a notice under section 13 (*1*) of the Act on.....19 . ..... , and that the Return required by the said notice

*is due on..... .... 19..... ...
*has been duly furnished to the Excess Profits Tax Officer.

2. That the standard period elected by the applicant under section 6(*2*) of the Act is the "previous year" as determined, under section 2(*11*) of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 193....., being the period commencing.....19....., and ending..... .....19.....,

*and the "previous year" as determined, under section 2(*11*) of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending 31st March 193..... being the period commencing..... . ... 19....., and ending... ....19.....

3. That the profits of such "standard period" computed in accordance with the provisions of the First Schedule to the Act are Rs..... . ...

4. That special circumstances, which render it inequitable that the standard profits of the applicant's business shall be computed as set out in paragraph 3, exist, that is to say :—

5 That the average amount of capital employed in the business during the chargeable accounting period commencing .. ..19 . ..., and ending..... ....19... . , computed in accordance with the provisions of the Second Schedule to the Act was Rs..... . .....

6. *That application has been made to the Board of Referees under section 6(*3*) of the Act, and

*that no relief has been granted by that Board,

*that insufficient relief has been granted by that Board increasing the said standard profits to Rs..... ..... only.

7. The applicant therefore applies that under section 26 (*1*) of the Act the Central Board of Revenue may direct that the standard profits of the business shall be computed as if the profits of the standard period were such greater amount as they think just.

8. The applicant further applies that such direction shall not be limited to the statutory percentage of the average amount of the capital employed in the business because it is just that a greater amount should be allowed in view of the following specific cause(s) peculiar to the business :—

9. Copies of my computations showing how the sums referred to in paragraphs 3 and 5 are arrived at are attached thereto. ... .

(Signature of Applicant.)

FORM OF VERIFICATION.

I,..... .. .. , the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

(Signature).

*Delete inappropriate items.

FORM E. P. 16

Excess Profits Tax Act, 1940

FORM OF APPLICATION FOR SPECIAL ALLOWANCE, UNDER THE PROVISIONS OF SECTION 26 (*3*) OF THE ACT, IN COMPUTING THE PROFITS OF A BUSINESS DURING A CHARGEABLE ACCOUNTING PERIOD.

Name of applicant..... ....

Address of applicant..... . ...

Business..... ....

The . ...day of.....19.....

To

THE CENTRAL BOARD OF REVENUE.

The applicant named above submits :—

1. that the profits of his business during the chargeable accounting period commenced..... ..... . 19.. ..., and ended ....19... . , computed in accordance with the provisions of the First Schedule to the Act are Rs..... ;

2. that such computation is inequitable owing to the following circumstances :—

*(*i*) the suspension or postponement, as a consequence of the present hostilities, of repairs or renewals ;

*(*ii*) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities ;

*(*iii*) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India ;

as shown in the statement of particulars set out on the back of this form.

(Signature of Applicant.)

*Delete inappropriate items.

SCHEDULE OF PARTICULARS REQUIRED.

1* In the case of suspension or postponement of repairs or renewals.

Nature of the repair or renewal. 1	Date when, but for the present hostilities, the repair or renewal would have been executed. 2	Estimated cost thereof as at that date. 3	Actual cost of repairs and renewals executed in the period constituting or including the chargeable accounting period. 4	Actual average expenditure on repairs and renewals during the five preceding years. 5
		Rs.	Rs.	Rs.

2†. In the case of buildings, plant or machinery provided which, after the termination of hostilities, will not be required.

Description of each item. 1	Date when each item provided. 2	Cost of each item. 3	Reasons why each item will not be required after the termination of the present hostilities. 4
		Rs.	

*3. In the case of difficulty in bringing into British India money arising in a country outside British India, by reason of the laws of that country restricting or prohibiting the remittance of money to British India.

Country in which income accrued. 1	Amount of income accrued and not remitted (in currency of that country). 2	Amount thereof assessed for income-tax purposes in British India. 3	Estimated ultimate loss owing to non-remittance. 4
		Zs.	Rs.

4*. In the case of loss on remittance owing to fluctuations in rates of Exchange.

Country in which income accrued. 1	Amount of income accrued (in currency of that country). 2	Amount realized by remittance thereof 3	Amount as assessed to Indian income-tax 4	Deduction claimed in respect of loss in remittances. 5
		Rs.	Rs.	Rs.

I,....., the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

(Signature).....

*Particulars to be entered in appropriate spaces only.

FORM E. P. 17.

APPLICATION FOR REFUND OF EXCESS PROFITS TAX IN RESPECT OF DEFICIENCY OF PROFITS.

To

THE EXCESS PROFITS TAX OFFICER

I,.....of.....do hereby declare that for the chargeable accounting period commencing.....19..., and ending .....19..., the excess profits arising from the business of .....were determined at Rs..... .....and charged to tax amounting to Rs..... The tax was paid on . .....19...

I further declare that during the chargeable accounting period commencing.....19..., and ending.....19..., there was a deficiency of profits in the same business amounting to Rs.....

I therefore pray for a refund of Rs.....

The Return prescribed under section 13 (*1*) of the Act showing the deficiency of profits is attached hereto.

Dated the.....19... (Signature).

FORM OF VERIFICATION.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated the... .....19... (Signature).

FORM E. P. 18.

APPLICATION FOR REFUND IN RESPECT OF DOUBLE EXCESS PROFITS TAXATION.

To

THE EXCESS PROFITS TAX OFFICER,

I,.....of.....do hereby declare that excess profits arising from the business of..... . .....for the chargeable accounting period commencing . .....19 . , and ending .....19..., have been charged to excess profits tax both in British India and in.....Official receipts are attached for*... .. ..excess profits tax of Rs.....paid on.....19..., and for British Indian excess profits tax of Rs ..... . paid on..... ...19...

I therefore pray for relief amounting to Rs.....under—

(*a*) sub-section (*1*) of section 11 of the Act in accordance with the Notification of the Central Government under that section.

(*b*) sub-section 2 of that section.

[Delete (a) or (b) whichever is inapplicable]

Dated the.....19... (Signature).

FORM OF VERIFICATION.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated the.....19... (Signature).

*Insert name of Country or State in which tax paid

RULES MADE BY THE CENTRAL GOVERNMENT UNDER SUB-SECTION (*6*) OF SECTION 3 OF THE EXCESS PROFITS TAX ACT, 1940.

In exercise of the powers conferred by sub-section (*6*) of section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following rules, namely :—

1. These Rules may be called the Excess Profits Tax (Boards of Referees) Rules, 1940.

2. The Central Government shall, by notification in the Official Gazette, constitute a panel of persons eligible for appointment to a Board of Referees, and may in like manner, from time to time, nominate to, or remove from, the panel such persons as it thinks fit.

3. On receipt of an application under sub-section (*3*) of section 6, or of an appeal under sub-section (*5*) of section 8, of the Excess Profits Tax Act, 1940, the Commissioner shall appoint, subject to the provisions of sub-section (*5*) of section 3 of that Act, a Board of Referees from the panel constituted under rule 2, and refer the application or the appeal, as the case may be. for the decision of the Board.

4. (*1*) If the applicant, or in the case of an appeal, any of the parties to the appeal, objects to the appointment of any particular member or members of the Board of Referees, and the Commissioner is satisfied that there are reasonable grounds for such objection, he may in his discretion cancel the appointment of such member or members to the Board and appoint an eligible person or persons instead :

Provided that no objection taken after the date of the first meeting of the Board fixed for hearing the application or the appeal shall be considered by the Commissioner.

(2) The decision of the Commissioner under sub-rule (*1*) shall be final.

5. The members of a Board of Referees shall elect their own chairman.

6. (*1*) The decision of the Board of Referees on any matter shall be according to the view of the majority of members present and shall be embodied in a report which shall be signed by all the members present :

Provided that any dissenting member may record a minute of dissent.

(*2*) Where the Board of Referees is equally divided, the chairman shall have a casting vote.

(*3*) No decision of the Board of Referees which is signed by less than half the members constituting the Board shall be valid.

7. The proceedings of a Board of Referees shall not be invalid merely by reason of the absence of a member.

Excess Profits Tax (Amendment) Bill, 1941.

L. A. Bill No. 14 of 1941.

A Bill further to amend the Excess Profits Tax Act, 1940.

WHEREAS it is expedient further to amend the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing :—

It is hereby enacted as follows :—

1. This Act may be called the Excess Profits Tax (Amendment) Act, 1941.

2. In section 2, after clause 16, the following clause shall be inserted, namely :—

"(16A) "ordinary share capital" has the meaning assigned to that expression in sub-section (*8*) of section 9.

3. Section 4 shall be renumbered as sub-section (*1*) of that section, and to the section as so re-numbered the following sub-section shall be added, namely :—

"(*2*)" Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the siad end of March were each a separate chargeable accounting period, and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period ; and any apportionment required to be made by this sub-section shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period."

4. To section 7 of the said Act the following provisoes shall be added, namely :—

"Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March, 1941, shall first be applied so as to reduce profits

*The Bill was introduced in the Central Legislature on the 14th March 1941 and it was passed on the 22nd March 1941.

chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March ; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said first day of April, the whole or any part of the deficiency is applied otherwise than as aforesaid,—

(*a*) the application shall be treated as provisional only ; and

(*b*) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the Central Board of Revenue may by written order direct :

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding proviso shall apply as if so much of the chargeable accounting period as falls before, and so much of the chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits occurring in the whole period ; and any apportionment required to be made by this proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period."

5. In sub-section (*1*) of section 17 o the said Act,—

(*a*) in the first proviso, for the words "first proviso" the words "second proviso" shall be substituted ,

(*b*) in the second proviso, for the word "modifications" the following words shall be substituted ;

"refusal to make modifications or against any modifications."

6. In the first proviso to rule 1 of the First Schedule to the said Act, after the words "Provided that any sums" the brackets and words "(other than any interest paid by a firm to a partner of the firm)" shall be inserted and shall be deemed always to have been inserted.

INDEX

The references are to the pages.

Abatement—
for premium paid for insurance, 296,297
for premium paid on joint lives, 295
partners of registered firm, for premium paid, 295
sums withdrawn from Prov. Fund, not allowed, 295
contributions by Officer for passage money of widows, 295
Assessee dying pending reference, 802

Abroad—
Profits earned, 79

Abwabs—
illegal, if agricultural income, 16

Accident—
Premium paid for against risk, 295
Railway Company compensating loss for accident, 246

Accountant—
recognised by the C. B. R., 747 and Rules portion.
right to appear in income-tax proceedings, 745, 746

Accounting method—
abnormal, 267
for calculating taxable income, 266
for assessing profits, 268
assessment at flat rate, 272, 273, 274
cash basis, 268
change of, 268
different methods of, 268
income-tax officer, sole arbiter, 272
mercantile system, 285
hybrid system, 267
regularly employed, 268
when once accepted, 268

Accounts—
cash basis, 268
mercantile basis, 285
beyond three years, rejection of, 271
items not shewn, 231

Accounts (*Contd.*)
power to call for, 338, 342, 348
branch account, 349
default in producing accounts, 388, 389
denial of existence of, 353, 385
to be specifically called for, 400
distinction between cash and mercantile system of, 268, 285
dishonest concealment of, 502
unadjusted books of, 273
proper and regular keeping of, 268
irregular keeping of, 268
notice calling for, 355
notice on non-residence for, 351
submission of, 352
consequences of non-production, 352
powers to seize books, 355
sufficiency of cause for non-production, 484, 485

Accrue—
accrue or arise, meaning of, 96

Action—
against income-tax officers, when barred, 809, 810

Acts—
Income-tax Act, a fiscal enactment, 4, 5
beneficial construction for subjects, 5
amending Act retrospective or prospective, 5
Excess Profits Tax, *vide* last portion
extent of, 1

Adjournment—
powers of, 401

Adjustment, of tax, 315

Administrator-General,
liability of, 572, 574, 575

Advance—
advances of pay, 145

Advertisement—
charges for, 247

Affidavit—
non-judicial, meaning of, *vide* Mis. portion

Agent—
definition of, 585, 591
interpretation of, 585, 586, 591, 598
in actual receipt of profit, 598
broker not agent, 591
determination by I. T. O. of, 600
to include persons treated as such. 601
appearance in income-tax proceedings of, 745
service of notice on, 752

Agricultural income—
definition of, 13
in permanently settled estate, 19
rent or revenue, 24, 25
income from forest or trees, 19
income partly derived from, 19
interest on arrears of rent, 18, 19
building for collection of rent, 32
buildings in the immediate vicinity of land, 32
tea companies, 31, 194
timber stacking, 17
toddy, 20
fisheries, 19, 20
jalkar, 19, 20
hatkar, 19, 20
royalty on coal, etc, 20
leased or mortgaged lands, 20
illegal abwabs, 16
profits of sugar factories,
nazar, 18
manufacture of salt, 20
landlord's fees, 25,
maintenance allowance, 20
selami, 24,
process ordinarily employed by cultivator, 30, 31

Agricultural lands—
capital locked up in, 204

Allowances (in assessing business income)—
animals, dead or useless, 219
bad and doubtful debts, 223, 223
boarding and travelling expenses, 228
bonus for, 221
borrowed capital, 201
capital expenditure, 200, 233, 234,
capital loss, 234, 235
commission, 221
compensation for loss of agency, 248
damages paid for, 241
depreciation of buildings, plant, machinery, furniture etc., 208, 209
of machinery, plant let out, 215

Allowances (*Contd.*)
depreciation in securities, 156
embezzlement and theft, 250
expenditures incurred to earn profits, 245
expenses for business, 226
insurance premia, 179
interest on mortgage or charge, 170, 171
irrecoverable loans, 224
life insurance premia, 297, 298
litigation expenses, 231
losses, 412, 417
machinery on hire, 261, 262
managing agency commission, 261
obsolescence of machinery, 216, 217
partner's capital, interest on, 202
payment of profit to third party, 232
penalties, 229
personal expenses, 249
rent of premises, 198, 199
repairs to machinery, plant or furniture, 206, 207
repairs to premises, 206, 207
road cess, 220, 239
royalty for mines, 220, 259
salaries paid to partners, 227, 228, 249
interest to partners, 202
provident fund contribution, 238, 239
superannuation fund, 238, 239
receipt from charity, britti or dharmada, 252, 253
litigation costs, 231
municipal tax, 220
share of profits on agreement, 249
written down value, 241, 242

Allowances (in assessing income from 'other Sources'—260

Allowances (in assessing income from property) 176
collection charges, 172
depreciation of, 176
admissible allowances, 170, 172, 173, 176
ground rent, 161
insurance, 161
jointly owned, 161
land revenue, 161
legal expenses, 176, 178
mortgages, interest on, 170
municipal tax, 166, 167
occupied by owner for business, 161
trust held under, 97
unrealised rent, 178
vacancies, 172

Amalgamation of business—
assessment of, 467

Annual Return, 336, 337

Annual value—
definition of, 167
of house property, 165
of business premises, 161
mode of ascertainment, 165, 173
can be a negative figure, 173
loss can be set-off, 173, 414, 415

Annuity—
deferred, 147
when deductible, 147. 149
whether assessable. 147

Anticipatory Certificate—
for securities, 316

Appeal —
against assessment under section 23 ; 510
to Appellate Asst. Commissioner, 510
time-limit for filing appeals, 514, 515
how to be presented, 511, 516
against summary assessment under section 23(*4*) ; 511, 518
against order under section 25A ; 510
against order under section 26A ; 510
against order under section 27 ; 510
against order under section 28 ; 510
against order under section 48 ; 510
for two years in one application, 510
appeal in nil cases, 512
ad-interim appeal, 515
defective appeal, 524
plea not raised, if can be raised in appeal, 526, 527
additional grounds of appeal, 522, 523
appeal if can be withdrawn, 514, 525, 526
dismissal for default, 524
duties and obligations of the Appellate Asst. Commissioner, 511, 512, 523, 524
form of appeal, 515
appeal against the decisions of th e Appellate Asst. Commissione r, 532, 533
to Appellate Tribunal, 533, 534
verification of appeals. 532

Appeal to Privy Council—808
by authorised representative, 748, 749

Appearance—
by power of attorney, 748, 749
by letter of authority, 748, 749
by authorised representative, 749
for court fees, 748
appointment of pleader, 748
who can appear, 746

Appellate Assistant Commissioner—
appointment and dismissal of, 117, 118
duties and obligations of, 118, 529
power and jurisdiction of,.118
power to impose penalty, 521, 522
power to enhance on appeal, 520
if a Court, 552, 563, 564
power to take evidence on oath, 565
power to stay prosecution, 672
rectification of mistakes, 560

Appellate Tribunal—
appointment of, 124, 125
formation of, 124, 125, 126
procedure for filing appeals, 533, 534
rectification of mistakes, 560
no appeal without deposit of Rs. 1001-, 533, 534

Appointment—
of Commissioner, 119
of Central Board of Revenue, 117, 118
of Appellate Asst. Commissioner, 118
of Inspecting Asst. Commissioner, 118
of Income-tax Officer, 118
of Additional Income-tax Officer, 118
approval of Local Government, 117, 118, 119

Arrears of tax—
method of recovery, 633
realisation by certificate, 634
recovery by distraint, 635

Assessee—
definition of, 8
rights and liabilities of, *vide* sections, 4, 6, 7, 8, 9, 10, 12
personal and private expenses of, 249
personal attendance of, 365
appearance by representative, 365, 748

Assessee (*Contd.*)
returns to be signed by, 344, 368
different classes of, 53
death of, effect, 492, 493
used in different senses, 429, 430

Assessment—
after death of defaulter, 431
alteration and amendment, 560
appeal against assessment, 510
at too low a rate, 542
of agent, 585
High Court, not a court of appeal, 780
arbitrary assessment, 308
best judgment assessment, 391
reasonable opportunity, 489
sufficient cause, 487
completion of assessment, no time-limit, 403, 536
assessment when cancelled, 491
rectification of mistakes, 560
principle of flat rate, 273, 274
summary assessment can be a negative figure, 391
applicability of section 34 in case of estimated or summary assessment, 395
consequences of summary assessment, 394
for technical defect, 390
remedies against summary assessment, 510
fresh assessment when application under section 27 is allowed, 491
fresh assessment when ordered by the Appellate Asst. Commissioner, 491
orders of assessment, 529
in case of departure from British India, 423, 425
when application under section 25A is allowed, 442
place of assessment, 759
jurisdiction when can be challenged, 757
of Insurance Companies, 816, 817
of non-residents, 589, 590
principal place of business, 764, 765

Assets—
direct or indirect, transfer to wife, 302, 304

Associated operation—
meaning of 624

Association of persons—
liability to tax, 63, 68, 69, 70
when shares are definite, 174, 175

Association of persons (*Contd.*)
member's individual liability, 174
principal officer of, defined, 63
residence of, 112, 113

Attendance—
personal, of assessee, 365

Authorised representative—
to appear in income-tax cases, 748, 749
disciplinary action, 745, 746
authorised in writing, 748

Avoidance—
of liability, 302, 615
by transfer of income to non-residents, 615, 618
by transactions in securities, 618, 626
by sales cum dividend, 626, 627
by transference to wife and minor children, 302, 304

B

Bad debts—
not permissible when accounts are on cash basis, 222, 223, 224
Banking and money-lending business, 222
irrecoverable loans, 224
set off, of, 414, 420

Balance—
accumulated balance, 715—722
treatment of newly recognised Provident Funds (S. 58-J)

Bank—
investment of deposit or loans, 154
set off of money borrowed, 155

Banker—
certificate by, deduction of interest on securities, 152 and Rules portion

Begging—
income from, 106

Benami—
law of, 27
test of, 27, 28

Beneficiary—
assessment of, 574, 576
where shares are indefinite, 577
agents assessable on behalf of, 591

Best Judgment—
assessment, 391—395
section 34 when attracted in, 395
remedies against, 510, 481, 482
difference with estimated assessment, 387

Betting—
casual gains, 79
Board of Revenue—
appointment of, 117
Bogus Companies—
assessment of, 404
Bona fide Annual value—
meaning of, 165
of property, 165
municipal tax, 166
Bond-washing —
transactions in, 627
Bonus :—
paid for services rendered, 221
to retiring employee, 221, 222
Bonus share—
if income, profits or gains, 66, 67
distribution of profits, 68
Book-makers—
profits of, 106
Book-sellers—
assessment of, 252
Borrowed capital—
interest on, 201
Branch account—
non production of, 349
assessment without report of, 350, 351
British India—
meaning of, 6
residence of, 6
sea-faring persons, 113
British subject—
definition of, 7
Britti—
receipt for, 252, 253
Broker—
commission earned by insurance broker, 617
commission paid to, for negotiating loans, 246
Buildings—
occupied by Zemindars, 32
for collection of rent, 32
in the immediate vicinity of land, 32
lands attached to, 32
Business —
abroad, assessment of profits from, 193
casual gains, 79
discontinuance of, 439
definition of, 8
denying existence of, 353
Business (*Contd.*)
allowances and expenditures of, 190, 208-240
illegal, 193
jurisdiction of taxing authorities in assessing business, 760
laid out or expended wholly and exclusively, 237
loss in, 411
machinery not wholly used for, 589
Non-residents, income arising, from, 589
original cost, 212, 213
principal place of, 764, 765
profit and loss, 409
property and business, 173, 193
receipts arising from isolated transactions, 129.
succession to business, 458, 462
trade or professional associations, 244
unabsorbed depreciation, 212
Business abroad—
profits and gains of, 83
Business connection—
Meaning of, 587
Business premises—
not included in House property, 161, 162
allowances on account of rent for, 164

C

Calculation of tax—
elimination of pies, 561
tax to be calculated to nearest anna, 561
Cancellation of assessment—
when cause is shewn, 491
when appeal is allowed, 529
limitation of appeal, 514
Capital—
distinction between income and capital, 234, 235
expenditures, 233
interest on, when deductible, 201
loss of, if allowable, 235
not taxable, 79
Capital borrowed—
interest when deductible, 201
Capital and Revenue expenditure—
distinction between, 234, 235
Cash basis—
accounts kept on cash basis, 268, 269
accounts partly on, 269

Casual receipts—
profits from, 79
when exempted, 79

Central Board of Revenue—
appointment of, 117
definition of, 8
power to make rules, 727, 728
power to make exemptions, 729

Certificate—
form of, 318
dividend, 319
issue of by company to Shareholders, 330, 331
issue by Income-tax Officer for recovery of tax, 634
validity of, 635

Cess—
illegal, 16
paid on account of colliery, 239, 240

Change of ownership—
change of partnership, 467
change in the constitution of firm, 455, 456
change, meaning of, 455, 456, 466
amalgamation of business, 467, 468

Charge—
meaning of, 171
of income-tax, 53, 54
creation of, 171
collection, 164
litigation, 231
contingent, 231

Charitable purposes—
meaning of, 97, 98
property held under trust, 97
religious uses, 96, 99
for advancement of education, 98
for advancement of religion, 98
criteria of exemptions, 101

Charities—
customary of subscriptions, 252, 253
to privileged institutions, 244, 252

Civil Court—
attached salary, 145
jurisdiction barred, 808, 809,
prohibited summoning income-tax records, 677

Civil Procedure Code—
application of, 377

Civil Suit—
in respect of assessment of item not chargeable, 808, 809
barred under certain circumstances, 808, 809, 810

Claim—
Limitation of, for refund, 664, 665
of partition having taken place, 442, 443
when to be raised, 444

Clients—
customary subscriptions, 231, 244, 252

Clubs—
exemption from tax, 60, 61
mutual trading, 58, 59

Collection charge—
of property, 164
maximum of 6%, 164

Collector—
recovery of tax by, 634, 635

Commission—
addition to salary, 151, 152
employees paid to, when deductible, 227, 228
difinition of, 132, 133
managing agency, 263, 264

Commissioner of income-tax—
definition of, 118
appointment of, 118, 119
delegation of duty of, 118
duties of in stating case, see Appellate Tribunal
power, limitation, see Appellate Tribunal
power of inquiry, do.
power to call for information do.
power of High Court to refer case to, see Appellate Tribunal,
seeking advice of High Court, propriety of, see Appellate Tribunal

Commissioner, assistant—
appointment and dismissal, 118, 119
duty when hearing appeal, 523
to go into the merits of the case, 524
jurisdiction of, 524
power of, 525

Company—
one-man company, 47
definition of, 32
incorporated, if can exercise profession, 30, 32
preparation and submission of returns, 336, 337
returns of employees, 336

Compensation—
for voluntary retirement, 248
for cancellation of contracts, 247
for loss of agency, 248

Compensation (*Contd.*)—
for loss of office, 248
for retirement of director, 252

Compounding proceeding—
Inspecting Assistant Commissioner may compound, 673

Concealment—
evidence as to actual income, 504
of particulars, 502
penal provision, 501, 306
revised return will not absolve from, 503

Copy—
grant of, 402, Mis portion
when available without application, 402, Mis. portion.
who can apply, 402. Mis portion.
procedure for obtaining copies, 402 Mis. portion
certified or uncertified, mis. portion,
urgent fees, Mis. portion

Costs—
in reference to High Court, 785, 786
in law suits, how far deductible, 231, 176

Court fees—
in appeals, Mis. portion,
vakalatnama, Mis. portion
application for copy, 402, Mis. portion

Court of Wards—
assessment of, 577
basis of taxation, 575, 576
liability, 575, 576
recovery, 575, 567

Cultivator—
definition of, 20
process ordinarily employed by, 30, 31

Current repairs—
deduction of, 206, 207
question of fact, 792, 793

D

Dairy—
income from, 23

Damages—
when deductible, 64, 161
damage or destruction of property, 161

Death of assessee—
effect of, 427, 428, 492

Debentures—
definition of, 34
form of, 33, 34

Debenture-holder,
prosecution for refusal of inspection of registers, 34,

Debts—
allowance when claimable, 226,
bad, when becomes, 224, 225
capital loss, not deductible, 233, 234
release from debt, 58
priority of, 635, 636

Deductions—
admissible and inadmissible, 226, 190, 168, 175
at source, 315,
business expenses, 226, 190
claimable when, 199
from interest on securities, 315,— 330
from dividends, 330
from salaries, 315

Default—
in making return, 352
in producing evidence or accounts, 352, 365
method of assessment in case of default, 388, 389
prosecution for, 669
recovery of tax from defaulter, 633, 634, 635

Deferred annuity—
liability of, 147

Definitions—
of business, not exhaustive, 192
commissioner, 118
company, 32
dividend, 33, 34
firm, 10, 44, 45, 64
income, 54
income-tax Officer, 118
magistrate, 10
partner, 10, 47
partnership, 10, 47
person, 10,
prescribed, 10, 11
previous year, 35, 36
principal officer, 40
public servant, 10
registered firm, 40, 44
total income, 50

Demand—
notice of, 508
form of, 507, 508

Departure—
assessment in case of departure from British India, 423, 424

Depreciation—
allowances of, 208, and Rules portion

Depreciation (*Contd.*)
amount of, 208
carrying forward, 212
basis of computation, 241
excess allowance, 208
dead or useless animals, 219
claim of successors in business, 212
income-tax officer can revise, 540, 541
set off, 421
shares and securities, 156
succession, 467
user, active or passive, 239, 245
unabsorbed depreciation, 212
written down value, 241

Destination of profits—
immaterial, 196, 197

Directors—
of company fees, 252

Disclosure of information—
when permissible, 677, 679
when forbidden, 681

Discontinued business—
assessment of, 439
application for separation, 444
liability of members, 442
penalty for failure to give notice, 432
recovery of tax for, 633
succession, difference from, 458, 459

Discovery—
income escaping assessment under s. 34, 537

Dismissal—
wrongful, compensation, 248, 148

Distress—
power of execution through police officer, 636
sale or warrant, 637

Dividend—
deduction of tax at source, 326
certificate by company, 330, 331
definition of, 33, 34
conversion of, when yields income, 68
included in total income, 52
refund of, 641, 642, 643
supply of information regarding, 328, 329

Documents—
defined, 348, 349

Double-income Tax—
relief in case of, 647, 648

Doubtful debts—
see 'Bad debts', 222, 223

Drawings of partners—
not deductible, 228

Dwelling House—
national income, 163, 164

E

Education—
scholarship granted to Meet cost of, 98, 99, 100

Embezzlement—
amount, deductibility of, 250, 251

Equitable construction, 5
when to be preferred, 5 and misc. portion.

Escaped income—
assessment, requirements of, 538,
whether whole assessment re-opened, 540
who can proceed, 553
definite information, 536, 537
assessee if to be apprised, 541
meaning of, 538, 539
notice, 555, 558
proceedings, 538

Evidence—
hearing of, 366. 367
power to take evidence under section 37, 565

Exchange—
profits of, 228, 229
loss sustained in, 228

Executors—
liability of, 575

Exemptions—
cannot be claimed unless provided for, sections 7, 8, 9 and 10
agricultural income, 13, 17
casual or non-recurring receipts, 129, 196
charitable or religious purpose, 97—99
of general nature, see sections 9 and 10
Hindu undivided family, 294
life insurance premia, 293, 294, 295
local authority, income of, 103
property held under trust, 97, 99
provident fund, accumulated balance of, 589, etc., 94
in determining total income, 94
see special provisions form 58G
yield of post office cash certificates, 85

Expenses—
see 'allowances', sections 7, 8, 9, 10
Extent of the Act—
applicability of, 1, 2

F

Fact—
difference from law, 775, 787, 788
False Return—
consequence of, 498, 506
False Verification—
consequence of, 498, 506
Fees—
definition of, 785
government pleaders, 144
landlord's, 25, 26
examiner's, 144
deposit for reference cases, 785, 786
Finance Act—
fixes rate of income-tax and super-tax annually, 358, 359, 812
Firm—
change in the constitution of, 467
definition of, 28, 29
discontinuance of business by, 439, 440
registered and unregistered, 44, 45
registration of, 48, 49
renewal of registration, 52
refusal to register, 46, 47
appeal in case of refusal to register a, 46, 47
application of registration when to be made, 49, 50
form of registration, 43, 44
Fiscal Legislation—
guiding principle in, 5, 6 and Misc. portion.
Fisheries—
income from, 19, 20
Foreign Income—
of non-resident, section 4.
of resident, do.
Forest—
produce, if agricultural income, 16, 17
Free quarters, 147
liability to tax, 147
Fund—
provident funds, section 589 etc.
Furniture—
depreciation of, 861, 862, 865, 867, 870
insurance of, 294, 295, 205
repairs of, 207
Furniture (*Contd.*)
replacement of, 207
revenue expenditures, 205, 241

G

Gains—
same as profits, 192, 193
actual realisation of, 196
Gas work—
profit from sale of, see Mis. portion.
Gift—
to wife and minor children, 304
Gratuity—
definition of, 141
paid by outsider, 141-142
paid to non-pensionable Ry. employees, 141. 142
paid to employee after retirement, 143
principle underlying taxation, 141, 143
Guardian—
liability of, onbehalf of wards, 574
extent of liability, 574, 575
non-resident, 586, 587
taxation of, 586

H

Hatkar—
in permanently settled area, 19, 20
Heir—
if entitled to apply under section 27, 492, 492
High Court—
interpretation of, 769, 770
statement of case by Appellate Tribunal, 771
no power to question principal place of business, 800
points of law not raised at the first instance, 782
jurisdiction of, 780
may refer case back to, 780
whether exercises original jurisdiction, 780
power to examine books of accounts, 800
difference between judges, 888
statement of case by the Appellate Tribunal, 772, 773
Hindu undivided family—
assessment of, 65
partition of, 446, 447
registration of, 476, 453
meaning of, 469

Hindu undivided family *(Contd.)*—
Jains, 52
claim to maintenance, 52
annual allowance, 52
married daughter, 52
claim for separation, 447
section 25A when applicable, 444
partition of, 444
if can be registered, 453
Daybhag and Mitakshara, 454,—455
property purchased in the name of wife or minor children, 301.
procedure of assessment after disruption, 447

Hindu widow—
life interest in property, 688, 73—74
maintenance allowance, 73—74

Honoraria—
for professional work, 133—134

Hotel charges—
expenses for, 134, 135

House Property—
see 'Property', 161, 165

Husband and wife—
partnership, 304
assets transferred, 304-305

I

Idiot—
liability of guardian or trustee, 570, 571

Illegal fees—
exacted from tenants, 16

Illegality—
of business, no bar to assessment, 129

Income—
agricultural, 13
definition of, 13
computation of, 298-300
dishonest suppression of, 502
concealment of, 502
deliberate furnishing of, 502
of wife and children, 304
capital distinguished from, 55, 56, 57, 58
Foreign, 82
derived from building, 32
escaping assessment, method of assessing, 538, 539
excluded from total, 301, 302
total income, 50
evidence as to actual, 504
from fishery, 19, 20
from ' rest produce, 21, 22

Income *(Contd.)*—
from mortgaged land, 21, 22
from other sources, 255
from property, 165
from sale of lands, 177, 178
from toddy, 20
of non-resident, 575-577
of local authority, 40
return of under section, 22, 339, 340
set off of loss, 412
of religious and charitable purpose, 97, 98

Income-tax—
amount of, 507
avoidance of, by transfer to non-residents, 622
avoidance of, transactions in securities, 622
calculation of, to nearest anna, 561-562
charge of income-tax, 53-54
payable when, 507
rates fixed by Finance Act, 358
recovery of, mode and time of, 633 '634'

Income-tax Officer—
sole arbiter of accounting method, 270
definition of, 117, 179
power of, 120
duties of, 120
jurisdiction of, 120, 123
to assess income escaping, 535
right to be represented, 521
right to prefer appeal, 510

Income-tax Practitioner—
meaning of, 747

Income-tax records—677
Civil Court not to summon, 674-675
to be kept confidential, 677

Indemnification—
of Government Officers for acts done in good faith, 608, 809

Indian State—
application of the Act, 648
relief in respect of double taxation, 648, 649, 650

Information—
disclosure of by Public servant, 681
supply of regarding dividends, 285, 286
supply of regarding interest, 291-292

Inquiry—
under section 25A, 444
on remand, 524-525

U

Under-assessed—
when action can be taken, 547

University—
exempt, 100, 101

Unregistered Firm—
meaning of, 44
registered and distinction between, 44-45

V

Vacancy allowance—
from property, 172

Vacant land—
income from, 16

Vakalatnama—
chargeable to court fees, *see* Misc. portion
once filed lasts up to appeal, *see* Misc. portion

Verifications—
assessee to sign himself, 344
false statement in, 670

Vocation—
discontinuance of, 436, 437
meaning of, 199,

W

Wagering contract—
illegal, 129

Wages—
business expenditure, 227, 228

Wakf—
for maintenance of wife and children, 101
private and public, 101

Wear and tear—
meaning of, 208

Wife and children—
income of, 304

Working partner—
see Partner

Written down value—
meaning of, 241

Y

Year
income need not exist in, 52-53
previous, 35, 37
account year, 52-53
assessment year, 52-53

Z

Zemindary—
income from, 16-17
building in immediate vicinity of land, 32
buildings occupied by zemindars, 32
for collection of rent, 32
included in other sources, 256