

INCOME TAX ACT, 1922

11 of 1922

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SCHEDULE 1 :- SCHEDULE

INCOME TAX ACT, 1922

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

CHAPTER 1 CHARGE OF INCOME-TAX

1. Short title, extent and commencement :-

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

(2) It extends to the whole of British India, including P.1 British Baluchistan and the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions. -

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

2. Definitions :-

(1) Income-tax for the year beginning on the first day of April 1922, shall be charged at the rates specified in Part t of the third Schedule.

(2) For the purposes of the third Schedule "total income" first day of April 1922, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the third Schedule.

(3) For the purposes of the third Schedule " total income " means total income as defined in clause (15) of section 2 of the Indian Income-tax Act, 1922. * * * * *

In this Act, unless there is anything repugnant in the Subject Or context,

(1) " agricultural income " means

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of 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) " Assistant Commissioner " means a person appointed to be an 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;

(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 Companies Act, 1913 , or formed in pursuance of an Act 7 of 1913 of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Board of Inland Revenue may, by general or special order, declare to be a company for the purposes of this Act;

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

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

(9) person includes a Hindu undivided family;

- (10) " prescribed " means prescribed by rules made under this Act,
- (11) "previous year" means
- (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up; Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression " previous year " as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or
- (b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Board of Inland Revenue or by such authority as the Board may authorise in this behalf;
- (12) " principal officer, " used with reference to a local authority or a company or any other public body or 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, 1860 ;
- (14) " registered firm " means a firm constituted under an Instrument of partnership specifying the individual shares of life-partners of which the prescribed particulars have been registered with the Income-tax Officer in the prescribed manner;
- (15) " total income " means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16 ; and
- (16) "unregistered firm " means a firm which is not a registered firm

3. Charge of Income Tax :-

. -- Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at 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 all income, profits and gains of the previous year of every individual, company, firm and Hindu undivided family.

4. Application of Act :-

. -

(1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6 , from whatever source derived, accruing, or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) Profits and gains of a business accruing or arising without British India to a person resident in British India shall be deemed to be profits and gains of the year in which they are received or brought into British India, notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose.

Explanation. -Profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

(3) This Act shall not apply to the following classes of income:

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(iii) The income of local authorities-

(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies, or any Provident Insurance Society to which the Provident Insurance Societies Act, 1912, is, or, but for an exemption under that Act, would be, applicable.

(v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such

Provident Fund.

(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(vii) 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 employe.

(viii) Agricultural income. 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.

4A. Residence in the taxable territories :-

³[4A. Residence in ⁴[the taxable territories]

For the purposes of this Act-

(a) any individual is resident in ⁴[the taxable territories] in any year if he-

(i) is in ⁴[the taxable territories] in that year for a period amounting in all to one hundred and eighty-two days or more; or

(ii) maintains or has maintained for him a dwelling place in ⁴[the taxable territories] for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in ⁴[the taxable territories] for any time in that year; or

(iii) having within the four years preceding that year been in ⁴[the taxable territories] for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in ⁴[the taxable territories] for any time in that year otherwise than on an occasional or casual visit; ⁵[or]

⁵[(iv) is in ⁴[the taxable territories] for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in ⁴[the taxable territories] during that year is likely to remain in ⁴[the taxable territories] for not less than three years from the date of his arrival;]

(b) a Hindu undivided family, firm or other association of persons is resident in ⁴[the taxable territories] unless the control and management of its affairs is situated wholly without ⁴[the taxable territories]; and

⁶[(c) a company is resident in the taxable territories in any year, if-

(i) it is an Indian company; or

(ii) during that year the control and management of its affairs is

situated wholly in the taxable territories.]

3 Ss. 4A and 4B inserted by s. 5, Indian I.T. (Amendment) Act, 1939.

4 Substituted for "British India" by Adaptation of Laws Order, 1950.

5 Inserted by s. 4, Indian I.T. (Amendment) Act, 1941, w.e.f. 1-4-1942.

6 Substituted by s. 4, F. Act, 1958, w.e.f. 1-4-1958.

4B. Ordinary residence :-

For the purposes of this Act-

(a) an individual is "not ordinarily resident" in ⁷[the taxable territories] in any year if he has not been resident in ⁷[the taxable territories] in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in ⁷[the taxable territories] for a period of, or for periods amounting in all to, more than two years;

(b) a Hindu undivided family is deemed to be ordinarily resident in ⁷[the taxable territories] if its manager is ordinarily resident in ⁷[the taxable territories];

(c) a company, firm or other association of persons is ordinarily resident in ⁷[the taxable territories] if it is resident in ⁷[the taxable territories].]

7 Substituted for "British India" by Adaptation of Laws Order, 1950.

CHAPTER 2 INCOME-TAX AUTHORITIES

5. Income tax authorities :-

.-

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

- (a) a Board of Inland Revenue,
- (b) Commissioners of Income-tax,
- (c) Assistant Commissioners of Income-tax, and
- (d) Income-tax Officers.

(2) The Board of Inland Revenue shall consist of one or more persons appointed by the Governor General in Council.

(3) There shall be a Commissioner of Income-tax for each province

who shall be appointed by the Governor General in Council after consideration of any recommendation made by the Local Government in this behalf.

(4) Assistant Commissioners of Income-tax and Income-tax Officers shall, subject to the control of the Governor General in Council, be appointed by the Commissioner of Income-tax by order in writing. They shall perform their functions in respect of such classes of persons and such classes of income and in respect of such areas as the Commissioner of Income-tax may direct. The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall) in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made here under to the Income-tax Officer and" the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.

(5) The Board of Inland Revenue may, by notification in the Gazette of India, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the province in which they perform their functions.

5A. The Appellate Tribunal :-

(1) The Central Government shall appoint an Appellate Tribunal consisting of ²[as many persons as it thinks fit] to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist ³* * of judicial members and accountant members as hereinafter defined.

⁴* * * * *

(3) ⁵[A judicial member shall be a person who has for at least ten

years either held a civil judicial post or been in practice as an advocate of a High Court, and an accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (XXXVIII of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant:]

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this subsection, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall ⁶[ordinarily] 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.

⁷[(6) Save as hereinafter provided a Bench shall consist of one judicial member and one accountant member:

Provided that the President or any other member of the Tribunal specially authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income-tax Officer in the case does not exceed Rs. 15,000:

Provided further that the President may, for the disposal of any particular case, constitute a special Bench consisting either of two judicial members and one accountant member or of one judicial member and two accountant members.]

(7) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the ⁸[places] at which the

Benches shall hold their sittings.]

1 Inserted by s. 85, Indian I.T. (Amendment) Act, 1939.

2 Substituted for "not more than ten persons" by s. 10, Taxation Laws (Extension to Merged States and Amendment) Act, 1949.

3 "Of an equal number" omitted, by s. 3, Indian I.T. (Amendment) Act, 1940,

4 The proviso omitted by s. 5, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

5 Substituted, by s. 5, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

6 Inserted, by s. 5, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

7 Substituted by s. 10, Taxation Laws (Extension to Merged States and Amendment) Act, 1949.

8 Substituted for "place" by s. 4, Indian I.T. (Amendment) Act, 1940.

CHAPTER 3 TAXABLE INCOME

6. Head of income chargeable to income tax :-

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

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.
- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

7. Salaries :-

. :-

(1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company,

or any other public body or association, or by or on behalf of any private employer:

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

(2) Any income which-would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor General in Council.

8. Interest of Securities :-

. :- The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

Provided that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free :

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

9. Property :-

. :-

(1) The tax shall be payable by an assessee under the head "Property" in respect of the bond-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 his business, 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 charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent;

(v) any sums paid on account of land-revenue in respect of the property;

(vi) in respect of collection charges, a sum not exceeding the prescribed maximum;

(vii) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case:

Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

(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.

10. Business :-

.:-

(1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

(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 is carried on, provided that, when any sub-stantial part of the premises is used as a dwelling- house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;

(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 or 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, where the payment of interest thereon is not in any way dependent

on the earning of profits, the amount of the interest paid;

Explanation. Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, 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 to such percentage on the original cost thereof to the assessee 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 owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

(c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the 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, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi), or any Act repealed hereby, or the Income-tax Act, 1886, and the amount, for which the machinery or plant is actually sold, or its scrap value;

(viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;

(ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains.

(3) In sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

11. Professional earnings :-

. :-

(1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

(2) Such profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, provided that no allowance shall be made on account of any personal expenses of the assessee.

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

12. Other sources :-

. :-

(1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

12A. Managing agency commission :-

Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

12AA. Royalties or copyright fees for literary or artistic works :-

Where the time taken by the author of a literary or artistic work in the making thereof is-

(a) more than twelve but less than twenty-four months, or

(b) more than twenty-four months,

the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment as hereunder-

(i) in the case referred to in clause (a), one-half of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and the other half as the income of the next succeeding previous year; and

(ii) in the case referred to in clause (b), one-third of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and one-third of the said amount as the income of each of the two next succeeding previous years.

Explanation.-For the purposes of this section, the expression "author" includes a joint author and the expression "lump sum" in regard to royalties or copyright fees includes an advance payment on account of such royalties or copyright fees which is not returnable.

12B. Capital gains :-

(1) The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange, relinquishment or transfer took place:

Provided that any distribution of capital assets on the total or partial partition of a Hindu undivided family or under a deed of gift, bequest or will shall not for the purposes of this section be treated as a sale, exchange, relinquishment or transfer of the capital assets:

Provided further that the transfer of a capital asset by a company

to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in the taxable territories and is registered under the Indian Companies Act, 1956, so however that for the purposes of clause (vi) or clause (vii) of sub-section (2) of section 10, the cost or the written down value, as the case may be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

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

(i) expenditure incurred solely in connection with such sale, exchange, relinquishment or transfer;

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

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

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

Provided further that where the capital asset became the property of the assessee, or of the previous owner where the cost of the capital asset to the previous owner is to be taken in accordance

with sub-section (3), before the 1st day of January, 1954, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10:

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

(3) Where any capital asset became the property of the assessee by succession, inheritance or devolution or on any distribution of capital assets on the total or partial partition of a Hindu undivided family or on the dissolution of a firm or other association of persons or on the liquidation of a company or under a deed of gift, or transfer on irrevocable trust, its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof:

Provided that where the capital asset became the property of the assessee-

(i) before the 1st day of April, 1956, under a deed of gift or on the partition of a Hindu undivided family, the actual cost allowable to him shall be the fair market value of the capital asset on the date of the gift or the date of the partition, as the case may be, if such value is greater than the actual cost to the previous owner or the fair market value thereof on the 1st day of January, 1954, where the third proviso to sub-section (2) applies;

(ii) on or after the 1st day of April, 1956, on the partition of a Hindu undivided family, the cost allowable to him shall be the fair market value on the date of the partition.

(4) Notwithstanding anything contained in sub-section (1)-

(a) where a capital gain arises from the sale, exchange or transfer of one or more capital assets being property the income of which is chargeable under section 9, and the full aggregate value of the consideration for which the sale, exchange or transfer is made does

not exceed the sum of twenty-five thousand rupees, the capital gain shall not be charged under this section and shall not also be included in the total income of the assessee:

Provided that this clause shall not apply in any case where the aggregate of the fair market values of all capital assets, being property the income of which is chargeable under section 9, owned by the assessee immediately before the sale, exchange or transfer aforesaid is made, exceeds the sum of rupees fifty thousand;

(b) where a capital gain arises from the sale, exchange, relinquishment or transfer of a capital asset to which the provisions of clause (a) are not applicable, being property the income of which is chargeable under section 9, which in the two years immediately preceding the date on which the sale, exchange, relinquishment or transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parents own residence, and the assessee has within a period of one year before or after that date purchased a new property for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange, relinquishment or transfer took place, it shall, if the assessee so elects in writing before the assessment is made, be dealt with in accordance with the following provisions of this clause, that is to say,-

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

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under this section.

13. Method of accounting :-

. :- Income, profits and gains shall be computed, for the purposes of section 10 , section 11 and section 12 , in accordance 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.

14. Exemptions of a general nature :-

. :

(1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

(2) The tax shall not be payable by an assessee in respect of

(a) any sum which he receives by way of dividend as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm.

15. Exemption in case of life insurances :-

. :-

(1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies or to any Provident Fund which complies with the provisions of the Provident Insurance Societies Act, 1912, or has been exempted from the provisions of that Act.

(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 proviso to Sub-section (1) of section 7, exceed one-sixth of the total income of the assessee.

15A. Exemption of portion of earned income :-

³[15A. Exemption of portion of earned income.

The tax shall not be payable by an assessee in respect of such portion, if any, of the earned income included in his total income as is directed by the annual ⁴[Central Act] fixing the rate or rates of tax for any year to be deducted in making an assessment for that year, and for the purposes of determining the rates at which income-tax (but not super-tax) is payable by the assessee for that

year his total income shall be deemed to be the total income reduced by the said portion.]

3 Inserted by s. 3, Indian I.T. (Amendment) Ordinance, 1945.

4 Substituted for "Act of the Central Legislature" by Adaptation of Laws Order, 1950.

15B. Exemption on account of donations for charitable purposes :-

⁵[15B. Exemption on account of donations for charitable purposes.

⁶[(1) The tax shall not be payable by an assessee in respect of any sums paid by him on or after the 1st day of April, 1953, as donations to any institution or fund to which this section applies

⁷[or in respect of any sums paid by him on or after the 1st day of April, 1960, as donations to the Government or to any local authority to be utilised for any charitable purpose as defined in sub-section (3) of section 4]:

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

Provided further that this exemption shall not apply-

(a) if the aggregate of the sums so paid by the assessee is less than two hundred and fifty rupees,

(b) to any sums paid in excess of ⁸[seven and a half per cent, of the assessee's total income] as reduced by any portion thereof exempt from tax under any other provisions of this Act, or ⁹[one hundred and fifty thousand rupees], whichever is less.

(2) This section applies to any institution or fund established in the taxable territories for a charitable purpose-

(i) the income whereof is exempt under clause (i) of sub-section (3) of section 4;

(ii) which is not expressed to be for the benefit of any particular religious community;

(iii) which maintains regular accounts of its receipts and expenditure; and

(iv) which is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (XXI of 1860), or under section 26 of the Indian Companies Act, 1913 (VII of 1913), or is a university established by law or is any other educational institution recognised by Government or by a university

or affiliated to any university; or

(v) which is an institution financed wholly or in part by the Government or a local authority.

Explanation.-An institution or fund established for the benefit of scheduled castes, backward classes, scheduled tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community within the meaning of clause (ii).

(2A) For the removal of doubts, it is hereby declared that in respect of sums paid as donations on or after the 1st day of April, 1948, and before the 1st day of April, 1953, the provisions of sub-sections (1) and (2) shall apply as if the amendments made by clause (c) of section 3 of the Finance Act, 1953, had not been made.]

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

5 Inserted by s. 8, Indian F. Act, 1948.

6 Substituted by s. 3, F. Act, 1953, w.e.f. 1-4-1953.

7 Inserted by s. 5, Taxation Laws (Amendment) Act, 1960, w.e.f. 1-4-1960.

8 Substituted for "one-twentieth of the assessee's total income" by s. 7, F. Act, 1960, w.e.f. 1-4-1960.

9 Substituted for "one hundred thousand rupees" by s. 7, F. Act, 1960, w.e.f. 1-4-1960.

15C. Exemption from tax of newly established industrial undertakings :-

10[15C. Exemption from tax of newly established industrial undertakings.

(1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking **11**[or hotel] to which this section applies as do not exceed six per cent, per annum on the capital employed in the undertaking **11**[or hotel], computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.

(2) This section applies to any industrial undertaking which-
(i) is not formed by the splitting up, or the reconstruction, of business already in existence or by the transfer to a new business of building, machinery or plant ¹²[previously used in any other business];

(ii) has begun or begins to manufacture or produce articles in ¹³[any part of the taxable territories] at any time within a period of ¹⁴[eighteen] years from the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

¹⁵[(iii) employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power:]

Provided that the Central Government may, by notification in the Official Gazette, direct that the exemption conferred by this section shall not apply to any particular industrial undertaking.

¹⁶[(2A) This section applies to any hotel which-

(a) starts functioning on or after the 1st day of April, 1961, and is not formed by the splitting up, or the reconstruction, of business already in existence or by the transfer to a new business of building, machinery or plant previously used in any other business;

(b) is owned and run by a company registered in the taxable territories with a paid-up capital of not less than five hundred thousand rupees;

(c) is run in premises which are owned by the company;

(d) has such number and types of guest rooms and provides such amenities as may be prescribed, having regard to the population and the tourist importance of the place in which the hotel is located; and

(e) is for the time being approved for the purposes of this subsection by the Central Government.]

(3) The profits or gains of an industrial undertaking ¹⁷[or a hotel] to which this section applies shall be computed in accordance with the provisions of section 10.

(4) The tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking ¹⁷[or a hotel] as is attributable to that part of the profits or gains on which the tax is not payable under this section.

17[Explanation.-The amount of dividend in respect of which the tax is not payable under this sub-section shall be computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.]

(5) Nothing in this section shall affect the application of section 23A in relation to the profits or gains of an industrial undertaking **17**[or a hotel] to which this section applies **18****.

19[(6) The provisions of this section **20**[shall, in relation to an industrial undertaking, apply] to the assessment for the financial year next following the previous year in which the assessee begins to manufacture or produce articles and for the four assessments immediately succeeding:]

21[Provided that where the assessee is a co-operative society, this sub-section shall have effect as if for the words "four assessments" the words "six assessments" had been substituted.]

22[(7) The provisions of this section shall, in relation to a hotel, apply to the assessment for the financial year next following the previous year in which the hotel starts functioning and for the four assessments immediately succeeding.]]

10 Inserted by s. 13, Taxation Laws (Extension to Merged States and Amendment) Act, 1949.

11 Inserted by s. 7, F. Act, 1961, w.e.f. 1-4-1961.

12 Retrospectively substituted for "used in a business which was being carried on before the 1st day of April, 1948", by s. 6, F. Act, 1959.

13 Substituted for "any Province in India" by Adaptation of Laws Order, 1950.

14 "Six" substituted for "three" by s. 10, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952; "eight" for "six" by s. 3, F. Act, 1954, w.e.f. 1-4-1954; "thirteen" for "eight" by s. 11, F. Act, 1956, w.e.f. 1-4-1956; and "eighteen" for "thirteen" by s. 8, F. Act, 1960, w.e.f. 1-4-1960.

15 Substituted by s. 10, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

16 Inserted by s. 7, F. Act, 1961, w.e.f. 1-4-1961.

17 Inserted by s. 7, F. Act, 1961, w.e.f. 1-4-1961.

18 "And for the purposes of that section, the expression assessable

income shall be deemed to include the profits or gains in respect of which the tax is not payable under this section" omitted by s. 12 F. Act 1955 w.e.f. 1-4-1955.

19 Substituted by s. 10, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

20 Substituted for "shall apply" by s. 7, F. Act, 1961, w.e.f. 1-4-1961.

21 Inserted by s. 8, F. Act, 1960, w.e.f. 1-4-1960.

22 Inserted by s. 7, F. Act, 1961, w.e.f. 1-4-1961.

16. Esemptions and exclusions in determining the total income :-

. :-

(1) In computing the total income of an assessee sums exempted under the proviso to sub-section (1) of Section 7 , the provisos to Section 8 , Sub- section (2) of section 14 and section 15 , shall be included.

(2) For the purposes of sub-section (1), any sum mentioned in clause (a) of sub-section (8) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

17. Reduction of tax when margin above a certain limit is small :-

. :- Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit he is liable to pay income-tax or to- pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely:

(a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and.

(b) the amount by which his total income exceeds that sum.

CHAPTER 4 DEDUCTIONS AND ASSESSMENT.

18. payment by deduction at source :-

. . :-

(1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be leviable in advance by

deduction at the time of payment in respect of income chargeable under the following heads:

- (i) "Salaries"; and
- (ii) "Interest on securities."

(2) Any person responsible for paying any income chargeable under the head " Salaries " shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(3) The person responsible for paying any income chargeable under the head "Interest on securities " shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate.

(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 shall be treated as a payment of income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Board of Inland Revenue directs.

(7) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(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 in accordance with the provisions of sub-section (3) shall, at the time of payment of interest, furnish to the person to whom the interest is paid a

certificate to the effect that income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

18A. Advance payment of tax :-

¹⁵[18A. Advance payment of tax.

-(1) (a) ¹⁶[In the case of income other than income chargeable under the head "Salaries",] the Income-tax Officer may, on or after the 1st day of April in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, ¹⁷[if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees]. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income the same proportion as the amount of such inclusions bears to his total income or, in cases where under the provisions of sub-section (1) of section 17 both income-tax and super-tax or super-tax are chargeable with reference to the total world income, shall bear to the total amount of income-tax and super-tax which would have been payable on his total world income of the said previous year had it been his total income the same proportion as the amount of such inclusions bears to his total world income. ¹⁸[The income-tax and super-tax so calculated shall be reduced by the amount of income-tax and super-tax which would be deductible during the said financial year in accordance with the provisions of section 18 on any income (other than income chargeable under the head "Salaries") included in the said total income:]

Provided that, where the previous year of the assessee in respect of any source of income ends after the 31st day of December and before the 30th day of April, the order in writing issued by the Income-tax Officer requiring the payment of income-tax and super-tax on that source of income shall substitute for the four quarterly payments hereinbefore specified, three payments of equal amount to be made on the 15th day of September, the 15th day of

December and the 15th day of March, respectively:

Provided further that, if the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than that for which the assessee's last assessment has been completed, his share in the profits of the firm shall, for the purposes of this sub-section, be included in his total income on the basis of the latest assessment of the firm:

Provided further that, if after the making of an order by the Income-tax Officer and before the 15th day of February of the financial year an assessment of the assessee or of the registered firm of which he is a partner is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates if more than one, falling after the date of the amended order, the tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original order; but if the amount already paid exceeds the tax determined on the revised basis, the excess shall be refunded.

(b) If the notice of demand issued under section 29 in pursuance of the order under clause (a) of this sub-section is served after any of the dates on which the instalments specified therein are payable, the tax shall be payable in equal instalments on each of such of those dates as fall after the date of the service of the notice of demand, or in one sum on the 15th day of March if the notice is served after the 15th day of December.

(2) If any assessee who is required to pay tax by an order under sub-section (1) estimates at any time before the last instalment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him calculated in the manner laid down in sub-section (1) on that part of his income for such period, and shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in sub-section (1)(a) as have not expired or in one sum if only the last of such dates has not expired:

Provided that the assessee may send a revised estimate of the tax payable by him before any one of the dates specified in sub-section

(1)(a) and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

(3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following ¹⁹[is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees], send to the Income-tax Officer an estimate of the tax payable by him on that part of his income ²⁰[which is not chargeable under the head "Salaries"] of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount, on such of the dates specified in that sub-section as have not expired, by instalments which may be revised according to the proviso to sub-section (2).

(4) Where part of the income to which sub-section (1), (2) or (3) applies consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the quarterly instalments of tax become due, he may defer payment of tax on that part of his income to the date on which such income would be normally received or adjusted and if he does so he shall communicate to the Income-tax Officer the date to which such payment is deferred: Provided that, if the tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the tax shall be payable with six per cent, simple interest per annum from the date of such receipt or adjustment to the date of payment of the tax.

(5) ²¹[The Central Government shall pay simple interest-

(i) at two per cent. per annum on any amount payable in accordance with the provisions of this section before the 1st day of April, 1955, and paid accordingly;

(ii) at four per cent. per annum on any amount payable in accordance with the provisions of this section after the 1st day of April, 1955, and paid accordingly;]

from the date of payment ²²[to the date of the provisional assessment made under section 23B, or if no such assessment has been made,] to the date of the assessment (hereinafter called the "regular assessment") made under section 23 of the income, profits and gains of the previous year for an assessment for the year next

following the year in which the amount was payable:

Provided that on any portion of such amount which is refunded under the foregoing provisions of this section interest shall be payable only up to the date on which the refund was made:

23[Provided further that for any period beginning with the 1st day of April, 1952, interest shall be payable only on the amount by which the aggregate sum of any instalments paid during any financial year in which they are payable under this section exceeds the amount of the tax determined on regular assessment calculated as hereunder-

(i) in respect of such instalments paid in any financial year before the said date, from the said date to the date of the regular assessment;

(ii) in respect of such instalments paid after the said date, from the beginning of the financial year next following to the date of the regular assessment.]

(6) Where in any year an assessee has paid tax under sub-section (2) or sub section (3) on the basis of his own estimate, and the tax so paid is less than eighty per cent. of the tax determined on the basis of the **24**[regular assessment (reduced by the amount of tax deductible in accordance with the provisions of section 18 on any income, other than income chargeable under the head "Salaries", included in such assessment), so far as such tax relates to income other than income chargeable under the head "Salaries"] and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of six per cent. per annum from the 1st day of January in the financial year in which the tax was paid up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent.:

25[Provided that for any period after the 31st day of March, 1952, interest shall be payable at the rate of four per cent. per annum:]

1[Provided **25**[further] that where a provisional assessment is made under section 23B, interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid, and thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to income **2**[other than income chargeable under the head "Salaries"]) falls short of the said eighty per cent.:]

Provided ¹[also] that, where, as a result of an appeal under section 31 or section 33 or of a revision under section 33A or of a reference to the High Court under section 66, the amount on which interest was payable under this sub-section has been reduced the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded together with the amount of income-tax that is refundable:

Provided further that, where a business, profession or vocation is newly set up and is assessable on the income, profits and gains of its first previous year in the financial year following that in which it is set up, the interest payable shall be computed from the 1st day of April of the said financial year:

²⁵[Provided further that in such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee.]

(7) Where, on making the regular assessment, the Income-tax Officer finds that any assessee has-

(a) under sub-section (2) or sub-section (3) underestimated the tax payable by him and thereby reduced the amount payable in any of the first three instalments, or

(b) under sub-section (4) wrongly deferred the payment of tax on a part of his income,

he may direct that the assessee shall pay simple interest at six per cent. per annum, in the case referred to in clause (a) for the period during which the payment was deficient on the difference between the amount paid in each such instalment and the amount which should have been paid having regard to the aggregate tax actually paid under this section during the year, and in the case referred to in clause (b) for the period during which the payment of tax was wrongly deferred on the amount of which the payment was so deferred:

Provided that for the purposes of this sub-section any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

(8) Where, on making the regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the foregoing provisions of this section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment.

(9) If the Income-tax Officer, in the course of any proceedings in

connection with the regular assessment, is satisfied that any assessee-

(a) has furnished under sub-section (2) or sub-section (3) estimates of the tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to comply with the provisions of sub-section (3),

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income, and in the case referred to in clause (b), to have failed to furnish thereturn of his total income; and the provisions of section 28, so far as may be, shall apply accordingly:

Provided that the amount of penalty leviable shall, in the case referred to 11. clause (a), be a sum not exceeding one-and-a-half times the amount by which the tax actually paid during the year under the provisions of this section falls short of the tax that should have been paid by the assessee under sub-section (1) or eighty per cent, of the tax determined on the basis of the regular assessment as modified in the manner provided in sub-section (6), whichever is the less, and, in the case referred to in clause (b), one-and-a-half times the said eighty per cent.

(10) (a) If any assessee does not pay on the specified dates any instalment of tax that he is required to pay under sub-section (1) and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (2) an estimate or a revised estimate of the tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments.

(b) If any assessee has sent under sub-section (2) or sub-section (3) an estimate or a revised estimate of the tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in sub-section (1), he shall be deemed to be an assessee in default in respect of such instalment or instalments:

Provided that the assessee shall not, under clause (a) or (b), be deemed to be in default in respect of any amount of which the payment is deferred under sub-section (4) until after the date communicated by him to the Income-tax Officer under that sub-section.

(11) Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of this section shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the

financial year next following the year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment.]

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

15 Inserted by s. 5, Indian I.T. (Amendment) Act, 1944.

16 Substituted for "In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment" by s. 10, F. Act, 1960, w.e.f. 1-4-1960.

17 Substituted for "if that total income exceeded six thousand rupees" by s. 13, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

18 Inserted by s. 10, F. Act, 1960, w.e.f. 1-4-1960.

19 Substituted for "is likely to exceed six thousand rupees" by s. 13, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

20 Substituted for "to which the provisions of section 18 do not apply" by s. 10, F. Act, 1960, w.e.f. 1-4-1960.

21 Substituted for "The Central Government shall pay on any amount paid under this section simple interest at two per cent, per annum" by s. 14, F. Act, 1955, w.e.f. 1-4-1955.

22 Inserted by s. 16, Taxation Laws (Extension to Merged States and Amendment) Act, 1949.

23 Inserted by s. 13, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

24 Substituted for "regular assessment, so far as such tax relates to income to which the provisions of section 18 do not apply" by s. 10, F. Act, 1960, w.e.f. 1-4-1960.

25 Inserted by s. 13, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

1 Inserted by s. 16, Taxation Laws (Extension to Merged States and Amendment) Act, 1949.

2 Substituted for "to which the provisions of section 18 do not apply" by s. 10, F. Act, 1960, w.e.f. 1-4-1960.

3 Inserted by s. 9, I.T. and E.P.T. (Amendment) Act, 1947.

19. Payment in other cases :-

. :- In the case of income chargeable under any other heads than those mentioned in sub-section (1) of section 18 , and in any case where income-tax has not been deducted in accordance with the provisions of that section, the tax shall be payable by the assessee direct.

19A. Supply of information regarding dividends :-

⁵[19A. Supply of information regarding dividends.

The principal officer of every company ⁶[which is an Indian company or a company which has made such effective arrangements as may be prescribed for the declaration and payment of dividends in ⁷[the taxable territories]] shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.]

5 Inserted by s. 2, Indian I.T. (Amendment) Act, 1926.

6 Inserted by s. 8, Indian F. Act, 1948.

7 Substituted for "British India" by Adaptation of Laws Order, 1950.

20. Certificate by company to shareholders receiving dividends :-

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

20A. Supply of information regarding interest :-

⁸[20A. Supply of information regarding interest.-

The person responsible for paying any interest not being "Interest on securities" shall, on or before the 15th day of June in each year,

furnish to the prescribed officer a return in the prescribed form and modified 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 ⁹[four hundred] rupees as may be prescribed in this behalf, together with the amount paid to each such person.]

8 Inserted by s. 9, Indian I.T. (Second Amendment) Act, 1933.

9 Substituted for "one thousand" by s. 22, Indian I.T. (Amendment) Act, 1939.

21. Annual return :-

. :- The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every 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, a return in writing showing

(a) the name and, so far as it is known; the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head " Salaries " of such amount as may be prescribed;

(b) the amount of the income so received by each such person, and the time or times at which the same was paid;

(c) the amount deducted in respect of income-tax from the income of each such person.

22. Return of Income :-

. :-

(1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year:

Provided that the Income-tax Officer may, in his discretion) extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income-tax Officers opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2); or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person 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 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.

23. Assessment :-

. :-

(1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officers 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 the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment.

23A. Power to assess companies to super-tax on undistributed income in certain cases :-

⁹[23A. Power to assess companies to super-tax on undistributed income in certain cases.

¹⁰[(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 within the twelve months immediately following the expiry of that previous year are less than the statutory percentage of the total income of the company of that previous year as reduced by-

(a) the amount of income-tax and super-tax payable by the company in respect of its total income, but excluding the amount of any super-tax payable under this section;

(b) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income; and

(c) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949 (X of 1949);

the Income-tax Officer shall, ¹¹[unless he is satisfied-

(i) that, having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of a dividend or a larger dividend than that declared would be unreasonable; or

(ii) that the payment of a dividend or a larger dividend than that declared would not have resulted in a benefit to the revenue];

¹²[or]

¹²[(iii) that at least seventy-five per cent. of the share capital of the company is throughout the previous year beneficially held by

an institution or fund established in the taxable territories for a charitable purpose the income whereof is exempt under clause (i) of sub-section (3) of section 4;]

make an order in writing that the company shall, apart from the sum determined as payable by it on the basis of the assessment under section 23, be liable to pay super-tax at the rate of fifty percent. in the case of a company whose business consists wholly or mainly in the dealing in or holding of investments, and at the rate of thirty-seven per cent. in the case of any other company on the undistributed balance of the total income of the previous year, that is to say, on the total income as reduced by the amounts, if any, referred to in clause (a), clause (b) or clause (c) and the dividends actually distributed, if any.

(2) No order under sub-section (1) shall be made,-

(i) in the case of a company whose business consists wholly or mainly in the dealing in or holding of investments which has distributed not less than **13**[eighty] per cent. of its total income as reduced by the amounts, if any, referred to in clause (a), clause (b) or clause (c) of sub-section (1); or

(ii) in the case of any other company whose distribution falls short of the statutory percentage by not more than five per cent. of its total income as reduced by the amounts, if any, aforesaid; or

(iii) in any case where according to the return made by a company under section 22 it has distributed not less than the statutory percentage of its total income as reduced by the amounts, if any, aforesaid, but in the assessment made by the Income-tax Officer under section 23 a higher total income is arrived at and the difference in the total income does not arise out of the application of the proviso to section 13 or sub-section (4) of section 23 or the omission by the company to disclose its income fully and truly;

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 the statutory percentage of the total income of the company as reduced by the amounts, if any, aforesaid.]

(3)-(7) **14*** * * * *

(8) **15*** * No order shall be made by the Income-tax Officer under sub-section (1) unless the previous approval of the Inspecting Assistant Commissioner of Income-tax has been obtained, and the Inspecting Assistant Commissioner shall not give his approval to any order proposed to be made by the Income-tax Officer until he

has given the company concerned an opportunity of being heard.

(9) Nothing contained in this section shall apply to any company in which the public are substantially interested or to a subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.

Explanation ¹⁶[1].-For the purposes of this section, a company shall be deemed to be a company in which the public are substantially interested-

(a) if it is a company owned by the Government or in which not less than forty per cent, of the shares are held by the Government;

(b) if it is not a private company as defined in the Indian Companies Act, 1913 (VII of 1913), and

(i) its shares (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 fifty per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the previous year beneficially ¹⁷[held by the Government or a corporation established by a Central, State or Provincial Act or the public] (not including a company to which the provisions of this ¹⁸[section] apply):

Provided that in the case of any such company as is referred to in ¹⁹[clause (ii) of Explanation 2], this sub-clause shall apply as if for the words "not less than fifty per cent.", the words "not less than forty per cent." had been substituted;

(ii) the said shares were at any time during the previous year the subject of dealings in any recognised stock exchange in India or were freely transferable by the holder to other members of the public; and

(iii) the affairs of the company or the shares carrying more than fifty per cent. of the total voting power were at no time during the previous year controlled or held by less than six persons, ²⁰[and in computing the number of six persons aforesaid, the Government or any corporation established by a Central, State or Provincial Act or a company to which the provisions of this section do not apply shall not be taken into account, and persons who are relatives of one another and persons who are nominees of any other person together with that other person shall be treated as a single person, the expression "relative" in this context meaning husband, wife, lineal ascendant or descendant, brother or sister]:

Provided that in the case of any such company as is referred to in

21[clause (ii) of Explanation 2], this clause shall apply as if for the words "more than fifty per cent.", the words "more than sixty per cent." had been substituted.]

22[Explanation 2.-For the purposes of this section, statutory percentage means,-

(i) in the case of a company whose business consists wholly or mainly in the dealing in or holding of investments

23[90%]

(ii) in the case of an Indian company whose business consists wholly in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power

24[50 %]

(iii) in the case of an Indian company, a part only of whose business consists in any of the activities specified in clause (ii)-

(a) in relation to the said part of the company's business ..

24[50%]

(b) in relation to the remaining part of the company's business-

(1) if it is a company which satisfies the conditions specified in sub-clause (a) of clause (iv)

90 %

(2) in any other case

25[65 %]

the said percentages being applied separately with reference to the amounts of profits and gains attributable to the two parts of the company's business aforesaid as if the said amounts were respectively the total income of the company in relation to each of its parts, the amount of dividends and taxes also being similarly apportioned, for the purposes of sub-section (1)

(iv) in the case of any other company not referred to in the preceding clauses,-

(a) where the accumulated profits and reserves (including the amounts capitalised from the earlier reserves) representing accumulations of past profits which have not been the subject of an order under sub-section (1) exceed-either the aggregate of-

(1) the paid-up capital of the company exclusive of the capital, if any, created out of its profits and gains which have not been the subject of an order under sub section (1);

(2) 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

90%

(b) where sub-clause (a) does not apply

25[65 %].]

9 Substituted by s. 15, F. Act, 1955, w.e.f. 1-4-1955.

"For the removal of doubts, it is hereby declared that the provisions of section 23A of the Income-tax Act, as in force immediately before the 1st day of April, 1955, shall continue to apply to a company in respect of its profits and gains of a previous year relevant to any assessment year prior to the assessment year ending on the 31st day of March, 1956, and also to its shareholders referred to in sub-section (1) of section 23A as then in force in respect of their appropriate previous years, notwithstanding that the relevant assessment years in respect of such previous years end on or after the 31st day of March, 1956."-S. 20(4), F. Act, 1955.

10 Sub-ss. (1) and (2) substituted by s. 7, F. (No. 2) Act, 1957, w.e.f. 1-4-1957.

"For the removal of doubts, it is hereby declared that the provisions of section 23A of the Income-tax Act, as in force immediately before the 1st day of April, 1957, shall continue to apply to a company in respect of its profits and gains of a previous year relevant to any assessment year prior to the assessment year ending on the 31st day of March, 1958."-S.11(4), F. (No. 2) Act, 1957.

11 Substituted for "unless he is satisfied that, having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of a dividend or a larger dividend than that declared would be unreasonable" by s. 9, F. Act, 1958, w.e. f. 1-4-1958.

12 Inserted by s. 8, F. Act, 1961, w.e.f. 1-4-1960.

13 Substituted for "ninety" by s. 11, F. Act, 1960, w.e. f. 1-4-1960.

14 Omitted by s. 7, F. (No. 2) Act, 1957, w.e.f. 1-4-1957. (See p.67, f.n. 10.)

15 "Except in cases where a decision is given by the Commissioner of Income-tax under subsection (3) or the Board of Referees under sub-section (4)", omitted by s. 7, F. (No. 2) Act, 1957, w.e.f. 1-4-1957.

16 Inserted, by s. 7, F. (No. 2) Act, 1957, w.e.f. 1-4-1957.

17 Substituted for "held by the public", by s. 7, F. (No. 2) Act, 1957, w.e.f. 1-4-1957. (See p.67, f.n. 10.)

18 Substituted for "sub-section" by s. 15, F. Act, 1956, w.e.f. 1-4-1956.

19 Substituted for "sub-section (4)" by s. 7, F. (No. 2) Act, 1957, w.e.f. 1-4-1957.

20 Substituted for "(persons who are related to one another as husband, wife, lineal ascendant or descendant, brother or sister, as the case may be, being treated as a single person and persons who are nominees of another person together with that other person being likewise treated as a single person)", by s. 7, F. (No. 2) Act, 1957., w.e. f. 1-4-1957. (See p.67, f.n. 10.)

21 Substituted for "sub-section (4)", by s. 7, F. (No. 2) Act, 1957., w.e.f. 1-4-1957.

22 Inserted by s. 7, F. (No. 2) Act, 1957, w.e.f. 1-4-1957. (See p.67, f.n. 10.)

23 Substituted for "100%" by s. 11, F. Act, 1960, w.e.f. 1-4-1960.

24 Substituted for "45%" by s. 11, F. Act, 1959, w.e.f. 1-4-1960.

25 Substituted for "60%", by s. 11, F. Act, 1959., w.e.f. 1-4-1960.

23B. Power to make provisional assessment in advance of regular assessment :-

¹[23B. Power to make provisional assessment in advance of regular assessment.-

(1) The Income-tax Officer may, at any time after the receipt of a return made under section 22, proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to (i) the allowance referred to in paragraph (b) of the proviso to clause (vi) of sub-section (2) of section 10, and (ii) any loss carried forward under sub-section (2) of section 24.

(2) A partner of a firm may be provisionally assessed under sub-section (1) in respect of his share in the firms income, profits and gains, if its return has been received, although the return of the partner himself may not have been received.

(3) A firm may be provisionally assessed under sub-section (1) as if it were an unregistered firm, unless the firm fulfils such conditions as the Central Government may, by notification in the Official Gazette, specify in that behalf.

(4) There shall be no right of appeal against a provisional assessment made under sub-section (1).

(5) For the avoidance of doubt, it is hereby declared that the provisions of section 45 (except the first proviso) and section 46 apply in relation to any tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under section 23.

(6) Income-tax paid ²* * under section 18 or section 18A in respect of any income provisionally assessed under sub-section (1), shall be deemed to have been paid towards the provisional assessment.

(7) After a regular assessment has been made under section 23, any amount paid or deemed to have been paid towards a provisional assessment made under sub-section (1), shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment, exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

(8) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits, of any issue which may arise in the course of the regular assessment under section 23.]

1 Inserted by s. 17, Taxation Laws (Extension to Merged States and Amendment) Act, 1949.

2 "Or deemed to have been paid" omitted by s. 12, F. Act, 1959, w.e.f. 1-4-1960, subject to the special provisions in s. 3, F. Act, 1960.

24. Set-off of loss in computing aggregate income :-

. :-

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

(2) Where the assessee is a registered firm, and the-loss sustained cannot wholly be set-off under sub-section (1), any member of such firm shall be entitled to have set-off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set-off a.s is proportionate to his share in the firm.

24A. Assessment in case of departure from the taxable territories :-

²³[24A. Assessment in case of departure from ²⁴[the taxable territories],-

(1) When it appears to the Income-tax Officer that any person may leave ²⁴[the taxable territories] during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income ²⁵[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 ²⁴[the taxable territories], or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from ²⁴[the taxable territories]. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made]:

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment ¹[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 ²[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.]

23 Inserted by s. 11, Indian I.T. (Second Amendment) Act, 1933.

24 Substituted for "British India" by Adaptation of Laws Order, 1950.

25 Substituted by s. 28, Indian I.T. (Amendment) Act, 1939.

1 Substituted for "or have been assessed at too low a rate", by s. 28, Indian I.T. (Amendment) Act, 1939.

2 Substituted for "comprised in the period first referred to in", by s. 28, Indian I.T. (Amendment) Act, 1939.

24B. Tax of deceased person payable by representative :-

³[24B. Tax of deceased person payable by representative.-

(1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had "not died.

⁴[(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 ⁵* * 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, ⁶[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.]

3 Inserted by s. 11, Indian I.T. (Second Amendment) Act, 1933.

4 Substituted by s. 29, Indian I.T. (Amendment) Act, 1939.

5 "Of sub-section (2)" omitted by s. 29, Indian I.T. (Amendment) Act, 1939.

6 Inserted, by s. 29, Indian I.T. (Amendment) Act, 1939.

25. Assessment in case of discontinued business :-

. :-

(1) Where any business, profession or vocation commenced after the 31st day of March, 1922, 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 business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation which was in existence at the commencement of this Act, and on which, tax was at any time charged under the provisions of the Income Tax Act, 1918, is discontinued, no tax shall be payable VI of 1918 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 an assessment is to be made under sub-section, (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under subsection (2) of section 22 , and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

25A. Assessment after partition of a Hindu undivided family

:-

14[25A. Assessment after partition of a Hindu undivided family.-

(1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto **15**[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 **16*** * that the joint family property has been partitioned among the various members or groups of members in definite portions **17*** * 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, **18**[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 **19*** * partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the ²⁰[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.

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

14 Inserted by s. 4, Indian I.T. (Amendment) Act, 1928.

15 Inserted by s. 3, Indian I.T. (Second Amendment) Act, 1930.

16 "That a separation of members of the family has taken place and" omitted by s. 31, Indian I.T. (Amendment) Act, 1939.

17 "Before the end of the previous year" omitted by s. 3, Indian I.T. (Second Amendment) Act, 1930.

18 Inserted by s. 31, Indian I.T. (Amendment) Act, 1939.

19 "Separation or" omitted by s. 31, Indian I.T. (Amendment) Act, 1939.

20 Substituted for "separated members and groups of members", by s. 31, Indian I.T. (Amendment) Act, 1939.

21 Inserted by s. 3, Indian I.T. (Second Amendment) Act, 1930.

26. change in ownership of business :-

. :- Where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment.

26A. Procedure in registration of firms :-

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

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such

form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

27. Cancellation of assessment when cause is shown :-

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

28. penalty for concealment of income :-

. .

(1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income, or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall; in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income :

Provided that no such order shall be made, unless the assessee has been heard, or has been given a reasonable opportunity of being heard:

Provided, further, that no prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) An Assistant Commissioner or a Commissioner who has made an order under sub-section (1) shall forthwith send a copy of the same to the Income-tax Officer.

29. Notice of demand :-

. :- When the Income-tax Officer has determined a sum to be payable by an assessee under section 23 , or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

30. Appeal against assessment under this Act :-

. :-

(1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27 , or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to make a fresh assessment under section 27 , or to any order against him under sub-section (2) of section 25 or section 28 , made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23 , or under that sub-section read with section 27 .

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, or of the date of the refusal to make a fresh assessment under section 27 , as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

31. Hearing of appeal :-

. :-

(1) The 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 Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit. or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment. or, in the cases of an order under sub-section (2) of section 25 or section 28 ,

(c) confirm, cancel or vary such order : Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

32. Appeals against orders of Assistant Commissioner :-

. :-

(1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31 , may appeal to the Commissioner within thirty days of the making 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.

33. Power of review :-

. :-

(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 powers of an Assistant Commissioner under sub-section (4) of section 5 .

(2) On receipt of the record the Commissioner may make such inquiry 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.

33A. Power of revision by Commissioner :-

⁴[33A. Power of revision by Commissioner.-

(1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

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

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired, or

(b) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal, or

(c) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order ⁵[(or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period)], call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this subsection if-

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal, or

(b) where an appeal against the order has been made to the Appellate Assistant Commissioner, the appeal is pending before the Appellate Assistant Commissioner, or

(c) the order has been made the subject of an appeal to the Appellate Tribunal:

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

⁶[Explanation.-For the purposes of sub-sections (1) and (2), the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.]

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

4 Inserted by s. 18, Indian I.T. (Amendment) Act, 1941.

5 Inserted by s. 17, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

6 Inserted by s. 17, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

33B. Power of Commissioner to revise Income-tax Officers orders :-

(1) The Commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-section (1)-

(a) to revise an order of reassessment made under the provisions of section 34; or

(b) after the expiry of two years from the date of the order sought to be revised.

(3) Any assessee objecting to an order passed by the Commissioner under sub-section (1) may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.

(4) An appeal to the Appellate Tribunal under sub-section (3) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a treasury receipt in support of having paid the fee of Rs. 100, and such appeal shall be dealt with in the same manner as if it were an appeal under subsection (1) of section 33.

34. Income escaping assessment :-

. :- If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 , and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

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

35. Rectification of mistake :-

. :-

(1) The Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the assessment, and shall within the like period rectify any such mistake which has been brought to his notice by such assessee :

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Income-tax Officer has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29 , and the provisions of this Act shall apply accordingly.

36. Tax to be calculated to nearest anna :-

. :- In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

37. Power to take evidence on oath, etc. :-

. :- The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 , when trying a suit in respect of the following matters, namely:

(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, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and Section 228 of the Indian Penal Code, 1860 .

38. Power to call for information :-

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

(1) require any firm, or Hindu undivided family to furnish him 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.

39. power to inspect the register of members of any company :-

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

CHAPTER 5 LIABILITY IN SPECIAL CASES

40. Guardians, trustees and agents :-

. .:- In the case of any guardian, trustee or agent of any person

being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits 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.

41. Court of Words, etc :-

. :- In the case of income, profits or gains chargeable under received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amounts as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

42. Non-residents :-

. :

(1) In the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person

resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

43. Agent to include persons treated as such :-

. :- 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 no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

44. Liability in case of a discontinued firm or partnership :-

. .:- Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

44A. Liability to tax of occasional shipping :-

The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of ²³[the taxable territories] and carries on business in ²³[the taxable territories] in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as

the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

22 Inserted by s. 3, Indian I.T. (Further Amendment) Act, 1923.

23 Substituted for "British India" by Adaptation of Laws Order, 1950.

44B. Return of profits and gains :-

(1) Before the departure from any port in ²³[the taxable territories] of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and ²⁴[one-sixth] of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

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

23 Substituted for "British India" by Adaptation of Laws Order, 1950.

24 Substituted for "one-twentieth" by s. 3, F. Act, 1950, w.e.f. 1-4-1950.

44C. Adjustment :-

Nothing in this Chapter shall be deemed to prevent a principal from claiming, ²⁵[in the year] following that in which any payment has

been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.]

25 Substituted for "in any year" by s. 50, Indian I.T. (Amendment) Act, 1939.

44D. Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad :-

(1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in ²[the taxable territories], acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first-mentioned person for all the purposes of this Act.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in ²[the taxable territories], any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or moneys worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

(3) Sub-sections (1) and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either-

- (a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or
- (b) that the transfer and all associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.
- (4) For the purposes of this section, an "associated operation" means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.
- (5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in 3[the taxable territories], if-
- (a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to 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 ³[the taxable territories] shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (1) of section 23A, include references to so much of 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 obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(e) any body corporate incorporated outside ³[the taxable territories] shall be treated as if it were resident out of ³[the taxable territories] whether it is so resident or not.

(8) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income-tax (Amendment) Act, 1939.

(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.

1 Inserted by s. 51 Indian I.T. (Amendment) Act, 1939.

2 Substituted for "British India" by Adaptation of Laws Order, 1950.

3 Substituted for "British India" by Adaptation of Laws Order, 1950.

44E. Avoidance of tax by certain transactions in securities

:-

(1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as "the owner") agrees to sell or transfer those securities, and by the same or any collateral agreement-

(a) agrees to buy back or reacquire the securities, or

(b) acquires an option, which he subsequently exercises, to buy back or I reacquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect I of the securities is receivable otherwise than by the owner, the interest payable as I 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 reacquiring 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 reacquired.

(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 stocks and shares;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or

the manner in which they can be transferred.

(6) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities; and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

44F. Avoidance of tax by sales cum-dividend :-

(1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

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

section (3) applies.

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

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

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

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purpose of this section the expression "securities" includes stocks and shares.

CHAPTER 6 RECOVERY OF TAX AND PENALTIES.

45. Tax when payable :-

. :- Any amount specified as payable in a notice of demand 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.

46. Mode and time of recovery :-

. . :-

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

(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.

(3) In any area, with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

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

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

(6) The Local Government may direct with respect to any specified area, that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

46A. Persons leaving India to obtain tax clearance certificate :-

(1) Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India, or who, even if domiciled in India at the time of his departure, has, in the opinion of an Income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (XV of 1940), or the Business Profits Tax Act, 1947 (XXI of 1947), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

Provided that if the competent authority is satisfied that such person intends to return to India, he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside the territory allows any person to whom sub-section (1) applies, to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Income-tax Officer may, having regard to the circumstances of the case, determine.

Explanation.-For the purposes of this sub-section the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be, shall be deemed to be an assessee in default within the meaning of sub-section (1) of section 46.

(4) The Central Government may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

47. Recovery of penalties :-

. :- Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25 , section 28 or sub-section (1) of section 46 , shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER 7 REFUNDS

48. Refund :-

. :-

(1) If a shareholder in a company who has received any dividend therefrom satisfies the Income-tax Officer that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, he shall, on production of the certificate received by him under the provisions of section 20 , be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates.

(2) If a member of a registered firm satisfies the Income-tax Officer that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates.

(3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18 , satisfies the Income-tax Officer that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, 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.

48A. General power to make refunds :-

Omitted by s. 56 of the Indian Income-tax (Amendment) Act, 1939

49. Relief in respect of United Kingdom income-tax :-

. :-

(1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax

Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of S.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 and the rate at which he was entitled to, and obtained, relief under that section :

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax.

(2) In sub-section (1)

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

(b) the expression " Indian rate of tax " means the amount of the Indian income-tax divided by the income on which it was charged;

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

49A. Agreement for granting relief in respect of double taxation or for avoidance thereof :-

⁵[⁶49A. Agreement for granting relief in respect of double taxation or for avoidance thereof.-

The Central Government may enter into an agreement-

(a) ⁷* * with the Government of any country outside India for the granting of relief in respect of income on which have been paid both income-tax (including super-tax) under this Act and income-tax ⁸[in that country], or

(b) with the Government of any country outside India for the avoidance of double taxation of income, profits and gains under this Act and under the corresponding law in force in that country;

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.]

5 Ss. 49A, 49B, 49C and 49D inserted by s.58, Indian I.T. (Amendment) Act, 1939.

6 Substituted for ss. 49A and 49AA by s. 3, F. Act, 1953, w.e. f. 1-4-1953. S. 49AA inserted by India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947.

7 "With the Government of the State of Jammu and Kashmir or" omitted by s. 2 and Sch Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.

8 Substituted for "in that State or in that country, as the case may be" by s. 2 and Sch., Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.

49B. Relief to shareholders in respect of agricultural income-tax attributable to dividends :-

Where a company pays to a shareholder any dividend out of its profits and gains which is assessed to agricultural income-tax by any State Government, the shareholder shall be entitled to a reduction from the tax payable by him under this Act, of a sum equal to-

(a) that proportion of the agricultural income-tax (including super-tax, if any) paid by the company as the amount of the dividend attributable to the profits of the company assessed to agricultural income-tax bears to its total profits assessed to agricultural income-tax, reduced by the amount of refund, if any, allowed to him by the State Government; or

(b) where the shareholder-

(i) is not a company, the amount of income-tax (but not super-tax) payable by him under this Act; and

(ii) is a company, twenty per cent.;

on that portion of the dividend which is attributable to the profits of the company assessed to agricultural income-tax; whichever is less.

49BB. Relief to company in respect of dividend paid out of past taxed profits :-

(1) Where in respect of any previous year relevant to the assessment year commencing after the 31st day of March, 1960, an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends within India, pays any dividend wholly or partly out of its profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960, and deducts tax therefrom in accordance with the provisions of section 18, credit shall be given to the company against the income-tax, if any, payable by it on the profits and gains of the previous year during which the dividend is paid, of a sum calculated in accordance with the provisions of sub-

section (2), and where the amount of credit so calculated exceeds the income-tax payable by the company as aforesaid, the excess shall be refunded.

(2) The amount of income-tax to be given as credit under sub-section (1) shall be a sum equal to ten per cent, of so much of the dividends referred to in sub-section (1) as are paid out of the profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960.

Explanation I.-For the purposes of this section, the aggregate of the dividends declared by a company in respect of any previous year shall be deemed first to have come out of the distributable income of that previous year and the balance, if any, out of the undistributed part of the distributable income of one or more previous years immediately preceding that previous year as would be just sufficient to cover the amount of such balance and as has not likewise been taken into account for covering such balance of any other previous year.

Explanation II.-The "distributable income" of any previous year shall mean the total income assessed for that year as reduced by-

(i) the amount of income-tax and super-tax payable by the company in respect of the said total income;

(ii) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;

(iii) the amount paid to any charitable institution or fund to the extent to which it is exempt from tax under section 15B; and

(iv) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949 (X of 1949),

and as increased by- ,

(a) any profits and gains or receipts of the company not included in its total income; and

(b) any amount attributable to any allowance made in computing the profits and gains of the company for purposes of assessment, which the company has not taken into account in its profit and loss account.

49C. Relief granted to a company to be deemed relief granted to shareholder :-

Omitted by s. 15 of the Finance Act, 1959, with effect from 1st

April 1960, subject to the special provisions in s. 3 of the Finance Act, 1960.

49D. Relief in respect of incomes accruing or arising outside the taxable territories :-

11[49D. Relief in respect of incomes accruing or arising outside the taxable territories.-

(1) If any person who is resident in the taxable territories in any year proves that, in respect of his income which accrues or arises during that year without the taxable territories (and which is not deemed to accrue or arise in the taxable territories), he has paid in any country, with which there is no reciprocal arrangement for relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower.

(2) The Central Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall also apply in relation to any such income accruing or arising in the United Kingdom and chargeable under this Act for the year ending on the 31st day of March, 1950, or for the year ending on the 31st day of March, 1951, or for the year ending on the 31st day of March, 1952.

12 [(3) If any person who is resident in the taxable territories in any year proves that in respect of his income which accrues or arises to him during that year in Pakistan he has paid in that country, by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him-

(a) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also; or

(b) of a sum calculated on that income at the Indian rate of tax; whichever is less.

(4) Sub-section (3) shall apply in relation to all assessments for the years subsequent to the year ending on the 31st day of March, 1948, and, notwithstanding anything contained in section 50, a claim for refund in respect of any of the years ending on the 31st

day of March of the years 1949 to 1952 inclusive, may be entertained if made before the 31st day of March, 1957.]

Explanation.-In this section,-

- (i) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;
- (ii) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the other provisions of this Act but before deduction of any relief due under this section, by the total income;
- (iii) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after deduction of all reliefs due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income assessed in the said country;
- (iv) the expression "income-tax in relation to any country" includes any excess profits tax or business profits tax charged on the profits by the Government of that country and not by the Government of any part of that country or a local authority in that country.]]

11. Substituted by s. 24, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

12. Inserted by s. 23, F. Act, 1956, w.e.f. 1-4-1956.

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

¹³[49E. Power to set off amount of refunds against tax remaining payable.-

Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, ¹⁴[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, ¹⁵[interest or penalty], if any, remaining payable by the person to whom the refund is due.]

13. Inserted as s. 49A by s. 19, Indian I.T. (Second Amendment) Act, 1933; and renumbered "49E" by s. 59, Indian I.T. (Amendment) Act, 1939.

14. Substituted for "Assistant Commissioner" by s. 59, Indian I.T. (Amendment) Act, 1939.

15. Inserted by s. 25, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

49EE. Power to set off in certain cases moneys in the possession of Government against tax found due under assessments, etc., thereafter to be made :-

16[49EE. Power to set off in certain cases moneys in the possession of Government against tax found due under assessments, etc., thereafter to be made.-

(1) Where in pursuance of any settlement relating to the assessment, reassessment or case of any person made or purported to have been made before the 17th day of January, 1959, whether under this Act or otherwise, any sum of money or any security for the payment of any sum of money has been paid or furnished by him, or on his behalf by any other person, no claim for the refund of any sum so paid or for the return of any security so furnished shall be entertained or allowed on the ground that the settlement is invalid-

(a) in any case where a notice under section 34 in respect of the income, profits or gains relating to the settlement aforesaid has been issued before the 17th day of January, 1959, and

(b) in any other case, for a period of two years from that date and, if during the period of the said two years any notice under section 34 is issued, pending the completion of the assessment, reassessment or settlement in pursuance of such notice;

and, accordingly, no application, suit or other legal proceeding for the refund of any such money or the return of any such security shall lie or be allowed to continue-

(i) pending the completion of the assessment, reassessment or settlement in pursuance of the notice referred to in clause (a); or

(ii) during the period of two years referred to in clause (b) or pending the completion of the assessment, reassessment or settlement in pursuance of the notice referred to in that clause.

(2) The Income-tax Officer, Appellate Assistant Commissioner or the Commissioner, as the case may be, may set off the amount referred to in sub-section (1) or the amount of the security referred to in that sub-section which may be realised for the purpose against the tax, interest, penalty or any other sum which may become payable by reason of any assessment, reassessment or

settlement made in pursuance of the notice referred to in clause (a) of that sub-section or in pursuance of any such notice issued within the period of two years referred to in clause (b) of that sub-section. (3) In computing the period of limitation prescribed for any legal proceeding in relation to any such sum or security aforesaid, the time during which any such proceedings cannot be instituted by reason of the provisions contained in sub-section (1) shall be excluded.]

16. Inserted by s. 3, Indian I.T. (Amendment) Act, 1959.

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

17[49F. Power of representative of deceased person or person disabled to make claim on his behalf.-

Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 **18*** * or section 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.]

17. Inserted as s. 49B by s. 19, Indian I.T. (Second Amendment) Act, 1933; and renumbered "49F" by s. 60, Indian I.T. (Amendment) Act, 1939.

18. "Or 48A" omitted by s. 60, Indian I.T. (Amendment) Act, 1939.

50. Limitation of claims for refund :-

. .:- No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered.

CHAPTER 8 OFFENCES AND PENALTIES

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

. . If a person fails without reasonable cause or excuse-

- (a) to deduct and pay 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 21 , section 22 , or section 38 ;
- (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22 , such accounts and documents as are referred to in. the notice;
- (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39 , he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

52. False statement in declaration :-

. .:- If a person makes a statement in a verification mentioned in Section 22 , 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 deemed to have committed the offence described in Section 177 of the Indian Penal Code, 1860 .

53. Prosecution to be at instance of Assistant Commissioner :-

. .:-

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

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

54. Disclosure of information by a public servant :-

. . :-

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as

confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents) evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine:

Provided that nothing in this section shall apply to the disclosure

(a) of any such particulars for the purposes of a prosecution under Section 193 of the Indian Penal Code, 1860 in respect of any such statement, return, accounts. documents) evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(d) of such facts to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under S.27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act :

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER 9 SUPER-TAX

55. Charge of super-tax :-

. . :- In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, unregistered firm, Hindu undivided family or company, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature:

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

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

. :- Subject to the provisions of this Chapter, the total income of any individual, unregistered firm, Hindu undivided family or company shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

56A. Exemption from super-tax of certain dividends :-

³[56A. Exemption from super-tax of certain dividends.-

(1) No super-tax shall be payable by a company on such part of its total income as consists of dividends received from an Indian company formed and registered after the 31st day of March, 1952, where-

(i) the Central Government is satisfied that the Indian company is wholly or mainly engaged in an industry for the manufacture or production of any one or more of the following, namely:-

(1) Coal, including coke and other derivatives;

⁴[(2) Iron and steel (metal), ferro-alloys, and special steels;]

(3) Motor and aviation fuel, kerosene, crude oils and synthetic oils (not being oil exploration);

⁵[(4) Chemicals (other than fertilisers) of the following types:-

(i) Inorganic heavy chemicals;

(ii) Organic heavy chemicals;

((iii) Fine chemicals including photographic chemicals;

(iv) Synthetic rubber;

(v) Man-made fibres other than viscose rayon;

(vi) Coke oven by-products;

(vii) Coal-tar distillation products like naphthalene, anthracene and the like;

(viii) Explosives including gun-powder and safety fuses;

(4A) Inorganic, organic and mixed fertilisers;

(5) Industrial machinery of the following types (including gear wheels and parts thereof, boilers and steam generating plants):-

A. Major items of specialised equipment used in specific industries:

(i) Textile machinery (such as frames, carding machines, power-looms and the like) including textile accessories;

(ii) Jute machinery;

(iii) Rayon machinery;

- (iv) Sugar machinery;
- (v) Tea machinery;
- (vi) Mining machinery;
- (vii) Metallurgical machinery;
- (viii) Cement machinery;
- (ix) Chemical machinery;
- (x) Pharmaceuticals machinery;
- (xi) Paper machinery;

B. General items of machinery used in several industries, such as the equipment required for various "unit processes":

- (i) Size reduction equipment-crushers, ball mills and the like;
- (ii) Conveying equipment-bucket elevators, ship hoists, cranes, derricks and the like;
- (iii) Size separation units-screens, classifiers and the like; (iv) Mixers and reactors-kneading mills, turbo mixers and the like;
- (v) Filtration equipment-filter presses, rotary filters and the like;
- (vi) Centrifugal machines;
- (vii) Evaporators;
- (viii) Distillation equipment;
- (ix) Crystallisers;
- (x) Driers;
- (xi) Power-driven pumps-reciprocating, centrifugal and the like;
- (xii) Air and gas compressors and vacuum pipes (excluding electrical furnaces);
- (xiii) Refrigeration plants for industrial use;
- (xiv) Fire fighting equipment and appliances including fire engines;

C. Other items of industrial machinery:

- (i) Ball, roller and tapered bearings;
- (ii) Speed reduction units;
- (iii) Grinding wheels and abrasives;]
- (6) Machinery and equipment for the generation, transmission and distribution of electric energy;
- (7) Non-ferrous metals including alloys;
- (8) Paper including newsprint and paper board;
- (9) Internal combustion engines;
- (10) Power-driven pumps;
- 6[(11) Automobiles;
- (12) Tractors;
- (13) Cement;
- (14) Electric motors;
- (15) Locomotives;
- (16) Rolling stock;

- (17) Machine tools;
- (18) Agricultural implements;
- (19) Ferro-manganese;
- (20) Dye-stuffs;]
- ⁷[(21) Refractories;]

as specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (LXV of 1951), and

(ii) the income of the Indian company would have been exempt under the operation of section 15C if the provisions of that section had been applicable thereto.

(2) The exemption specified in sub-section (1) shall apply also to dividends payable to a company in respect of any fresh capital raised by an Indian company after the 28th day of February, 1953, by public subscription for the purpose of increasing the production of, or starting a separate unit of, any one or more of the items specified in clause (i) of sub-section (1).]

3 Inserted by s. 3, F. Act, 1953, w.e.f. 1-4-1953.

4 Substituted by s. 8, Taxation Laws (Amendment) Act, 1960, w.e.f. 1-4-1960.

5 Substituted for items (4) and (5), Taxation Laws (Amendment) Act, 1960, w.e.f. 1-4-1960.

6 Inserted by s. 17, F. Act, 1955, w.e.f. 1-4-1955.

7 Inserted by s. 10, F. Act, 1961, w.e.f. 1-4-1961.

57. Non-resident partner and shareholders :-

. . :-

(1) In the case of any assessee residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

(2) Where any assessee who is liable to pay super-tax on the amount of the dividends receivable by him from any company is to the knowledge of the principal officer of the company, residing out of British India, the principal officer shall be liable to pay the super-tax due by such non-resident person in respect of the dividends

received by him from the company, and shall have power to deduct the amount of such super-tax from the amount payable by the company to such assessee.

(3) Where any person pays any tax under the provisions of this section on account of an assessee who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident assessee under the provisions of section 42 and section 43 .

58. Application of Act to super-tax :-

. :-

(1) All the provisions of this Act, except section 3 , the proviso to sub-section (1) of section 7 , the provisos to section 8 , sub-section (2) of section 14 , and section 15 , section 17 , section 18 , section 19 , section 20 , section 21 and section 48 shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in section 57 , super-tax shall be payable by the assessee direct.

58A. Definitions :-

In this Chapter, unless there is anything repugnant in the subject or context,-

(a) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(b) an "employer" means-

(i) a Hindu undivided family, company, firm or other association of 4* * 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, 5* * 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.

3 Inserted by s. 5, Indian I.T. (Provident Funds Relief) Act, 1929.

4 "Individuals or" omitted by s. 71, Indian I.T. (Amendment) Act, 1939.

5 "Or section 11" omitted, by s. 71, Indian I.T. (Amendment) Act, 1939.

58B. The according and withdrawal of recognition :-

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

6* * * * *

7[(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.

7[(3)] An order withdrawing recognition shall take effect from the day on which it is made.

8[(3A)] An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred

to or merged in the undertaking of the employer maintaining the first-mentioned fund.]

⁷[(4)] An employer objecting to an order of the Commissioner refusing to recognise ⁹[or an order withdrawing recognition from] a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

⁶ Sub-s. (2) omitted by s. 72, Indian I.T. (Amendment) Act, 1939.

⁷ Sub-ss. (3), (4) and (5) renumbered "(2)", "(3)" and "(4)" respectively, by Indian I.T. (Amendment) Act, 1939.

⁸ Inserted by s. 9, Indian I.T. (Amendment) Act, 1940.

⁹ Inserted by s. 72, Indian I.T. (Amendment) Act, 1939.

58C. Conditions to be satisfied by a recognised provident fund :-

(1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the ¹⁰[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 ¹¹[the taxable territories]:

¹²[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 ¹¹[the taxable territories] notwithstanding that a proportion not exceeding ten per cent, of the employees is employed outside India.]

(b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employees salary in that proportion, at each periodical payment of such salary in that year, and credited to the employees individual account in the fund:

¹³[Provided that an employee who retains his employment while serving in ¹⁴[the Armed Forces of the Union] or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service

(Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered ¹⁴[the Armed Forces of the Union], or been so taken into or employed in the national service, contribute to the fund during his service in ¹⁴the Armed Forces of the Union] or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered ¹⁴[the Armed Forces of the Union] or been taken into or employed in the national service.]

(c) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employees individual account at intervals not exceeding one year.

(d) The fund shall consist of contributions as above specified ¹⁵[and of donations, if any, received ¹⁶[by the trustees]], of accumulations thereof, and of interest (simple and compound), credited in respect of such ¹⁷[contributions, donations and accumulations], and of securities purchased therewith, ¹⁸[and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund], and of no other sums:

¹⁹[Provided that the fund may consist also of the accumulated balance due to an employee who has ceased to be an employee, and of interest (simple and compound) in respect thereof where such balance is retained in the fund in accordance with the provisions of clause (g).]

(e) The fund shall be vested in two or more trustees ²⁰[or in the Official Trustee] under a trust which shall not be revocable save with the consent of all the beneficiaries.

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

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

accordance with the regulations of the fund.

(g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund, ²¹[unless at the request of the employee made in writing, the trustees of the fund consent to retain the whole or any part of the accumulated balance due to the employee in the fund to be drawn by him at any time on demand].

(h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the ²²[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.

10 Substituted for "Governor General in Council" by Government of India (Adaptation of Indian Laws) Order, 1937.

11 Substituted for "British India" by Adaptation of Laws Order, 1950.

12 Inserted by s. 10, Indian I.T. (Amendment) Act, 1940.

13 Inserted, by s. 10, Indian I.T. (Amendment) Act, 1940.w.e.f. 3-9-1939.

14 Substituted for "His Majestys Forces" by Adaptation of Laws Order, 1950.

15 Inserted by s. 10, Indian I.T. (Amendment) Act, 1940.

16 Substituted for "from the trustees" by s. 31, Indian I.T. (Amendment) Act, 1941.

17 Substituted for "contributions and accumulations" by s. 10, Indian I.T. (Amendment) Act, 1940.

18 Inserted by s. 14, I.T. and E.P.T. (Amendment) Act, 1947.

19 Inserted by s. 27, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

20 Inserted by s. 2, Indian I.T. (Amendment) Act, 1931.

21 Inserted by s. 27, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

22 Substituted for "Governor General in Council" by Government of India (Adaptation of Indian Laws) Order, 1937.

58D. Power to relax restrictions of employers contributions in certain cases :-

Subject to any rules which the ²²[Central Government] may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58C-

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

22 Substituted for "Governor General in Council" by Government of India (Adaptation of Indian Laws) Order, 1937.

58E. Annual contributions of employers and interest when deemed to be income received :-

²³[58E. Annual contributions of employers and interest when deemed to be income received.-

That portion of the annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund as consists of-

(a) contributions made by the employer in excess of ten per cent, of the salary of the employee, and

(b) interest credited on the balance to the credit of the employee in so far as it exceeds one-third of the salary of the employee or is allowed at a rate exceeding the rate fixed by the Central Government in this behalf by notification in the Official Gazette, shall be deemed to have been received by him in that year and shall be included in his total income for that year, and shall be liable to income-tax and super-tax.]

23. Substituted by s. 9, F. (No. 2) Act, 1957, w.e.f. 1-4-1957 for making deduction of income-tax under sub-s. (2) or (2B) of s. 18, and w.e.f. 1-4-1958 for other purposes.

58F. Exemption of employees contributions from income-tax :-

²⁴[58F. Exemption of employees contributions from income-tax.-
An employee shall not be liable to pay income-tax on his own 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-fifth of his salary in that year or eight thousand rupees, whichever is less.]

24. Substituted by s. 10, F. (No. 2) Act, 1957, w.e.f. 1-4-1957 for making deduction of income-tax under sub-s. (2) or (2B) of s. 18, and w.e.f. 1-4-1958 for other purposes.

58G. Exemption of accumulated balance from income-tax and super-tax :-

²⁵[(1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the 1st day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933), had come into force on the 15th March, 1930.]

¹[(2)] Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax ²* * 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 employees ill-health, or by the contraction or discontinuance of the employers business, or other cause beyond the control of the employee.

³[(3)] Where exemption from payment of income-tax is not allowed

under the provisions of ⁴[sub-section (2)], the Income-tax Officer shall calculate the total of the various sums of income-tax ⁵[and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax] for which he may be liable for the year in which the accumulated balance due to him becomes payable.

25. 25 Inserted by s. 26, Indian I.T. (Second Amendment) Act, 1933.

1 Sub-s. (1) renumbered "(2)", by s. 26, Indian I.T. (Second Amendment) Act, 1933.

2 "And super-tax" omitted, by s. 26, Indian I.T. (Second Amendment) Act, 1933.

3 Sub-s. (2) renumbered "(3)", by s. 26, Indian I.T. (Second Amendment) Act, 1933.

4 Substituted for "sub-section (1)", by s. 26, Indian I.T. (Second Amendment) Act, 1933.

5 Substituted by s. 74, Indian I.T. (Amendment) Act, 1939.

58H. Deduction at source of income-tax payable on accumulated balances due :-

The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under ⁶[sub-section (3)] of section 58G and any income-tax and super-tax payable on an employees total income as determined under subsection (3) of section 58J, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries".

6 Substituted for "sub-section (2)" by s. 2 and Sch. 1, Repealing and Amending Act, 1934.

58I. Accounts of recognised provident funds :-

(1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

58J. Treatment of balances in newly recognised provident funds :-

(1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

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

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

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

relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

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

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

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

58K. Treatment of fund transferred by employer to trustee

:-

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

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employees contributions and interest thereon) shall,⁷[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 ⁸[clause (xv)]of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

7 Inserted by s. 75, Indian I.T. (Amendment) Act, 1939.

8 Substituted for "clause (xii)" by s. 26, F. Act, 1956, w.e.f. 1-4-

1956.

58L. Provisions relating to rules :-

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

(2) In addition to any power conferred by this Chapter, the ⁹[Central Government] may make rules-

(a) prescribing the statements and other information to be submitted with an application for recognition;

(b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

(c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as ¹⁰[it] may deem requisite.

9 Substituted for "Governor General in Council" by Government of India (Adaptation of Indian Laws) Order, 1937.

10 Substituted for "he", Government of India (Adaptation of Indian Laws) Order, 1937.

58M. Application of this Chapter :-

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

58N. Definitions :-

In this Chapter unless there is anything repugnant in the subject or context,-

(a) "approved superannuation fund" means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with

the provisions of this Chapter;

(b) "employer", "employee" and "contribution" have, in relation to superannuation funds, the meanings assigned to those expressions in section 58A in relation to provident funds;

(c) "ordinary annual contribution" means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

11. Inserted by s. 76, Indian I.T. (Amendment) Act, 1939.

58O. Approval and withdrawal of approval :-

(1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

58P. Conditions for approval :-

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

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in 12[the taxable territories];

(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 ¹²[the taxable territories].

12. Substituted for "British India" by Adaptation of Laws Order, 1950.

58Q. Application for approval :-

(1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless, the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

58R. Exemption of superannuation fund from income-tax :-

Income derived from investments or deposits of an approved

superannuation fund ¹³[and any capital gains arising from the sale, exchange or transfer of capital assets of such fund] shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply:

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution:

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of 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.

13. Inserted by s. 15, I.T. and E.P.T. (Amendment) Act, 1947

58S. Treatment of repaid contributions :-

(1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax ^{14* *} 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 ^{14* *} during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

14. "And super-tax" omitted by s. 5, I.T. Law Amendment Act, 1940.

58T. Deduction from pay of, and contributions on behalf of,

employee to be included in return under section 21 :-

Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

58U. Liabilities of trustees on cessation of approval of fund

:-

If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid-

(a) on account of returned contributions (including interest on contributions, if any), and

(b) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

58V. Particulars to be furnished in respect of superannuation funds :-

The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice:-

(a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require;

(b) prepare and deliver to the Income-tax Officer a return containing-

(i) the name and place of residence of every person in receipt of an annuity from the fund,

(ii) the amount of the annuity payable to each annuitant,

(iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees, and

(iv) particulars of sums paid in commutation or in lieu of annuities;

(c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and

particulars as the Central Board of Revenue may reasonably require.]

CHAPTER 10 MISCELLANEOUS

59. Power to make rules :-

.∴-

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

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

(a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of

(i) incomes derived in part from agriculture and in part from business;

(ii) insurance companies;

(iii) 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 S.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 S.27 of the Finance Act, 1920; and

(e) provide for any matter which by this Act is to be prescribed.

(3) 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.

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

59A. Publication of information respecting penalties in certain cases :-

²⁵[59A. Publication of information respecting penalties in certain cases.-

(1) The Central Government shall cause to be published, by

notification in the Official Gazette, the names and such other particulars as may be relevant of-

(a) persons on each of whom a penalty amounting to not less than five thousand rupees or such lower amount as may be fixed by the Central Government, by notification in the Official Gazette, has been imposed at any time on or after the 1st day of April, 1960, under clause (c) of subsection (1) of section 28; and

(b) persons who have been convicted as a result of any proceedings initiated on or after the 1st day of April, 1960, under section 52 or under any provision of the Indian Penal Code (XLV of 1860) for any offence connected with any proceedings under this Act.

(2) If in the interests of revenue the Central Government considers it necessary so to do, it may also cause to be published, by notification in the Official Gazette, the names and such other particulars as may be relevant of-

(a) persons on each of whom a penalty has been imposed at any time on or after the 1st day of April, 1960, under clause (a) or clause (b) of sub section (1) of section 28; or

(b) persons on each of whom a penalty of an amount not exceeding the amount referred to in clause (a) of sub-section (1) has been imposed at any time on or after the 1st day of April, 1960, under clause (c) of sub section (1) of section 28; or

(c) persons who have been convicted as a result of any proceedings initiated on or after the 1st day of April, 1960, under any provision of this Act other than section 52.

(3) No publication under this section shall be made-

(i) in the case of an assessee mentioned in clause (a) of sub-section (1) or in clause (a) or clause (b) of sub-section (2) who has presented an appeal under section 30 against the order of penalty, until the appeal is disposed of by the Appellate Assistant Commissioner;

(ii) in the case of an assessee mentioned in clause (b) of sub-section (1) or clause (c) of sub-section (2), until the time for appealing has expired without an appeal having been presented, or an appeal if presented has been disposed of.

(4) Notwithstanding anything contained in this section, the Central Government may refrain from publishing the name of any person if it is satisfied that in the interests of revenue it is necessary so to do, and where the Central Government refrains from publishing the name of any person, the reason for not publishing the name shall be recorded in writing.

(5) Every notification issued under this section shall be laid before

Parliament as soon as may be after it is made.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in section 54.

Explanation.-In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

25 Inserted by s. 9, Taxation Laws (Amendment) Act, 1960, w.e.f. 1-4-1960.

59B. Disclosure of information respecting tax payable :-

Where a person makes an application to the Commissioner in the prescribed form and after payment of the prescribed fee for information as to the amount of tax determined as payable by any assessee in respect of any assessment made on or after the 1st day of April, 1960, the Commissioner may, notwithstanding anything contained in section 54, if he is satisfied that there are no circumstances justifying its refusal, furnish or cause to be furnished the information asked for.

60. power to make exemptions, etc :-

. .: 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.

60A. Power, to make exemption, etc., in relation to merged territories or to the territories which immediately before the 1st November, 1956, were comprised in any Part B State or to Chandernagore :-

¹⁰[60A. Power, to make exemption, etc., in relation to ¹¹[merged territories] ¹²[or to the territories which immediately before the 1st November, 1956, were comprised in any Part B State] ¹³[or to Chandernagore].-

If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any

difficulty, that may arise as a result of the extension of this Act to t h e ¹¹[merged territories] ¹²[or to the territories which immediately before the 1st November, 1956, were comprised in a n y Part B State] ¹³[or to Chandernagore], the Central Government may, by general or special order, make an exemption, reduction in rate or Other modification in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any person or class of persons:

Provided that the power conferred by this section shall not be exercisable ¹⁴[in the case of merged territories and ¹⁵[the territories which immediately before the 1st November, 1956, were comprised in Part B States] other than the State of Jammu and Kashmir, after the 31st day of March, 1955, and, in the case of the State of Jammu and Kashmir ¹³[and Chandernagore], after the 31st day of March, 1959,] except for the purpose of rescinding an exemption, reduction or modification already made.]

10 Inserted by s. 19, Taxation Laws (Extension to Merged States and Amendment) Act, 1949.

11 Substituted for "merged States" by Adaptation of Laws Order, 1950.

12 "Or to any Part B State" inserted by s. 3, F. Act, 1950, w.e.f. 1-4-1950; and the present words substituted by Adaptation of Laws (No. 3) Order, 1956, w.e.f. 1-11-1956.

13 Inserted by s. 18, F. Act, 1955, w.e. f. 1-4-1955.

14 Substituted for "after the 31st day of March, 1955" by s. 2 and Sch., Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.

15 Substituted for "Part B States" by Adaptation of Laws (No. 3) Order, 1956, w.e.f. 1-11-1956.

60B. Tax may be levied for period other than previous year or deducted at source or paid in advance, wherever so provided :-

¹⁶[60B. Tax may be levied for period other than previous year or deducted at source or paid in advance, wherever so provided.-

(1) Where by virtue of any provision of this Act income-tax or super-tax is to be charged in respect of the income of a period other than the previous year, the income-tax or super-tax, as the

case may be, shall be charged accordingly.

(2) In respect of income chargeable under this Act, income-tax or super-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.]

16. Retrospectively inserted by s. 10, Taxation Laws (Amendment) Act, 1960.

61. Appearance by authorised representative :-

. . Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceedings, under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

62. Receipts to be given :-

. :- A receipt shall be given for any money paid or recovered under this Act.

63. Service of notice :-

. :-

(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.

64. Place of assessment :-

. :-

(1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the -area in which his principal place of business is situate.

(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 Board of Inland Revenue :

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

(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.

65. Indemnity :-

. :- Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

66. Statement of case by Commissioner to High Court :-

. :-

(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 one month of the passing of an order under section 31 or section 32 , the assessee in respect of whom the order was passed may, 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 Commissions shall, within one month 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 if in exercise of his power of review under section 33 , the Commissioner decides the question, the assessee may withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub-section (8), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply to the High Court, and the High Court if it is not satisfied of the correctness of the

Commissioners 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.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised hereby, 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.

66A. Reference to be heard by Benches of High Courts and appeal to lie in certain cases to the Supreme Court :-

19[66A. Reference to be heard by Benches of High Courts and appeal to lie in certain cases to **20**[the Supreme Court].-

(1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, **21**[and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.]

22* * * * *

(2) An appeal shall lie to 23[the Supreme Court] from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to **23**[the Supreme Court].

(3) The provisions of the Code of Civil Procedure, 1908 (V of 1908), relating to appeals to **23**[the Supreme Court] shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

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

Provided further that the High Court may, on petition made for the execution of the order of 23[the Supreme Court] in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of 23[the Supreme Court] in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) **24*** * * * *]

19 Inserted by s. 8, Indian I.T. (Amendment) Act, 1926.

20 Substituted for "His Majesty in Council" by Adaptation of Laws Order, 1950.

21 Substituted for "and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908 (V of 1908), shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force" by s.29. Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1952.

22 The proviso omitted by India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947.

23 Substituted for "His Majesty in Council" by Adaptation of Laws Order, 1950.

24 Omitted by Adaptation of Laws Order, 1950.

67. Bar of suite in civil Court :-

. :- No suit shall be brought in any Civil Court to set aside or

modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

67A. Computation of periods of limitation :-

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

1 Inserted by s. 12, Indian I.T. (Second Amendment) Act, 1930.

67B. Act to have effect pending legislative provision for charge of income-tax :-

²[67B. Act to have effect pending legislative provision for charge of income-tax.-

If on the 1st day of April in any year provision has not yet been made by ³[a Central Act] for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before ⁴[Parliament], whichever is more favourable to the assessee, were actually in force.]

2 Inserted by s. 7, I.T. Law Amendment Act, 1940.

3 Substituted for "an Act of the Indian Legislature" by Adaptation of Laws Order, 1950.

4 Substituted for "the Legislature", Adaptation of Laws Order, 1950.

68. Repeals :-

. :- The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof:

Provided that such repeal shall not affect the liability of any person to pay any sum due from him or any existing right of refund under any of the said enactments :

Provided, further, that the provisions of S.19 of the Indian Income-tax Act, 1918, shall apply, so far as may be, to VII of 1918. all assessments made under that Act in the year ending on the 31st

day of March, 1922, and where an adjustment shall be made under the provisions of section 19 of the said Act, the provisions of this Act regarding the procedure for the assessment and recovery of income-tax shall apply as if such adjustment were an assessment made under this Act.

SCHEDULE 1

SCHEDULE

⁵[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 ⁶[arrived at by adjusting the surplus or deficit] disclosed by the actuarial valuation made ⁷[in accordance with the Insurance Act, 1938 (IV of 1938), in respect of] the last inter-valuation period ending before the year for which the assessment is to be made, ⁸* * 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 years premiums received in respect of other life insurance policies for which the number of annual premiums ⁹[payable] is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year 7½ per cent. of such first years premiums received during the preceding year, plus

¹⁰[(c) 90 per cent. of the first years premiums received during the preceding year in respect of all other life insurance policies, plus

¹¹[(d) in respect of all renewal premiums received during the preceding year an amount calculated at such percentage thereof as is permissible under sub-section (2) of section 40B of the Insurance Act, 1938 (IV of 1938), as reduced by any expenditure which is not admissible under section 10 of this Act.]]

3. In computing the surplus for the purpose of rule 2,—

(a) ¹¹[four-fifths] 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 policyholders ¹²[that proportion of such amount (one-half or four-fifths, as the case may be)], if it has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved;

(b) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus:

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the ¹³[Controller 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;

¹⁴[(c) interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall not be excluded but the whole amount of such interest received during the inter-valuation period shall be exempt from income-tax under the second proviso to section 8 though not from super-tax.]

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

(i) "preceding year" means that year for which annual accounts are required to be prepared under the Insurance Act, 1938, 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 ***, but excludes profits on the realisation of securities ¹⁵[or other assets]:

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the last-named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section;

(iii) "management expenses" means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life

insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of, securities ¹⁵[or other assets] and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules;

(iv) "life insurance business" means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938;

(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 ¹⁶[Controller 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 societies 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 ¹⁷[premium income of the previous year derived from the taxable territories].

¹⁸[8. The profits and gains of the branches in the taxable territories of a person not resident in the taxable territories and carrying on any business of insurance, may, in the absence of more reliable data be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from the taxable territories bears to his total premium income.

For the purposes of this rule, the world income in relation to life insurance business of a person not resident in the taxable territories shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in the taxable territories.]

9. These rules apply to the assessment of the profits of any business of insurance carried on ¹⁹[by a mutual insurance association] ²⁰[or by a co-operative society].]

5 The original Schedule repealed by Repealing Act, 1927; and this Schedule inserted by s. 84, Indian I.T. (Amendment) Act, 1939.

6 Inserted by s. 8, I.T. Law Amendment Act, 1940.

7 Substituted for "for" by s. 30, Indian I.T. (Amendment) Act, 1953, w.e. f. 1-4-1951. The amendment also applies to completed assessments.

8 "After adjusting such surplus" omitted by s. 8, I.T. Law Amendment Act, 1940.

9 Substituted for "received" by s. 14, Indian I.T. (Amendment) Act, 1944.

10 Cls. (c) and (d) substituted, s. 14, Indian I.T. (Amendment) Act, 1944.

11 Cl. (d) further substituted, and "four-fifths" substituted for "one-half", by s. 30, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1951. The amendments also apply to completed assessments.

12 Substituted for "one-half of such amount" by s. 30, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1951. The amendment also applies to completed assessments.

13 Substituted for "Superintendent of Insurance" by s. 30, Indian I.T. Amendment Act, 1953, w.e. f. 1-4-1951.

14 Substituted by s. 14, Indian I.T. (Amendment) Act, 1944.

15 Inserted by s. 14, Indian I.T. (Amendment) Act, 1944.

16 Substituted for "Superintendent of Insurance" by s. 30, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1951.

17 Substituted for "British Indian premium income of the previous year" by Adaptation of Laws Order, 1950.

18 Substituted by s. 30, Indian I.T. (Amendment) Act, 1953, w.e.f. 1-4-1951. The amendment also applies to completed assessments.

19 Substituted for "by a mutual insurance company" by s. 13, Indian I.T. (Amendment) Act, 1940.

20 Inserted by s. 19, F. Act, 1955, w.e.f. 1-4-1955.