

ASSAM ACT IX OF 1939.

THE ASSAM AGRICULTURAL INCOME-TAX ACT, 1939

[Passed by the Assam Legislature]

[Received the assent of the Governor on the 18th August 1939.]

[Published in the *Assam Gazette* of 23rd August 1939.]

An Act to provide for the imposition of a tax on agricultural income

WHEREAS it is expedient to impose a tax on agricultural income arising from lands situated in the Province of Assam ;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

Short title. 1. (1) This Act may be called the Assam Agricultural Income-Tax Act, 1939.

(2) It shall take effect from the 1st of April, 1939.

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

(a) “agricultural income” means—

(1) Any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in Assam or subject to a local rate assessed and collected by officers of the Crown as such.

(2) 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

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

Explanation.—Agricultural income derived from such land by the cultivation of tea means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to Indian Income-tax.

(b) "agricultural income-tax" means the tax payable under this Act ;

(c) "Agricultural Income-tax Officer" means a person appointed to be an Assam Agricultural Income-tax Officer under sub-section (2) of section 18 ;

(d) "previous agricultural year" means the twelve months ending the 31st of March 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 "agricultural year" as then applicable to such assessee except with the consent of the Agricultural Income-tax Officer and upon such conditions as he may think fit.

(e) "assessee" means a person by whom agricultural income-tax is payable ;

(f) "Assistant Commissioner of Agricultural Income-tax" means a person appointed to be an Assam Assistant Commissioner of Agricultural Income-tax under sub-section (2) of section 18 ;

(g) "Board" means the Assam Board of Agricultural Income-tax appointed under sub-section (2) of section 18 ;

(h) "Commissioner of Agricultural Income-tax" means a person appointed to be an Assam Commissioner of Agricultural Income-tax under sub-section (2) of section 18 ;

(i) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance ~~VII of 1913~~ of an Act 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 situated in British India or not, which the Board may, by general or special order, declare to be a Company for the purposes of this Act;

(j) "financial year" means the year beginning on the first day of April and ending on the thirty-first day of March next following;

(k) "firm" has the same meaning as in the Indian Partnership Act, 1932; ~~IX of 1932~~

(l) "landlord" has the same meaning as
 Assam (Temporarily-settled Districts) Tenancy Act, 1935; ~~III of 1935.~~
 in the Sylhet Tenancy Act, 1936; ~~Assam Act XI of 1936.~~
 Goalpara Tenancy Act, 1929; ~~Assam Act I of 1929.~~

(m) "person" means any individual, or association of individuals, owning or holding property for himself or for any other or others or partly for his own benefit and partly for that of any other or others, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law, and includes an undivided or joint Hindu Family, firm or company;

(n) "prescribed" means prescribed by Rules made under this Act;

(o) "principal officer" used with reference to any company or association means:—

(i) the secretary, treasurer, manager or agent of the company or association, or

(ii) any person connected with the company or association upon whom the Agricultural Income-tax Officer has served a notice

of his intention of treating him as principal officer thereof; and

(p) "total agricultural income" means the aggregate of amounts of agricultural income of the different classes specified in sections 7 and 8 as determined respectively in the manner laid down in the said sections.

CHAPTER II

CHARGE OF AGRICULTURAL INCOME-TAX.

Charge of agricultural income-tax. 3. Agricultural income-tax at the rate or rates specified in the annual Assam Finance Acts subject to the provisions of section 6 shall be charged for each financial year in accordance with, and subject to, the provisions of this Act on the total agricultural income of the previous year of every individual, Hindu undivided or joint family, company, firm and other association of individuals.

Exemptions. 4. Except as provided elsewhere in this Act agricultural income-tax shall not be assessed on, and be payable by, an assessee in respect of—

- (i) Any income which he receives as a member of a Hindu joint or undivided family where the agricultural income of such family has been assessed to agricultural income-tax under this Act,
- (ii) Any sum which he receives by way of dividend as a share-holder in any company where the agricultural income of the company has been assessed to agricultural income-tax under this Act,
- (iii) Such an amount of the agricultural income of any firm which has been assessed to agricultural income-tax under this Act as is proportionate to his share in the firm at the time of such assessment and is received by him,
- (iv) Any sum which he receives as his share of the agricultural income of an association of individuals other than a Hindu joint or undivided family, company or firm where such agricultural income has been assessed to agricultural income-tax under this Act,

(v) Any sum which he receives after the tax in respect thereof has been assessed under sections 9 to 14 and realised.

Application of the Act. 5. Save as hereinafter provided, this Act shall apply to all agricultural income derived from land situated in the Province of Assam.

Limit of taxable income. 6. Agricultural income-tax shall be payable by persons whose total agricultural income of the previous agricultural year exceeds Rs.3,000 at such rates as may be laid down from year to year in the annual Assam Finance Acts :

Provided that such rates shall not be greater than the Central Government income-tax rates from time to time and that they shall not be subject to, or include, any surcharge.

Explanation.—Income-tax for the purposes of this Act does not include super-tax.

Determination of agricultural income. 7. The agricultural income mentioned in sub-clause (1) of clause (a) of section 2 shall be deemed to be the sum realised in the previous agricultural year on account of agricultural income mentioned in the said sub-clause (1), after making the following deductions :—

- (a) the sum actually paid in the previous agricultural year as revenue to the Crown or as rent to a superior landlord in respect of the land from which such agricultural income is derived ;
- (b) the sum actually paid in the previous agricultural year in respect of such land as any local rate collected under any enactment in force in Assam ;
- (c) a sum equal to 15 per cent. of the total amount of the rent which accrued due in the previous agricultural year, in respect of the charges for collecting the same ;
- (d) any rate paid under the Village Chowkidari Act, 1870, in respect of any building used by the assessee as an office for the collection of the rents due in respect of the land from which such agricultural income is derived ; Bengal Act VI of 1870.
- (e) any expenses incurred on the maintenance of any irrigation or protective work constructed for the benefit of the land from which such agricultural income is derived ;

Determination of agricultural income mentioned in clause (a)(2) of section 2.

8. (1) The agricultural income mentioned in sub-clause (2) of clause (a) of section 2 shall be assessed on the net amount of such income determined in the prescribed manner.

(2) Rules prescribing the manner of determining the net amounts of agricultural income for the purpose of this clause shall provide that the following deductions shall be made from the gross amounts of such income, namely :—

- (a) the sum actually paid in the previous agricultural year as revenue to the Crown or as rent to a superior landlord in respect of the land from which such agricultural income is derived ;
- (b) the sum actually paid in the previous agricultural year in respect of such land as any local rate collected under any enactment in force in Assam ;
- (c) any rate paid under the Village Chowkidiari Act, 1870, in respect of any Bengal Act building used for the purposes of the VI of 1870, cultivation of the land from which such agricultural income is derived ;
- (d) the expenses of cultivating the crop from which such agricultural income is derived and of transporting such crop to market, including the maintenance of agricultural implements and cattle required for the purpose of such cultivation and for transporting the crop to market ;
- (e) any tax, or rate paid under any enactment in force in Assam on the cultivation or sale of the crop from which such agricultural income is derived ;
- (f)(i) any expenses incurred on the maintenance of any irrigation or protective works constructed for the benefit of the land from which such agricultural income is derived ;
- (ii) any expenses incurred on the maintenance of any capital asset, if such maintenance is deemed to be required for the purpose of deriving such agricultural income from such land ;
- (iii) interest actually paid on any amount borrowed and actually spent on any capital expenditure incurred for the benefit of the land from which such agricultural income is derived, or for the purpose of deriving such agricultural income from such land ;

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clause (a)(2) of section 2. (2) Rules prescribing the manner of determining the net amounts of agricultural income for the purpose of this clause shall provide that the following deductions shall be made from the gross amounts of such income, namely :—

- (a) the sum actually paid in the previous agricultural year as revenue to the Crown or as rent to a superior landlord in respect of the land from which such agricultural income is derived ;
- (b) the sum actually paid in the previous agricultural year in respect of such land as any local rate collected under any enactment in force in Assam ;
- (c) any rate paid under the Village Chowki-dari Act, 1870, in respect of any building used for the purposes of the cultivation of the land from which such agricultural income is derived ;
- (d) the expenses of cultivating the crop from which such agricultural income is derived and of transporting such crop to market, including the maintenance of agricultural implements and cattle required for the purpose of such cultivation and for transporting the crop to market ;
- (e) any tax, or rate paid under any enactment in force in Assam on the cultivation or sale of the crop from which such agricultural income is derived ;
- (f)(i) any expenses incurred on the maintenance of any irrigation or protective works constructed for the benefit of the land from which such agricultural income is derived ;
- (ii) any expenses incurred on the maintenance of any capital asset, if such maintenance is deemed to be required for the purpose of deriving such agricultural income from such land ;
- (iii) interest actually paid on any amount borrowed and actually spent on any capital expenditure incurred for the benefit of the land from which such agricultural income is derived, or for the purpose of deriving such agricultural income from such land ;

- (iv) (a) Depreciation of any asset required for the benefit of the land from which such agricultural income is derived or for the purpose of deriving such agricultural income from such land, subject to the provisions of this Act in the manner allowed and at the rates prescribed for the purposes of Indian Income-tax or in default of such prescription as prescribed by rules under section 50 of this Act ;
- (b) In respect of any such machinery or plant which in consequence of its having become obsolete has been sold or discarded the difference between the written down value as defined for the purposes of Indian Income-tax and the amount for which the machinery or plant is actually sold or its scrap value ;
- (v) Any sum paid in order to effect an insurance against loss or damage of crop or property from which agricultural income is derived: provided that notwithstanding anything contained in this Act in the case of an assessee in whose case deduction on the account is made in assessment any amount received by him from the insurance company in any year shall be deemed to be for the purpose of this Act agricultural income after deducting the share or portion thereof assessed to the Indian Income-tax ;
- (vi) any interest paid on any mortgage or other capital charge incurred for the purpose of acquiring the property from which such agricultural income is derived or for the purposes of cultivation of the property ;
- (vii) Any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of earning or deriving the agricultural income ;
- (g) such other deductions as may be prescribed by rules made under section 50 of this Act :
Provided always that no deduction shall be made under this clause, if it has already been made under section 7 of this Act or in the assessment under the Indian Income-tax Act ;

Provided further that in cases of agricultural income from cultivation and manufacture of tea the agricultural income for the purposes of this Act shall be deemed to be that portion of the income from cultivation, manufacture and sale which is agricultural income within the meaning of the Indian Income-tax Act and shall be ascertained by computing the income from the cultivation, manufacture and sale of tea as computed for Indian Income-tax from which shall be deducted any allowances by this Act authorised in so far as the same shall not have been allowed in the computation for the Indian Income-tax Act.

XI of 1922.

Exemption of 9. (1) Any agricultural income derived from charitable or property held under a trust or other legal obligation wholly or partly for religious or charitable purposes shall, to the extent it is applied or finally set apart for the aforesaid purposes, not be liable to income-tax under this Act.

(2) In this section, purposes of a charitable nature include relief of the poor, education, medical relief, and advancement of any other object of general public utility.

Exclusion of 10. All agricultural income of Muslim Trusts agricultural income of referred to in section 3 of the Musalman Wakf Act VI of certain wakfs Validating Act, 1913, created before the commencement of this Act, 1913, shall be excluded from the operation of this Act:

Provided that the share of a beneficiary under a trust under the aforesaid Act, of the description commonly known as Wakf-alal-aulad shall not be exempted and the basis of the taxation shall be the share of each beneficiary:

Provided further that if a beneficiary's income is assessable under the above mentioned proviso the Agricultural Income-tax Officer may require the Mutawali to deduct the amount of the tax from the payment to be made to the beneficiary and pay the same to the Agricultural Income-tax Officer. On such requisition the Mutawali shall be liable to pay the same.

Assessment of 11. The total agricultural income of a Hindu undivided or undivided or joint family shall be treated as the joint family. income of one individual and assessed as such:

Provided that if a Hindu undivided or joint family consists of brothers only, or of a brother or

brothers and the son or sons of a brother or brothers, the total agricultural income of the family shall be assessed—

- (a) at the rate applicable to the share of a brother if such share exceeds Rs.5,000 ;
- (b) at 4 pies in the rupee, if the share of a brother is Rs.5,000 or less.

Explanation.—For the purposes of this section,—

(1) the expression "share of a brother" in the case of a joint family governed by Mitakshara law means the portion of the total agricultural income of a Hindu undivided or joint family which would have been allotted to a brother, if a partition of the property of such family had been effected according to the ordinary rules of Hindu Law applicable to such family, on the day before the assessment is made ; and

(2) "son" includes a son's son.

Assessment of
tax on land
held for the
benefit of
several per-
sons.

12. (1) Save as provided in sections 10, 13 and 14 if a person holds land from which agricultural income is derived partly for his own benefit and partly for the benefit of beneficiaries or wholly for the benefit of a beneficiary or beneficiaries, agricultural income-tax shall be assessed on the total agricultural income derived from such land at the rate which would be applicable if such person had held the land exclusively for his own benefit and agricultural income-tax so payable shall be assessed on the person holding such land, and he shall be liable to pay the same.

(2) Any person holding such land shall be entitled before paying to any beneficiary the amount of agricultural income which such beneficiary is entitled to receive from the agricultural income derived from such land, to deduct the amount of agricultural income-tax at the rate at which the agricultural income is or will be assessed under sub-section (1).

Explanation.—In this section "beneficiary" means a person entitled to a portion of the agricultural income derived from the land.

Assessment
of tax on
common
manager, re-
ceiver, etc.

13. Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator or the like on behalf of

persons jointly interested in such land or in the agricultural income derived therefrom, the aggregate of sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received or receivable by him shall be assessed on such common manager, receiver, administrator or the like and he shall be deemed to be the assessee in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same.

Court of Wards, etc. 14. In the case of agricultural income taxable under this Act, which is received by the Court of Wards, the Administrator General, or Official Trustee the tax shall be levied upon and be recoverable from such Court of Wards, Administrator General or Official Trustee in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such agricultural income is received, and all the provisions of this Act shall apply accordingly.

Exemptions in case of life insurances. 15. (1) (a) Agricultural income-tax shall not be payable by an assessee in respect of any sum paid by him out of his total agricultural income to effect an insurance on his own life or on the life of his wife or his child or children, 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, 1925, applies;

XIX of 1925.

Provided that agricultural income-tax shall be payable on the remainder of the total agricultural income of such assessee at the rate which would have been applicable if such deduction had not been made.

(b) Nothing in this sub-section shall be deemed to entitle an assessee, who is assessed to income-tax under the Indian Income-tax Act, as amended up-to-date, to claim a deduction in respect of any sum paid by him, as mentioned in clause (a), if such sum was exempted under section 15 of the said Act.

XI of 1922.

(2) Where the assessee is a Hindu undivided or joint family there shall be exempted under sub-section (1) any sum paid to effect an insurance on the life of any male member of the family.

(3) The aggregate of any sums exempted under this section shall not exceed one-sixth of the total agricultural income of the assessee.

Carrying forward of loss of profits or gains.

16. Where any assessee sustains a loss of profits or gains in any year being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, the loss shall be carried forward to the following year and set off against the profits or gains if any of the assessee from agricultural income for that year and if it cannot be wholly so set off the amount of loss not so set off shall be carried forward to the following year and so on but no loss shall be carried forward for more than six years.

Certificate in respect of payment of agricultural income-tax by Companies.

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

CHAPTER III

INCOME-TAX AUTHORITIES

Income-tax Authorities.

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

- (a) The Assam Board of Agricultural Income-tax,
- (b) The Assam Commissioner of Agricultural Income-tax,
- (c) The Assam Assistant Commissioner of Agricultural Income-tax, appellate and inspecting,
- (d) Assam Agricultural Income-tax Officers.

(2) The authorities specified in sub-section (1) shall be appointed by the Governor and shall exercise and perform in the prescribed areas the prescribed powers and duties, and their conditions of service, and their relations to each other shall be such as may be prescribed.

(3) The Governor of Assam may, by notification in the Official Gazette, empower officials, whether they be or be not directly recruited to the Assam Agricultural Income-tax service, to perform such functions in respect of such classes of persons or such classes of income and for such areas as may be specified in the notification.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Assam Board of Agricultural Income-tax:

Provided that no such order, direction or instruction shall be given so as to interfere with the discretion of any appellate authority in the exercise of his appellate functions.

CHAPTER IV

ASSESSMENT, DEDUCTIONS AND EXEMPTIONS.

Return of income.

19.(1) The Agricultural Income-tax Officer shall, on or before the first day of May or for the year commencing 1st April, 1939 any later day notified by Government in each year, give notice by publication in the press and otherwise in the manner prescribed by rules, requiring every person whose agricultural income exceeds the limit of taxable income prescribed in section 6 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 required by the notice) his total agricultural income during the previous year:

Provided that the Agricultural Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons;

(2) In the case of any person whose total agricultural income is, in the opinion of the Agricultural Income-tax Officer, of such amount as to render such person liable to payment of agricultural income-tax for any financial year, the Agricultural Income-tax Officer may serve in that financial year a notice in the prescribed form upon him requiring him to furnish, within the prescribed period, a return in the prescribed form and verified in the prescribed manner setting forth his total agricultural 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 made in due time under this section.

Assessment. 20. (1) If the Agricultural Income-tax Officer is satisfied that a return made under section 19 is correct and complete, he shall assess the total agricultural income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Agricultural Income-tax Officer has reason to believe that a return made under section 19 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on the date to be specified therein, either to attend at the office of the Agricultural Income-tax Officer 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 under sub-section (2) or as soon afterwards as may be, the Agricultural Income-tax Officer after hearing such evidence as such person may produce and such other evidence as the Agricultural Income-tax Officer may require on specified points, shall, by an order in writing, assess the total agricultural income of the assessee and determine the sum payable by him on such assessment:

Provided that the Agricultural Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(4) If the principal officer of any company or other person fails to make a return under sub-section (1) or sub-section (2) of section 19, as the case may be or, having made the return, fails to comply with all the terms of the notice issued under sub-section (2) of this section, or to produce any evidence required under sub-section (3) of this section, the Agricultural Income-tax Officer shall make the assessment to the best of his judgment, and determine the sum payable by the assessee on the basis of such assessment:

Provided that before making such assessment the Agricultural Income-tax Officer may allow the assessee such further time as he thinks fit to make the return or comply with the terms of the notice or to produce the evidence.

Cancellation 21. Where an assessee, or in 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 Agricultural Income-Tax Officer that he was prevented by sufficient cause from making the return

required by section 19 or that he did not receive the notice issued under sub-section (2) of section 19 or sub-section (2) of section 20 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 Agricultural Income-Tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 20.

Penalty for concealment of income. 22. (1) If the Agricultural Income-tax Officer, or the Assistant Commissioner of Agricultural Income-tax, or the Commissioner of Agricultural Income-tax, in the course of any proceeding under this Act, is satisfied that an assessee,—

- (a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish under sub-section (1) or sub-section (2) of section 19 or has without reasonable cause failed to furnish it within the time allowed and in the manner required in the provisions made under the abovementioned sub-sections, or
- (b) 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 pay by way of penalty, in the case referred to in clause (a), in addition to the amount of agricultural income-tax payable by him, a sum not exceeding that amount, and in the case referred to in clause (b) in addition to any tax paid by him, a sum not exceeding the amount of agricultural income-tax, which would have been avoided if the income so returned by him had been accepted as the correct income :

Provided that—

- (a) no penalty for failure to furnish the return of his total agricultural income shall be imposed on an assessee whose total agricultural income is less than rupees five thousand unless he has been served with a notice under sub-section (2) of section 19 ;

- (b) where a person has failed to comply with a notice under sub-section (2) of section 19 or under section 30 and proves that he has no income liable to tax, no penalty shall be imposed under this sub-section;
- (c) no penalty shall be imposed under this sub-section upon any person assessable as the agent of any person not resident in Assam for failure to furnish the return required under section 19 unless a notice under sub-section (2) of that section has been served on him;
- (d) no order under this section 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 under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

{ (2) If the ~~or the Deputy Commissioner of Taxes~~ Commissioner of Agricultural Income-tax, or the Assistant Commissioner of Agricultural Income-tax makes an order under sub-section (1), he shall forthwith send a copy of the same to the Agricultural Income-tax Officer in whose jurisdiction the assessee concerned resides.

Notice of demand. 23. When the Agricultural Income-tax Officer has determined a sum to be payable by an assessee under section 20, or when an order has been passed under section 22 for the payment of penalty, the Agricultural Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

Appeal against assessment under this Act. 24.(1) Any assessee objecting to the amount of income or the amount of tax as determined under section 20 or denying his liability to be assessed under this Act or objecting to any order passed against him under section 21 or 22 made by the Agricultural Income-tax Officer, may appeal to the Assistant Commissioner of Agricultural Income-tax against the assessment or against such order:

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 20.

of notice to (2) notice

(2) Every appeal under this section 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 order under section 21, as the case may be, but the authority before whom the appeal is filed may admit an appeal after the expiration of the prescribed period, if he is satisfied that the appellant had sufficient cause for not presenting it within the prescribed period.

(3) Every appeal under this section shall be presented in the prescribed form and shall be verified in the prescribed manner.

(4) The appellate authority shall fix a day and place for hearing of the appeal, and may from time to time adjourn the hearing and make such further enquiry as he thinks fit.

(5) In disposing of an appeal, the Assistant Commissioner of Agricultural Income-tax may in the case of an order of assessment :—

- (a) confirm, reduce, enhance or annul the assessment ;
- (b) set aside the assessment and direct the Agricultural Income-tax Officer to make a fresh assessment after such further enquiry as may be directed; or, in the case of an order under section 21 or 22 confirm, cancel or vary such order :

Provided that no enhancement of an assessment shall be made under this section, unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

**A p p e a l
against order
of refusal of
refund.** 25. The provisions of the foregoing section shall, so far as may be, apply to any order of refusal of any refund admissible under the rules prescribed under section 50.

**A p p e a l
against order
of an Assis-
tant Commis-
sioner of
Agricultural
Income-tax.** 26. (1) Any assessee objecting to an order passed by an Assistant Commissioner of Agricultural Income-tax under section 22 or to an order enhancing his assessment under sub-section (5)(a) of section 24, may appeal to the Commissioner of Agricultural Income-tax within thirty days of the date on which he was served with the notice of such order.

(2) Every appeal under this section shall be presented in the prescribed form and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner of Agricultural Income-tax shall, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit,

Powers of review. 27. (1) The Commissioner of Agricultural Income-tax may of his own motion or on petition call for the records of any proceedings under this Act which have been taken by any authority subordinate to him.

(2) On receipt of the record the Commissioner of Agricultural Income-tax 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 the assessee without hearing him or giving him a reasonable opportunity of being heard.

(3) Any order passed by the Commissioner of Agricultural Income-tax under sub-section (2) shall be final, subject to any reference that may be made to the High Court under section 28.

Reference of case by Commissioner of Agricultural Income-tax to High Court. 28. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VII, a question of law arises, the Board may, either of its own motion or on reference from any Agricultural Income-tax authority subordinate to it, draw up a statement of the case and refer it with its own opinion to the High Court.

(2) Within sixty days of the date on which he is served with notice of an order under section 24 or of an order under section 27 enhancing an assessment or otherwise prejudicial to him, the assessee in respect of whom the order or decision was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Board to refer to the High Court any question of law arising out of such order or decision, and the Board shall, within sixty days of the receipt of such application, draw up a statement of the case, and refer it with its own opinion thereon to the High Court:

Provided that a reference shall lie from an order under section 27 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 24 revised by the order under section 27:

Provided further that, if, in exercise of his power of revision under section 27, the revisional authority decides the question, or if the Board rejects the application on the ground that it is time-barred or otherwise incompetent, or if, in exercise of its power under sub-section (3), the

Board refuses to state the case, the assessee may, within thirty days from the date on which he receives notice of the order passed by the revisional authority or by the Board, as the case may be, withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If on any application being made under sub-section (2), the Board refuses to state the case on the ground that no question of law arises, the assessee may apply, within six months of the date on which he is served with the notice of the refusal, to the High Court, and the High Court, if it is not satisfied with the correctness of the decision of the Board, may require the Board to state the case and to refer it, and, on receipt of any such requisition, the Board shall state and refer the case accordingly.

(4) If, on any application being made under sub-section (2), the Board rejects it on the ground that it is time-barred, the assessee may within sixty days from the date on which he is served with the order of the Board, apply to the High Court, and the High Court, if it is not satisfied with the correctness of the decision of the Board, may require the Board to treat the application as made within the time allowed under sub-section (2).

(5) 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 Board to make such additions thereto or such alterations therein as the Court may direct in that behalf.

(6) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Board a copy of such judgment, under the seal of the Court and signature of the Registrar, and the Board shall dispose of the case accordingly, or, if the case arose on a reference from any Agricultural Income-tax authority subordinate to it shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(7) 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.

(8) Notwithstanding that a reference has been made under this section to the High Court, agricultural 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 Board may allow.

(9) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (4). IX of 1908.

A p p e a l 29. (i) An appeal shall lie to His Majesty against any judgment of the High Court delivered in a reference made under the foregoing section in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

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

Provided that nothing in this sub-section will be deemed to affect the provisions of sub-section (6) or sub-section (8) of the foregoing section :

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

(iii) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (6) and (8) of the foregoing section in the case of a judgment of the High Court.

**Income es-
caping assess-chargeable to agricultural income-tax** 30. If for any reason any agricultural income has escaped assessment for any financial year, or has been assessed at too low a rate, the Agricultural Income-tax Officer may, at any time within three years of the end of that financial year, serve on the person liable to pay agricultural income-tax on such agricultural income 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 19, and may proceed to assess or reassess such income, 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 if

such income had not escaped assessment or full assessment, as the case may be :

Provided further that when the income, profits or gains concerned are agricultural income, profits or gains liable to assessment for a year ending prior to the commencement of this Act, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person, this sub-section shall have effect as if for the period of three years a period of one year were substituted.

Rectification of mistakes. 31.(1) The authority which passed an order on appeal or review may, at any time within three years from the date of such order, and the Agricultural Income-tax Officer may at any time within three years from the date of any assessment order passed by him, of his own motion, rectify any mistake apparent from the record of the appeal or assessment, as the case may be, and shall within the like period rectify any such mistake as has been brought to his notice by an assessee :

Provided that no such rectification shall be made having the effect of enhancing the assessment, unless the appellate authority or the Agricultural Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard;

(2) Where any such rectification has the effect of reducing the assessment, the Agricultural 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 Agricultural 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 19, and the provisions of this Act shall apply accordingly.

Tax to be collected to the nearest anna. 32. In the determination of the amount of agricultural income-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.

Power to take evidence on oath. 33. (1) The Commissioner of Agricultural Income-tax, the Assistant Commissioner of Agricultural Income-tax and the Agricultural

Income-tax Officer shall, for the purpose of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, V of 1908, when trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses;

and any such proceeding before such Commissioner, Assistant Commissioner or Income-tax Officer under this Chapter shall be deemed to be a "Judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code. XLV of 1860.

(2) If any person assessed to agricultural income-tax in respect of agricultural income mentioned in sub-clause (1) of clause (a) of section 2 produces before the Agricultural Income-tax Officer for the purpose of calculating his agricultural income any rent roll or other similar papers showing the amount of rent received by him, he shall not be entitled to recover or to institute a suit to recover rent due to him for any tenure or holding included in such return at a rate higher than the rate mentioned in such return as payable for such tenure or holding, unless the rent shown in such return has, since the date of the return, been lawfully enhanced.

(3) Any person who has produced a rent roll referred to in sub-section (2) may, within one year of producing such roll, apply to the Agricultural Income-tax Officer to make any correction therein, and the Agricultural Income-tax Officer may, if he is satisfied that such correction should be made, pass an order correcting such rent roll.

(4) Where the Agricultural Income-tax Officer passes any order under sub-section (3), he may assess under section 30 any income escaping assessment by reason of the original incorrectness of any entry corrected.

Power to call for information. 34. The Assistant Commissioner of Agricultural Income-tax or the Agricultural Income-tax Officer may, for the purposes of this Act:—

- (1) require any firm or Hindu undivided or joint family to furnish him with a return of the names of members of the firm or of the names of the manager or the brothers or sons of brothers 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.

CHAPTER V

RECOVERY OF TAX AND PENALTIES.

Tax when payable.

35. (1) Any amount specified as payable in a notice of demand under section 23 or an order under section 24, 26 or 27 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.

(2) If the demand is not paid on or before the date fixed under sub-section (1) then the assessee shall be deemed to be in default :

Provided that when an assessee has presented an appeal under section 24, the Agricultural Income-tax Officer may, in his discretion, treat the assessee as not being in default as long as such appeal is undisposed of, and if in any such case the Agricultural Income-tax Officer considers that the assessee should be held to be in default, he shall refer the matter to the authority to whom the appeal was presented for orders, and shall treat the assessee as not being in default until the said authority passes orders to the contrary.

Mode and time of recovery.

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

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

(3) When an assessee is in default, the Agricultural Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from the assessee

and the Collector on receipt of such certificate shall proceed to recover from such assessee the amount specified therein as a public demand payable to the Collector.

(4) (a) When agricultural income-tax is payable by a trustee, or, is under section 10 payable by a *mutawali* of a Musalman Wakf referred to in section 3 of the Musalman Wakf Validating Act, 1913, and such trustee or *mutawali* is in default, the Agricultural Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from the assessee, and the Collector on receipt of such certificate shall proceed to recover from such trustee or *mutawali* the amount specified therein as a public demand :

Provided that, notwithstanding anything to the contrary contained in section 14 of the Bengal Public Demands Recovery Act, 1913, any land held by such trustee or *mutawali* as such shall not be attached or sold in execution of such certificate but such arrears may be realised from the income of the trust or *Wakf* estate by the appointment of a receiver of any property of the trust or *Wakf*.

(b) The provisions of Order XL of the Code of Civil Procedure, 1908, shall apply to a proceeding under this sub-section, and the Certificate Officer shall be deemed to be a Civil Court within the meaning of the said Order XL.

(5) No proceeding for the recovery of any sum payable under this Act shall be commenced after the expiration of three years after the date on which the original demand fixed under section 23 falls due, or after the expiration of three years after the date on which any appeal relating to such sum has been disposed of, whichever date is later.

Recovery of penalties. 37. Any sum imposed by way of penalty under the provisions of section 22 or section 36 shall be recoverable in the manner provided in this Chapter for the recovery of an arrear of tax.

Right, title and interest of members of Hindu undivided or joint family or of other persons on whose behalf property is held to pass to the purchaser when property is sold for realisation of arrears of tax, 38. Notwithstanding anything contained in sections 20 and 21 of the Bengal Public Demands Recovery Act, 1913 :—

- (a) Where any property of a Hindu undivided or joint family is sold under the said Act for the realisation of arrears of agricultural income-tax, the right, title and interest of all members of such family in the property shall pass to the purchaser ;
- (b) Save as provided in sub-section (4) of section 36 where any person has been assessed to agricultural income-tax on the agricultural income

VI of 1913.

Bengal Act III of 1913.

V of 1908.

Bengal Act III of 1913.

derived from land held by him wholly or partly for the benefit of other persons and the tax payable by him is in arrears, the land so held by him may be attached and sold for the realisation of such arrears, and on such sale, the right, title and interest of such persons in the said land shall pass to the purchaser.

CHAPTER VI

REFUNDS.

Refunds. 39. Refunds shall be admissible under this Act. The circumstances and the manner in which refunds shall be allowed shall be prescribed by rules under section 50.

CHAPTER VII

OFFENCES AND PENALTIES.

False statement in verification mentioned in section 19 or section 24 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 XLV of 1860. Penal Code.

Failure to furnish return or to supply information. 41. If any person fails, without reasonable cause or excuse, to furnish in due time any of the returns mentioned in section 19 or section 34, he shall be punishable with fine which may extend to five rupees for every day during which the default continues.

Prosecution to be at the instance of the Assistant Commissioner of Agricultural Income-tax.

Assistant Commissioner. (2) Before instituting proceedings against any person under sub-section (1) the Assistant Commissioner of Agricultural Income-tax shall call upon such person to show cause why proceedings should not be instituted against him.

(3) The Assistant Commissioner of Agricultural Income-tax may stay any such proceedings or compound any such offence.

CHAPTER VIII

MISCELLANEOUS.

Place of assessment. 43. (1) An assessee shall, subject to any orders passed under sub-section (2), be assessed by the Agricultural Income-tax Officer of the area in which is situated the land from which the greater

part of the agricultural income in respect of which he is assessed is derived.

(2) (a) An assessee may, on receipt of the first notice served on him under sub-section (2) of section 19, apply to the Agricultural Income-tax Officer by whom such notice is served to be assessed at his usual place of residence or at the place where the accounts relating to his agricultural income are kept, if either of such places is situated in the Province of Assam, and such Agricultural Income-tax Officer may pass an order that the assessee shall be assessed at the place specified in the application, the said place being situated in the Province of Assam, or refer the matter to the Assistant Commissioner of Agricultural Income-tax, whose decision shall be final:

(b) Where an order is passed under clause (a) of sub-section (2), the assessee shall not be entitled to make any further application to change his place of assessment:

Provided that the Agricultural Income-tax Officer may allow the assessee to be assessed at any other place upon such conditions as he thinks fit.

(3) Notwithstanding anything contained in this section, every Agricultural Income-tax Officer shall have all the powers conferred by or under this Act on the Agricultural Income-tax Officer in respect of any agricultural income derived from land situated within the area to which he is appointed.

Bar of suits
in Civil
Courts.

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

Computation
of period of
limitation.

45. In computing the period of limitation prescribed for any appeal under this Act, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

Appearance
by author-
ised repre-
sentative.

46. Any assessee, who is entitled or required to attend before any income-tax authority in connection with any proceeding under this Act, may attend either in person or by any person duly authorised by him in writing in this behalf.

Receipts to
be given.

47. A receipt shall be given for any money paid or recovered under this Act.

Indemnity.

48. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of any income belonging to another person

is hereby indemnified for the deduction, retention or payment thereof.

Powers of income-tax authorities to call for papers or documents.

49. Nothing in this Act shall be deemed to authorise any of the income-tax authorities mentioned in section 18 to call for any papers or documents for the purpose of ascertaining agricultural income or for any other purpose under this Act, except the papers noted below—

- (1) papers showing the amount of rent which accrued due in the previous year;
- (2) papers showing the actual receipt of agricultural income by an assessee in the previous year;
- (3) ledgers, account books and vouchers showing the actual expenditure incurred for which a deduction or exemption is claimed under this Act:

Provided that for the purposes of ascertaining agricultural income in regard to tea, the aforesaid Income-tax authorities may call for any papers produced or liable to be produced before the Income-tax authorities administering the Indian Income-tax Act.

Powers to make rules.

50. (1) The Provincial Government may, subject to previous publication, make rules for carrying out the purposes of this Act, and such rules may be made for the whole of the Province or such part or parts thereof as may be specified.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the manner in which the nett income from land referred to in sub-section (1) of section 8 shall be calculated;
- (b) prescribe the powers and duties of the income-tax authorities appointed under sub-section (2) of section 18, the area in which such powers shall be exercised and performed, the relation of such authorities to each other and the conditions of service of such authorities;
- (c) prescribe the date before which the returns shall be submitted under sub-section (1) of section 19, the form of such returns and the manner in which they shall be verified;
- (d) prescribe the period within which returns referred to in sub-section (2) of section 19 shall be submitted, the form of such returns and the manner in which they shall be verified;

- (e) prescribe the form of the notice of demand mentioned in section 23;
- (f) prescribe the form in which appeals under sections 24 and 26 shall be presented and the manner in which they shall be verified;
- (g) prescribe the fee mentioned in sub-section (2) of section 28;
- (h) prescribe the form of the notice of demand mentioned in sub-section (3) of section 31;
- (i) prescribe the method by which the assessment of agricultural income as determined under section 7 or section 8 shall be made in the case of an assessee who does not reside in the Province of Assam, or of an assessee who ordinarily resides in the Province of Assam and is temporarily absent therefrom;
- (j) prescribe the manner in which the tax shall be payable where the assessment is made on the agricultural income of a Hindu undivided or joint family and a partition of the property of such family has been effected after the date of such assessment;
- (k) prescribe the manner in which the tax payable by an assessee who has died since the date of the assessment made on him shall be payable;
- (l) provide for the circumstances in which refunds of the tax paid under this Act shall be made and prescribe the manner in which such refunds shall be made; and
- (m) provide for any other matter which by this Act has to be or may be prescribed.