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Bengal Act IV of 1944
THE BENGAL AGRICULTURAL INCOME-TAX ACT, 1944.

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THE SCHEDULE.

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Bengal Act IV of 1944¹

THE BENGAL AGRICULTURAL INCOME-TAX ACT, 1944.

REPEALED

Nil.

West Ben. Act III of 1949.
West Ben. Act XIX of 1949.
West Ben. Act XXVIII of 1957.
West Ben. Act XXV of 1969.
West Ben. Act III of 1974.
West Ben. Act VI of 1975.
West Ben. Act XXII of 1977.
West Ben. Act XXXI of 1979.
West Ben. Act XII of 1980.
West Ben. Act IX of 1981.
West Ben. Act XV of 1983.
West Ben. Act V of 1985.
West Ben. Act III of 1988.
West Ben. Act XVIII of 1989.
West Ben. Act VIII of 1990.
West Ben. Act VI of 1991.
West Ben. Act I of 1992.
West Ben. Act XVI of 1994.
West Ben. Act XXIX of 1994.
West Ben. Act III of 1995.
West Ben. Act XI of 1995.
West Ben. Act X of 1996.

AMENDED

ADAPTED

The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws
Order, 1950.

[30th December, 1944.]

An Act to provide for the imposition of a tax on agricultural income derived from land situated in Bengal.

WHEREAS it is necessary to make an addition to the revenues of Bengal, and for that purpose to impose a tax on agricultural income derived from land situated in Bengal;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 26th August, 1943, part IVA, page 42; the Report of the Select Committee which was published in the *Calcutta Gazette*, dated the 17th February, 1944, part IVA, page 19, was presented to the Bengal Legislative Assembly on the 1st February, 1944; for the Proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly, held on the 15th and the 16th September, 1943, 1st, 10th, 14th to 17th February, 3rd, 4th, 6th, 18th to 20th, 24th to 27th April, 1944; for Proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 17th, 23rd to 25th and 29th May, 12th, 13th, 20th and 23rd June, 4th to 6th, 10th to 13th, 17th to 19th, 25th, 27th and 31st July, 1st to 3rd, 8th to 10th and 15th to 17th August, 5th, 9th to 12th, 23rd and 24th October, 1944.

(Preliminary.—Sections 1, 2.)

Preliminary.

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Bengal Agricultural Income-tax Act, 1944.
 (2) It extends to the whole of ¹[West Bengal].
 (3) It shall be deemed to have come into force on the 1st day of April, 1944.

Definitions.

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

- (1) "agricultural income" means—
- ²(a) any rent or revenue derived from land which is situated in West Bengal and is used for agricultural purposes;
 - (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 item (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 items (ii) and (iii) of sub-clause (b) is carried on;

¹The words within square brackets were substituted for the word "Bengal" by para. (2) of Art. 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²This sub-clause was substituted for the original sub-clause by s. 2(a)(i) of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977). Prior to this substitution there were two changes in the original sub-clause (a), namely:—

(a) The words "a Province of India" were originally substituted for the words "British India", by para. (1) of Art. 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948; thereafter the words "of India" were omitted by para. 3 of and the Eleventh Schedule to, the Adaptation of Laws Order, 1950 and the word "State" was substituted for the word "Province" by para. 4(1), *ibid.* and

(b) The word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

of 1944.]

(Preliminary.—Section 2.)

¹Provided that—

- (i) 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, and
 - (ii) the land is either assessed to land revenue or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—
 - (A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or
 - (B) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A), as may be specified by the Central Government ²[under the enactments relating to Indian income-tax;]
- (2) "Agricultural Income-tax Officer" means a person appointed to be an Agricultural Income-tax Officer under section 21 ³[and includes persons vested with the powers of an Agricultural Income-tax Officer in the manner to be prescribed];

¹This proviso was substituted by s. 2(a)(ii) of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

²The words within square brackets were substituted for the words letter, figures and brackets "under the proviso to sub-clause (c) of clause (1) of section 2 of the Income-tax Act, 1961;" by s. 2(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

³The words within square brackets were added by s. 3(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

(Preliminary.—Section 2.)

- (2a) "Appellate Tribunal" means the West Bengal Commercial Taxes Appellate and Revisional Board constituted under section 6 of the West Bengal Sales Tax Act, 1994;
- (3) "assessee" means a person by whom agricultural income-tax is payable;
- (4) "Assistant Commissioner" means the person appointed as Assistant Commissioner of Agricultural Income-tax under section 21;
- (5) "Commissioner" means the person appointed to be the Commissioner of Agricultural Income-tax, ²[West Bengal], under section 21;
- ³(6) "company" means a domestic company or a foreign company.

West Ben.
Act XLIX
of 1994.

Explanation:—

- (a) "Domestic company" means a company formed and registered under the Companies Act, 1956 and includes a company formed and registered under any law relating to companies formerly in force in any part of India;

1 of 1956.

Provided that the registered office of the company is in India.

- (b) "Foreign company" means a foreign company within the meaning of section 591 of the Companies Act, 1956 and includes any foreign association whether incorporated or not, which the Government may, by general or special order, declare to be a foreign company for the purposes of this Act;

¹Firstly, clause (2a) was inserted by s. 4(1) of the West Bengal Taxation Laws (Second Amendment) Act, 1990. Thereafter, this clause was substituted for the original clause (2a) by s. 2(1) of the West Bengal Taxation Laws (Second Amendment) Act, 1995 (West Ben. Act XI of 1995).

²See foot-note 1 on page 580, *ante*.

³Firstly, in clause (6), the words and figures "section 3 of the Companies Act, 1956, and includes any foreign company within the meaning of section 591 of that Act and also includes" were substituted for the words and figures "the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament of the United Kingdom or of Royal Charter or Letters Patent or of an Act of the Legislature of a British possession or under a law of a Part B State, and includes" by s. 3(b) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Thereafter, clause (6) was substituted for the original clause by s. 2(b) of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977). Prior to these substitutions there were following changes in the original clause (6), namely:—

(a) the Indian Companies Act, 1913 (VII of 1913) was repealed and re-enacted by the Companies Act, 1956 (1 of 1956).

(b) the words "of the United Kingdom" were inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(c) the words and letter "a Part B State" were substituted for the words "an Indian State" by para. 4(1) of the Adaptation of Laws Order, 1950.

(d) the words "a Province of India" were originally substituted for the words "British India" by para. (1) of Art. 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948 and thereafter the words "a Province of" were omitted by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950, and

(e) The word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

of 1944.]

(Preliminary.—Section 2.)

- IX of 1932.
- (6A) "family" in relation to an individual shall be deemed to consist of his or her spouse, minor sons, unmarried daughters, as also major sons, daughters-in-law, son's minor sons and unmarried daughters in common mess;
- (7) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932, provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership;
- (8) "Hindu undivided family" means a Hindu undivided family governed by *mitakshara* law;
- (9) "person" includes a Hindu undivided family, a firm, ²[and a company];
- (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, 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 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have been so made up;
 - (b) such period as may be determined³ by the Commissioner in the particular case of any person or class of persons;
 - (c) in the case of income which is partially agricultural income from land and partially ⁴[income chargeable under the head of income "Business" or "Profits and gains of business or profession", as the case may be, under the enactments relating to Indian income-tax,] and the business concerned has been newly set up in the financial year preceding the year for which the assessment is to be made, the period from the date of the setting up of such business to the 31st day of March

¹Clause (6A) was inserted by s. 2(c) of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West. Ben. Act XXII of 1977).

²The words within square brackets were substituted for the words "a company and the Ruler of an Indian State" by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³For notification determining—

(a) the Bengali year in the case of persons who keep their accounts according to the Bengali year, see notification No. 609C., dated 8.3.45, published in the *Calcutta Gazette* of 1945, part I, page 415, and

(b) the accounting year in the case of assesses who do not keep their accounts either according to the financial year or the Bengali year, see notification No. 2776C., dated 23.9.46, published in the *Calcutta Gazette* of 1946, part I, page 1427.

⁴The words within square brackets were substituted for the words and figures "income chargeable under the Income-tax Act, 1961, under the head "Business", by s. 2(b) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

(Preliminary.—Section 2.)

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

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

Provided also that where in this clause an option is exercisable by the assessee it shall not be exercisable more than once except with the consent of the Agricultural Income-tax Officer and upon such conditions as such officer may think fit:

Provided further that where in this clause an option is exercisable by the assessee and he has been assessed after he has exercised such option it shall not be exercisable by him again so as to vary the meaning of the expression "previous year" as then applicable except with the consent of the Agricultural Income-tax Officer:

Provided also that where the assessee is a partner in a firm, the expression "previous year" in respect of his share of the agricultural income of the firm means the previous year as determined for the assessment of the agricultural income of the firm;

- (12) "principal officer" used with reference to ¹[a Part B State], a company or any other association means—
- (a) (i) the manager or agent in ²[West Bengal] of the Ruler of the ³[Part B State], or
 - (ii) the secretary, treasurer, manager or agent of the company or association; or
 - (b) any individual connected with the ³[Part B State], company or association upon whom an Agricultural 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;

Act XLV of
1860.

¹See foot-note 3 on page 582. *ante*.

²See foot-note 1 on page 580. *ante*.

³The words and letter "Part B State" were substituted for the words "Indian State" by para. 4(1) of the Adaptation of Laws Order, 1950

of 1944.]

(Preliminary.—Section 2.)

(14) "received" used with reference to the receipt of the agricultural income by a person shall include—

- (1) receipt by an agent or servant on behalf of a principal or master respectively,
- (2) receipts by other persons which are deemed to be his receipts under the provisions of this Act, and shall also include receipts of agricultural income by way of adjustment of accounts with any other person;

1* * * * *

(16) "total agricultural income" means the total amount of agricultural income referred to in section 4 and computed in the manner laid down in this Act;

²(17) "total world income" means the sum of—

- (a) the total income as defined in ³[the enactments relating to Indian income-tax,] and
- (b) the total agricultural income as defined in this Act, and
- (c) the agricultural income derived from land outside West Bengal and calculated in the manner referred to in clause (b) of sub-section (5) of section 48;

(18) "written down value" means in respect of any irrigation or protective work, or any machinery, plant or other capital asset,—

- (a) in the case of assets acquired in the previous year, the actual cost to the assessee,
- (b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation allowable to him under this Act in respect of such work, machinery, plant or other asset as the case may be.

¹Clause 15 was omitted by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²Clause (17) was substituted for the original clause by s. 3(c) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Prior to this substitution there were following changes in the original clause (17), namely:—

(a) the words "any Province of India other than West Bengal" were originally substituted for the words "British India excepting Bengal" by Art. 3(1) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the word "State" was substituted for the word "Province" by para. 4(1) of the Adaptation of Laws Order, 1950, and

(b) the words and figures "Income-tax Act, 1961" were substituted for the words and figures "Indian Income-tax Act, 1932" by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

³The words within square brackets were substituted for the words and figures "the Income-tax Act, 1961," by s. 2(c) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

(Chapter I.—Section 3.)

CHAPTER I

Charge of
agricultural
income-tax.

3. ¹(1) Agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of this Act, at the rate or rates specified in the Schedule in respect of the total agricultural income of the previous year of every individual, Hindu undivided family, company, firm or other ²[association of persons] and every Ruler of ³[a Part B State]:

⁴Provided that if the total world income of the previous year of any individual or Hindu undivided family consists of agricultural income as well, as other income, agricultural income-tax shall be chargeable under sub-section (1) on such part of the agricultural income as exceeds ten thousand rupees at the highest rate which would have been chargeable if the total world income were the agricultural income:

Provided further that in such cases increase in the quantum of tax in view of the application of the highest rate shall not exceed fifty *per centum* of the amount by which the total world income exceeds the agricultural income.

⁵(2) Notwithstanding anything contained in sub-section (1), agricultural income tax shall not be charged in respect of—

- (a) the total agricultural income of the previous year of any individual or Hindu undivided family where such total agricultural income does not exceed ten thousand rupees;

¹Section 3 was re-numbered as sub-section (1) of that section by s. 4(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²The words "association of persons" were substituted for the words "association of individuals" by s. 2 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

³See foot-note 3 on page 582, *ante*.

⁴Firstly, this proviso was inserted by s. 3(a) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949). Thereafter, the proviso was substituted by s. 4(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Finally, this proviso was substituted by s. 4(1)(a) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983). Prior to these substitutions there were following changes in the original proviso, namely:—

(a) the word "further" was inserted by s. 3(b) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949), and

(b) See foot-note 3 on page 584, *ante*.

⁵Firstly, sub-section (2) was added by s. 4(b) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Thereafter, this sub-section was substituted by s. 4(1) of the West Bengal Taxation Laws (Second Amendment) Act, 1994 (West Ben. Act XXIX of 1994). Prior to this substitution there was a change in clause (a), namely:—

(i) the words "ten thousand rupees" were substituted for the words "three thousand rupees" by s. 4(1)(b) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

of 1944.]

(Chapter I.—Section 4.)

- (b) the total agricultural income of the previous year of Central Government or any State Government or any local authority;
- ¹(c) the agricultural income of the previous year of any individual, Hindu undivided family, company, firm or other association of persons where such agricultural income is derived from—
- (i) land which is used for agricultural purposes other than those for producing tea,
 - (ii) land by agriculture other than that for producing tea,
 - (iii) land by 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, other than tea, raised or received by him fit to be taken to market, or
 - (iv) land by the sale by a cultivator or receiver of rent-in-kind of the produce, other than tea, 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 (iii).

4. Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within ²[West Bengal] and received by him within or without ²[West Bengal], including any Local Cess and Education Cess payable in respect of such land to such person under the Cess Act, 1880, and the Bengal (Rural) Primary Education Act, 1930, respectively, but does not include—

Total agricultural income.

- (a) any agricultural income derived from land situated without ²[West Bengal],
- ³(b) any agricultural income derived from property held under trust including Muslim trusts commonly known as Wakf-al-aulad or other legal obligation wholly or in part for religious or charitable purposes, to the extent to which such income is applied to such purposes.

Explanation.—⁴[In this clause] "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

¹Sub-clause (c) was substituted by s. 5 of the West Bengal Finance Act, 1995 (West Ben. Act III of 1995).

²See foot-note 1 on page 580, *ante*.

³Clause (b) was substituted by s. 3(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

⁴The words within square brackets were substituted for the words "In this section" by s. 3(b). *ibid*.

(Chapter II.—Computation of agricultural income-tax and allowances.—Sections 5, 6.)

CHAPTER II

Computation of agricultural income-tax and allowances.

Heads of charge to agricultural income-tax.

5. Save as otherwise provided by this Act, the following heads of agricultural income shall be chargeable to agricultural income-tax, namely:—

- (i) agricultural income as defined in sub-clause (a) of clause (1) of section 2 (hereinafter referred to as "agricultural income from rent or revenue");
- (ii) agricultural income as defined in sub-clause (b) of clause (1) of section 2 (hereinafter referred to as "agricultural income from agriculture").

in the manner hereinafter appearing.

Computation of tax and allowances under the head, "Agricultural income from rent or revenue".

6. Agricultural income-tax shall be payable by an assessee under the head "Agricultural income from rent or revenue" in respect of all rent and revenue, including any Local Cess or Education Cess referred to in section 4 derived from land referred to in sub-clause (a) of clause (1) of section 2 included in his total agricultural income and received in the previous year, subject to the following allowances, namely:—

- (1) any sums paid by him in the previous year on account of—
 - (i) land revenue or rent,
 - (ii) any local rate or cess including Education Cess in respect of such land;
- (2) where his interest in such land is subject to a mortgage or other capital charge, the amount of any interest paid by him in the previous year in respect of such mortgage or charge, and where such land has been acquired, reclaimed or improved by him by the use of borrowed capital, the amount of any interest paid by him in the previous year in respect of such capital;

Provided that the interest allowable under this clause shall not exceed the interest which the assessee is liable to pay in respect of such mortgage, charge or capital as a borrower under section 30 of the Bengal Money-lenders Act, 1940;

- (3) any sum paid by him in the previous year as interest on any loans taken by him under the Agriculturists' Loans Act, 1884, or the Land Improvement Loans Act, 1883, in respect of such land;
- (4) in respect of the maintenance of any irrigation or protective work or other capital asset the amount paid in the previous year on account thereof.

Ben. Act X
of 1940.

XII of 1884,
XIX of
1883.

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 6.)

Explanation.—“Maintenance” includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood, or other natural causes;

- (5) depreciation at the prescribed rate in respect of any irrigation or protective work or other capital asset, constructed or acquired after the commencement of this Act 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;
- (6) any sum paid by him in the previous year as premium in order to effect any insurance against loss of or damage to such land or any crops to be raised or cattle to be reared thereon;
- (7) in respect of the cost of collection of such rent or revenue including the cost of maintenance of any *kutchari* or other capital assets and any expenses of litigation, a sum equal to fifteen *per centum* of the total amount of rent or revenue which accrued to him in the previous year in respect of the land from which such rent or revenue is derived:

Provided that in the case of an assessee who can produce his accounts audited and certified to be correct by an accountant, and at the option of such assessee recorded in writing the allowance shall be, instead of such sum, the actual cost of collection incurred during the previous year as determined by the Agricultural Income-tax Officer on the basis of such accounts, subject to a maximum equal to twenty *per centum* of the total amount of rent or revenue which accrued to him in the previous year in respect of the land from which rent or revenue is derived.

Explanation.—“Accountant” in this proviso has the same meaning as in clause (iii) of sub-section (2) of section 58 and includes the Accountant-General, [West Bengal], and any person auditing accounts under his direction and control:

Provided further that the assessee, having once exercised the option to claim the actual cost on the basis of his accounts as the allowance admissible as aforesaid, shall not be entitled in any future year to claim instead the alternative allowance admissible except with the previous sanction of the Assistant Commissioner;

¹See foot-note 1 on page 580. *ante*.

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 7.)

- (8) in the assessment made for each of the three financial years ending on the 31st March, 1945, the 31st March, 1946, the 31st March, 1947, respectively, in respect of the cost of collection of such rent or revenue and in addition to the allowance specified in clause (7), if the total amount of the rent or revenue received by the assessee in the previous year exceeds the total amount of rent or revenue which accrued to such assessee in the previous year by more than five *per centum* of such amount accrued, a sum equal to one fifth of the amount by which such amount received exceeds such amount accrued;
- (9) when rent derived from such land is rent in kind the cost incurred by the assessee—
- (i) in performing any process contemplated in item (ii) of sub-clause (b) of clause (1) of section 2 for rendering the produce which comprises such rent in kind fit to be taken to market;
 - (ii) in transporting such produce to market;
 - (iii) in maintaining in good repair any agricultural implements or machinery and in providing for the upkeep of cattle for the purposes of such process or transport;
- (10) any other expenditure of the assessee, not being in the nature of capital expenditure or personal expenditure, laid out wholly and exclusively for the purpose of deriving such agricultural income from such land.

Computation of tax and allowances under the head, "Agricultural income from agriculture".

17. Agricultural income-tax shall be payable by an assessee under the head "Agricultural income from agriculture" in respect of all agricultural income derived from land referred to in sub-clause (b) of clause (1) of section 2 included in his total agricultural income and received by him in the previous year subject to the following allowances, namely:—

- (1) the cost incurred by the assessee in the previous year:—
 - (i) in cultivating such land or raising livestock thereon;
 - (ii) in performing any process contemplated in item (ii) of sub-clause (b) of clause (1) of section 2 for rendering the produce of such land fit to be taken to market;
 - (iii) in transporting such produce or livestock to market; and

¹Firstly, section 7 was renumbered as sub-section (1) of that section by s. 3(1) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994). Thereafter, sub-section (1) of section 7 was renumbered as section 7 by s. 4(1)(a) of the West Bengal Finance Act, 1996 (West Ben. Act X of 1996).

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 7.)

(iv) in maintaining agricultural implements and machinery in good repair and in providing for the upkeep of cattle for the purpose of such cultivation, process, or transport:

Provided that in the case of an agricultural income derived from land possessed by an individual or a Hindu undivided family and cultivated by such individual or by the members of such family with or without the aid of servants or hired labourers or of both, the allowance admissible under this clause shall, instead of such cost, be a sum equal to fifty *per centum* of the market value of the produce raised from such land;

- (2) any sum paid by him in the previous year on account of—
- (i) land revenue or rent,
 - (ii) any local rate or cess including Education Cess, in respect of such land;
- (3) where his interest in such land is subject to a mortgage or other capital charge, the amount of any interest paid by him in the previous year in respect of such mortgage or charge, and where such land has been acquired, reclaimed or improved by him by the use of borrowed capital, the amount of any interest paid by him in the previous year in respect of such capital:

Provided that the interest allowable under this clause shall not exceed the interest which the assessee is liable to pay in respect of such mortgage, charge or capital as a borrower under section 30 of the Bengal Money-lenders Act, 1940;

- (4) any sum paid by him in the previous year as interest on any loans taken by him under the Agriculturists' Loans Act, 1884, or the Land Improvement Loans Act, 1883, in respect of such land;
- (5) in respect of the maintenance of any irrigation or protective work or other capital assets the amount paid in the previous year on account thereof.

Explanation.—“Maintenance” includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood or other natural causes;

- (6) depreciation at the prescribed rate in respect of any irrigation or protective work or other capital asset constructed or

Ben. Act X
of 1940.

XII of 1884.

XIX of
1883.

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 7A.)

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acquired after the commencement of this Act 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;

- (7) any sum paid by him in the previous year as premium in order to effect any insurance against loss of or damage to such land or any crops to be raised or cattle to be reared thereon;
- (8) in respect of any machinery or plant used exclusively for agricultural purposes which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value;

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

- (9) any other expenditure of the assessee not being in the nature of capital expenditure or personal expenditure laid out wholly and exclusively for the purpose of deriving such agricultural income from such land;

¹(9a) any sum of allowance computed under sub-section (2);

- (10) any other sum which may be prescribed.

* * * * *

Computation of agricultural income of company, firm or other association of persons.

7A. Notwithstanding anything to the contrary contained in this Act, in the case of an assessee being a company or a firm or other association of persons, the agricultural income of such assessee shall be computed in accordance with the method of accounting regularly employed by such assessee for such computation:

Provided that if, in any case, the method of accounting as aforesaid is such that, in the opinion of the Agricultural Income-tax Officer, the agricultural income cannot be computed, the computation shall be made on such basis and in such manner as the Agricultural Income-tax Officer may determine.

¹Clause (9a) was added by s. 3(1)(a) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994).

²Firstly section 7 was renumbered as sub-section (1) of that section by s. 3 (1), *ibid* and after sub-section (1), as so renumbered, sub-section (2) was inserted by s. 3(1)(b), *ibid*. Thereafter sub-section (2) was omitted by s. 4(1)(b) of the West Bengal Finance Act, 1996 (West Ben. Act X of 1996).

³Section 7A was inserted by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1980 (West Ben. Act XII of 1980).

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 8.)

8. (1) In the case of income which is partially agricultural income assessable under this Act and partially ¹[income chargeable under the head of income "Business" or "Profits and gains of business or profession", as the case may be, under the enactments relating to Indian income-tax,] agricultural income-tax shall be payable by an assessee in respect of the market value determined in the manner prescribed of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business, subject to any allowances which may be permissible under the provisions of this Act:

Computation of tax on mixed incomes.

Provided that,—

- (a) where for the purposes of the assessment of income-tax under ²[the enactments relating to Indian income-tax,] the market value of the said produce has been determined the market value as so determined shall be taken to be the market value for the purposes of this sub-section;
- (b) where there is a common charge on both agricultural income assessable under this Act and income chargeable under ³[the enactments relating to Indian income-tax,] and such charge is an allowance permissible both under this Act and ³[the enactments relating to Indian income-tax,] then, if for the purposes of ³[the enactments relating to Indian income-tax,] the part of such charge which is to be deemed to be the allowance ⁴[permissible under those enactments] has been ⁵[determined under those enactments,] the remaining part of such charge shall be deemed to be the allowance to which agricultural income assessable under this Act is subject.

¹The words within the square brackets were substituted for the words and figures "income chargeable under the Income-tax Act, 1961, under the head "Business", by s. 3(a)(i) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989). Prior to this substitution there was a change in this sub-section, namely:—

the words and figures "Income-tax Act, 1961" were substituted for the words and figures "Indian Income-tax Act, 1922" by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²Firstly the words and figures "Income-tax Act, 1961" were substituted for the words and figures "Indian Income-tax Act, 1922" by s. 2, *ibid*. Thereafter the words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961," by s. 3 (a) (ii)(B)(1) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

³Firstly the words and figures "Income-tax Act, 1961" were substituted for the words and figures "Indian Income-tax Act, 1922" by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Thereafter the words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961," by s. 3 (a) (ii)(B)(1) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

⁴The words within the square brackets were substituted for the words "permissible under that Act," by s. 3(a)(ii)(B)(2), *ibid*.

⁵The words within the square brackets were substituted for the words "determined under that Act," by s. 3(a)(ii)(B)(3), *ibid*.

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 8.)

2. (1A) Notwithstanding anything contained in this Act, in the case of tea [the plant *Camellia Thea* (Linn.)] grown in West Bengal and sold by the grower himself or his agent after manufacture, the agricultural income derived therefrom shall, as long as for the purposes of assessment of income-tax under the enactments relating to Indian income-tax, the income derived therefrom is computed under those enactments in such manner as to include agricultural income, be deemed to be that portion of such income as so computed on which income-tax is not payable under those enactments, and agricultural income-tax at the rates specified in the Schedule shall be payable on the whole of such agricultural income as so computed.

Explanation.—Where such income is derived from lands partially in and partially without West Bengal, agricultural income-tax shall be levied under this Act on such portion of that income as is attributable to lands in West Bengal according to the following principles, namely:—

- (i) where the proportion of such income attributable to lands in West Bengal has been determined for the purposes of the enactments relating to Indian income-tax, such apportionment shall, for the purposes of this sub-section, be accepted as determining the proportion of such income attributable to lands in West Bengal;
- (ii) where the proportion of such income attributable to lands in West Bengal cannot be determined by the method specified in clause (i) of this *Explanation*, such proportion shall be determined in such manner as may be prescribed.

3(1B) Where the computation of the income derived from tea has not been completed for the purposes of assessment of income-tax under the enactments relating to Indian income-tax, or where such computation has been completed but the assessment under the enactments relating to Indian income-tax has been annulled or set aside under those enactments and no order of assessment under section 25 has been made within six years from the end of the year in which the agricultural income was first assessable, the Agricultural Income-tax Officer shall, notwithstanding anything to the contrary contained in this Act, assess the agricultural income derived from tea in such manner and within such period as may be prescribed and shall determine the sum payable by the assessee on the basis of such assessment:

Provided that the Agricultural Income-tax Officer may, of his own motion, and shall, on an application made within one year from the date

¹Sub-section (1A) was inserted by s. 3(b) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XXIII of 1989).

²Sub-section (1B) was inserted, with effect from the 18th day of October, 1979, by s. 3(c), *ibid.*

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Sections 9, 10.)

of assessment under the enactments relating to Indian income-tax and accompanied by a certified copy of the order, modify the assessment under this sub-section:

Provided further that the Agricultural Income-tax Officer shall not, of his own motion, modify such assessment without giving the assessee a reasonable opportunity of being heard:

Provided also that no order of modification of assessment shall be made after the expiry of six years from the end of the year in which the agricultural income was first assessed under this sub-section.

1* * * * *
2* * * * *

(3) For the purpose of the assessment of agricultural income-tax under this section or any rule made thereunder a certified copy of an order of an assessment under the ³[the enactments relating to Indian income-tax.] or a certified copy of an order of any appellate or revising authority or of the High Court or of ⁴[the Supreme Court] altering or amending such order of assessment under the provisions of ⁵[those enactments] shall be conclusive evidence of the contents of such order.

9. Where an allowance admissible under section 6, 7 or 8 is in respect of a common payment made for the purpose of deriving agricultural income from land part of which is within and part without ⁶[West Bengal] such allowance shall be calculated as such proportion of the common payment as the agricultural income derived from the land within ⁶[West Bengal] bears to the agricultural income derived from all the land both within and without ⁶[West Bengal] in respect of which such common payment is made.

Computation of allowances where estates extend beyond West Bengal.

10. Agricultural income-tax shall not, subject to the provisions of section 17, be payable on that part of the total agricultural income of a person which is—

Exemptions from assessment of tax.

¹Sub-section (2) was omitted by s. 3(1) of the Bengal Agricultural Income-tax (Amendment) Act, 1980 (West Ben. Act XII of 1980).

²Firstly, sub-section (2A) was inserted by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1979 (West Ben. Act XXXI of 1979). Thereafter this sub-section was omitted by s. 3(2) of the Bengal Agricultural Income-tax (Amendment) Act, 1980 (West Ben. Act XII of 1980).

³The words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961," by s. 3(d)(i) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989). Prior to this substitution there was a change in this sub-section as per para (1) of the foot-note 1 on page 593, *ante*.

⁴The words within square brackets were substituted for the words "His Majesty in Council" by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁵The words within the square brackets were substituted for the words "that Act" by s. 3(d)(ii) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

(Chapter II.—Computation of agricultural income-tax and allowances.—Sections 11, 12.)

- ¹[(a) any agricultural income which he receives as his share of agricultural income of a firm or association of persons, which has paid the tax in respect of the said agricultural income;]
- (b) any sum which he receives as a member of a Hindu undivided family, the agricultural income of which has already been taxed;
- (c) any sum paid by such person—
- (i) to effect an insurance on the life of such person or on the life of a wife or husband or minor child of such person or in respect of a contract for a deferred annuity on the life of such person or on the life of a wife or husband or minor child of such person;
 - (ii) where the assessee is a Hindu undivided family, to effect an insurance on the life of any male member of such family or of the wife or a minor child of any such member;

Provided that the aggregate of any sums exempted from assessment to agricultural income-tax under this clause shall not exceed one-sixth of the total agricultural income of the assessee.

Prevention of double relief.

11. In computing the amount of any allowance or relief from assessment due under sections 6, 7, 8 or clause (c) of section 10 no part of such allowance or relief shall be included which constitutes a ground for ²[relief in respect of income-tax chargeable under the provisions of the enactments relating to Indian income-tax.]

Inclusion to agricultural income.

³12. (1) In computing the total agricultural income of an individual for the purpose of assessment there shall be included—

- (a) the total agricultural income of his or her family;
- (b) so much of the total agricultural income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his or her spouse or minor child (not being married daughters) or both.

¹Clause (a) was substituted for the original clause by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1957 (West Ben. Act XXVIII of 1957).

²The words within the square brackets were substituted for the words and figures "relief from Indian income-tax under the provisions of the Income-tax Act, 1961." by s. 4 of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989). Prior to this substitution there was a change in this section as per para. (i) of foot-note 1 on page 593, *ante*.

³Section 12 was substituted for the original section by s. 4 of the Bengal Agri-

of 1944.]

(Chapter III.—Liability to assessment in special cases.—
Sections 13, 14.)

(2) Where, by reason of the provisions contained in sub-section (1) the income from any asset is included in the total income of the assessee, the person in whose name such asset stands shall, notwithstanding anything to the contrary contained anywhere in this Act, be liable, on the service of a notice of demand by the Agricultural Income-tax Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included, and the provisions of Chapter VI, so far as may be, shall apply accordingly:

Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

CHAPTER III

Liability to assessment in special cases.

13. Where any person receives any agricultural income derived from land.

- (a) as a guardian, trustee or agent of any person being a minor, lunatic or idiot or person residing without [West Bengal], interested in such land or the agricultural income derived therefrom, or
- (b) as a receiver or administrator appointed by or under the order of any Court in respect of such land or the agricultural income derived therefrom,

Liability of guardian, trustee, agent, receiver or administrator.

any agricultural income-tax payable under this Act on such income shall be levied upon and recoverable from such guardian, trustee, agent, receiver or administrator in like manner and to the same amount as would be leviable upon and recoverable from any such person if in direct receipt of such agricultural income and such guardian, trustee, agent, receiver or administrator shall be deemed to be the assessee in respect of the agricultural income-tax so payable by such minor, lunatic, idiot, person residing without [West Bengal] or other person, as the case may be, and all the provisions of this Act shall apply accordingly.

14. In the case of agricultural income chargeable to agricultural income-tax under this Act derived from land which is received by the Court of Wards, an Administrator-General or an Official Trustee or any trustee or trustees [appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise]

Liability of Court of Wards, Administrator-General and Official Trustees, etc.

¹See foot-note 1 on page 580. *ante*.

²The words within square brackets were substituted for the words "appointed under a duly executed trust deed" with retrospective effect by s. 4 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

(Chapter III.—Liability to assessment in special cases.—
Sections 15-17.)

(including the trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), or a common manager the agricultural income-tax payable under this Act on such income shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee or such other trustee or trustees or such common manager in the like manner and to the same amount as it would be leviable upon or recoverable from any person on whose behalf such agricultural income is received and all the provisions of this Act shall apply accordingly.

VI of 1913.

Rateable
payment by
guardian,
trustees, etc.

15. Where the agricultural income received on behalf of any person by any trustee, agent, receiver, Court of Wards, Official Trustee or common manager referred to in sections 13 and 14 is part only of the total agricultural income of such person, the agricultural income-tax payable under this Act shall be assessed on the total agricultural income of such person and the amount of tax as so assessed shall be levied upon and recoverable from such trustee, agent, receiver, Court of Wards, Official Trustee or common manager and such person rateably according to the portion of the total agricultural income of such person received by such trustee, agent, receiver, Court of Wards, Official Trustee or common manager, as the case may be, and the portion received by such person.

Residuary
provisions
for computa-
tion and
recovery of
tax under
sections 13
and 14.

16. (1) In any case falling under the provisions of sections 13 and 14 where any agricultural income or any part thereof is not specifically received on behalf of any one person, or where the individual shares of the persons on whose behalf such income is received are indeterminate or unknown, the tax shall be levied and recoverable at the rate applicable to the total amount of such income.

(2) Nothing contained in sections 13 and 14 shall prevent either the direct assessment of a person therein referred to on whose behalf agricultural income is received, or the recovery from such person of the agricultural income-tax payable in respect of such income.

Tax deemed
to be paid
on others'
behalf by
firms and
associations.

17. A firm or other association of persons which has paid agricultural income-tax under this Act in respect of its agricultural income as such firm or association shall be deemed for the purposes of section 48 to have paid agricultural income-tax on behalf of the partners of such firm or the members of such association, as the case may be, on such part of the agricultural income of every individual partner or member as represents the portion of the agricultural income of such firm or association which is received by such partner or member.

¹Section 17 was substituted for the original section by s. 3 of the Bengal Agricultural Income-tax (Amendment) Act, 1957 (West Ben. Act XXVIII of 1957).

of 1944.)

(Chapter III.—Liability to assessment in special cases.—
Sections 18-20.)

18. (1) Save as provided for in sections 13, 14 and 17 if a person receives agricultural income derived from land and such income is derived partly for his own benefit and partly for the benefit of beneficiaries or wholly for the benefit of beneficiaries, agricultural income-tax ¹[payable under this Act] shall be assessed on the total agricultural income derived from such land at the rate which would be applicable if such income had been derived solely for his own benefit, and agricultural income-tax at such rate shall be leviable upon and recoverable from such person in respect of such income.

Liability of person deriving agricultural income jointly for himself and others.

(2) Any person receiving agricultural income as referred to in sub-section (1) may, before paying to any beneficiary any share of such agricultural income to which such beneficiary is entitled, deduct from such share the amount of agricultural income-tax or its equivalent value in kind if such share is paid in kind rateably paid in respect of such share.

Explanation.—In this section “beneficiary” means a person entitled according to law to a portion of the agricultural income derived from such land.

19. Where agricultural income is received by a firm or ²[association of persons] and the business of such firm or association is discontinued or such firm or association is dissolved every person who was a partner of such firm or member of such association at the time of such discontinuance or dissolution shall be jointly and severally liable to assessment on such agricultural income and for the amount of agricultural income-tax payable under this Act by such firm or association, and all the provisions of this Act shall, so far as may be, apply to such assessment.

Liability in case of discontinued firms or associations.

20. Any person employed by or on behalf of a person residing without ³[West Bengal] or through whom in the course of any business connection such person is in the receipt of any agricultural income upon whom the Agricultural Income-tax Officer has caused a notice to be served of his intention of treating such person as the agent of the non-resident person, shall for the purposes of this Act be deemed to be such agent:

Agents to include persons treated as such.

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 Agricultural Income-tax Officer as to his liability.

¹The words within the square brackets were inserted by s. 5 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²See foot-note 2 on page 586, *ante*.

³See foot-note 1 on page 580, *ante*.

(Chapter IV.—Income-tax Authorities and Appellate Tribunal.—
Section 21.)

CHAPTER IV

Income-tax Authorities and Appellate Tribunal.

Agricultural
income-tax
authorities.

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

- (a) the Commissioner of Agricultural Income-tax. ¹[West Bengal];
- ²(aa) the Additional Commissioner of Agricultural Income-tax, West Bengal;
- ²(aaa) the Deputy Commissioner of Agricultural Income-tax, West Bengal;
- (b) ³[Assistant Commissioners of Agricultural Income-tax];
- (c) ¹[West Bengal] Agricultural Income-tax Officers.

(2) The authorities specified in sub-section (1) shall be appointed by the ⁴[State] Government.

(3) The Commissioner of Agricultural Income-tax. ¹[West Bengal], shall in respect of the whole of ¹[West Bengal] exercise the powers conferred and perform the duties imposed on him by this Act and by such rules as may be prescribed.

⁵(3A) The ⁶[Additional Commissioner of Agricultural Income-tax, West Bengal and the] Deputy Commissioner of Agricultural Income-tax, West Bengal, shall exercise such powers of the Commissioner under this Act or the rules made thereunder, except the powers provided under section 37, as may be delegated to him by the Commissioner with the approval of the State Government.

(4) ⁷[Assistant Commissioners of Agricultural Income-tax], shall exercise in respect of ⁸[such areas as the State Government may, by notification in the *Official Gazette*, determine] all the powers provided

¹See foot-note 1 on page 580, *ante*.

²Firstly, clause (aa) was inserted by s. 4(1) of the Bengal Agricultural Income-tax (Amendment) Act, 1980 (West Ben. Act XII of 1980). Thereafter, clauses (aa) and (aaa) were substituted for the previous clause (aa) by s. 4(2)(a)(i) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

³The words within the square brackets were substituted for the words "the Assistant Commissioner of Agricultural Income-tax, West Bengal" by s. 4(2)(a)(ii), *ibid*. Prior to this substitution there was a change in this clause as per foot-note 1 on page 580, *ante*.

⁴See foot-note 3 on page 582, *ante*.

⁵Sub-section (3A) was inserted by s. 4(2) of the Bengal Agricultural Income-tax (Amendment) Act, 1980 (West Ben. Act XII of 1980).

⁶The words within the square brackets were inserted by s. 4(2)(b) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

⁷The words within the square brackets were substituted for the words "The Assistant Commissioner of Agricultural Income-tax, West Bengal" by s. 4(2)(c)(i), *ibid*. Prior to this substitution there was a change in this sub-section as per foot-note 1 on page 580, *ante*.

⁸The words within the square brackets were substituted for the words "the whole of West Bengal" by s. 4(2)(c)(ii) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983). Prior to this substitution there was a change as per foot-note 1 on

of 1944.]

(Chapter IV.—Income-tax Authorities and Appellate Tribunal.—Section 22.)

under section 34 and such powers of the Commissioner under this Act or the rules made thereunder, except the powers provided under section 37, as may be delegated to him by the Commissioner with the approval of the ¹[State] Government.

(5) The ²[West Bengal] Agricultural Income-tax Officers shall, in respect of such areas as the ¹[State] Government may by notification ³determine, exercise the powers conferred and perform the duties imposed on them by this Act and by such rules as may be prescribed.

'22. (1) All appeals under section 36 and all applications for reference under section 63 shall be heard and disposed of by the Appellate Tribunal referred to in clause (2a) of section 2 in accordance with the provisions of this Act and the rules made thereunder.

Appellate Tribunal.

(2) All appeals under section 36 ⁴[, all proceedings under section 32 or section 39] and all applications for reference under section 63, including part heard ones' pending before the Appellate Tribunal appointed by the State Government under this Act prior to the coming into force of

¹See foot-note 3 on page 582, *ante*.

²See foot-note 1 on page 580, *ante*.

³For notification.—(a) directing that the Agricultural Income-tax Officers of the Calcutta, Burdwan, Midnapur and Jalpaiguri Ranges shall have jurisdiction over the assesses specified, see notification No. 81 F.T., dated 11.10.47, published in the *Calcutta Gazette* of 1947, part I, page 238;

(b) directing that the Agricultural Income-tax Officers of the Nadia and Malda Ranges shall have jurisdiction over the assesses of Nadia and Murshidabad and Malda and West Dinajpur districts, see notification No. 1939 F.T., dated 26.11.48, published in the *Calcutta Gazette* of 1948, part I, page 1610;

(c) relating to jurisdiction of the Agricultural Income-tax Officers of the Jalpaiguri Range over the assesses of the districts of Jalpaiguri, Darjeeling and Cooch Behar, see notification No. 317 F.T., dated 9.2.51, published in the *Calcutta Gazette* of 1951, part I, page 401;

(d) relating to jurisdiction of the Agricultural Income-tax Officers of certain Ranges over the assesses specified, see notification No. 1237 F.T., dated 17.7.53, published in the *Calcutta Gazette*, of 1953, part I, page 2340.

Section 22 was substituted for the original section by s. 4(2) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990). Prior to this substitution there were following changes in the original section 22, namely:—

(i) see foot-note 1 on page 580, *ante*.

(ii) see foot-note 3 on page 582, *ante*.

(iii) sub-section (5a) was inserted by s. 6 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975); and

(iv) in clause (c) of sub-section (2), the words, brackets and figures "Chartered Accountant within the meaning of the Chartered Accountants Act, 1949:" were substituted for the words and figures "Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932;" by s. 3 of the West Bengal Taxation Laws (Amendment) Act, 1985 (West Ben. Act V of 1985).

⁴The words and figures within the square brackets were inserted by s. 2(2)(a)(i) of the West Bengal Taxation Laws (Second Amendment) Act, 1995 (West Ben. Act XI of 1995).

(Chapter V.—Machinery of assessment.—Section 23.)

¹[section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995.] shall, on the commencement of ²[section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995.] stand transferred to the Appellate Tribunal referred to in clause (2a) of section 2 for hearing and disposal in accordance with the provisions of this Act and the rules made thereunder.

(3) Subject to the previous sanction of the State Government the Appellate Tribunal referred to in clause (2a) of section 2 shall, in so far as it is consistent with the provisions of this Act and the rules made thereunder, ³[make its regulations, or amend its regulations made, under sub-section (7) of section 6 of the West Bengal Sales Tax Act, 1994.] for regulating its business and providing the rules of business in connection with hearing and disposal of appeals referred to in section 36 and applications for reference referred to in section 63:

Provided that the regulations so amended shall be published in the *Official Gazette*.

⁴(4) All regulations made by the Appellate Tribunal before the date of coming into force of section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, and continuing in force immediately before the said date shall, with effect from the date of coming into force of section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, continue to be in force until they are made or amended by the Appellate Tribunal.

⁵(5) Anything done or any action taken by the Appellate Tribunal on or after the 1st day of May, 1995, but before the publication of the notification bringing into force section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, shall be deemed to have been validly done or taken by it.

CHAPTER V

Machinery of assessment.

23. [*Certificate by company to shareholders receiving dividends.*]—*Omitted by s. 4 of the Bengal Agricultural Income-tax (Amendment) Act, 1957 (West Ben. Act XXVIII of 1957).*

¹The words, figures and brackets within the square brackets were substituted for the words, figures and brackets "section 4 of the West Bengal Taxation Laws (Second Amendment) Act, 1990," by s. 2(2)(a)(ii), of the West Bengal Taxation Laws (Second Amendment) Act, 1995 (West Ben. Act XI of 1995).

²The words, figures and brackets within the square brackets were substituted for the words, figures, letter and brackets "amend its regulations made under sub-section (9) of section 3B of the Bengal Finance (Sales Tax) Act, 1941," by s. 2(2)(b), *ibid*.

³Sub-sections (4) and (5) were substituted for sub-section (4) by s. 2(2)(c), *ibid*.

of 1944.]

(Chapter V.—Machinery of assessment.—Section 24.)

24. ¹(1) Every person whose total agricultural income during the previous year exceeded the maximum amount which is not chargeable to agricultural income-tax, shall furnish a return in the prescribed form, verified in the prescribed manner, setting forth his total agricultural income and, except in the case of a company, firm, or other association of persons, also his total world income during the previous year and such other particulars as may be prescribed, before the expiry of three months from the end of the previous year or before the 30th day of June next following the previous year, whichever is later:

Return of agricultural income.

Provided that on an application made in the prescribed manner, the Agricultural Income-tax Officer may, in his discretion, extend the date for furnishing the return, and shall, in the case of agricultural income assessable under section 8, allow such extension of such date as may be necessary to enable the assessee to file any certified copy of an assessment order under the enactments relating to Indian income-tax.

(2) In the case of any person whose ²[total agricultural income] is, in the Agricultural Income-tax Officer's opinion, of such an amount as to render such person liable to agricultural income-tax, the Agricultural Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth along with such other particulars as may be provided for in the notice ³[his total agricultural income and except in the case of a company, firm or other association of persons, also his total world 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

* * * * *

¹Sub-section (1) was substituted for the original sub-section by s. 5(1) of the West Bengal Finance Act, 1992 (West Ben. Act I of 1992). Prior to this substitution there were following changes in the original sub-section (1), namely:—

(i) the words "his total agricultural income and except in the case of a company, firm, or other association of persons also his total world income during the previous year" were substituted for the words "his total agricultural income during that year" by s. 7(a)(i) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975); and

(ii) the words "and shall in the case of agricultural income assessable under section 8 allow such extension of such date as may be necessary to enable the assessee to file any certified copy of an assessment order under the Indian Income-tax Act, 1922" were omitted by s. 7(a)(ii), *ibid.*

²The words within square brackets were substituted for the words "total income" by s. 5 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

³The words within the square brackets were substituted for the words "his total agricultural income during the previous year" by s. 7(b)(i) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

⁴The words "and shall in the case of agricultural income assessable under section 8 allow such extension of such date as may be necessary to enable the assessee to file any certified copy of an assessment order under the Indian Income-tax Act, 1922" were omitted by s. 7(b)(ii), *ibid.*

(Chapter V.—Machinery of assessment.—Section 24A.)

(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 these sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Agricultural Income-tax Officer may serve on any person who has furnished a return under sub-section (1) or upon whom a notice has been served under sub-section (2), a notice requiring him, on a date to be therein specified, either to attend at the Agricultural Income-tax Officer's office or to produce or cause to be produced such accounts or documents as the Agricultural Income-tax Officer may require or to adduce any evidence on which such person may rely in support of the return where a return has already been furnished:

Provided that the Agricultural Income-tax Officer may on reasonable grounds and on application being made to him in this behalf extend the date for the attendance of the person or production of accounts or documents or for adducing evidence and shall in the case of agricultural income assessable under section 8 allow such extension of such date as may be necessary to enable the assessee to file certified copy of an assessment order under ²[the enactments relating to Indian income-tax:]

Provided further 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.

Self
assessment.

¹24A. (1) Where a return has been furnished under section 24 the assessee shall pay the tax so payable within thirty days of furnishing the return.

(2) After a regular assessment under section 25 has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such regular assessment.

(3) If any assessee fails to pay the tax or any part thereof in accordance with the provisions of sub-section (1), he shall, unless a regular assessment under section 25 has been made before the expiry of the thirty days referred to in that sub-section, be liable, by way of penalty, to pay such amount as the Agricultural Income-tax Officer may direct, and in the case of a continuing failure, such further amount or amounts as the Agricultural Income-tax Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed fifty *per cent.* of the amount of such tax or part, as the case may be:

¹Sub-section (4) was substituted for the original sub-section by s. 7(c) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²The words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961," by s. 5 of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

³Section 24A was inserted by s. 8 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

of 1944.]

(Chapter V.—Machinery of assessment.—Section 25.)

Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.

(4) If the Agricultural Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that an assessee has shown in the return furnished under section 24 an income which he knew or had reason to believe to be untrue, the Agricultural Income-tax Officer may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum not exceeding fifty *per cent.* of the amount by which the tax actually paid under sub-section (1) of this section falls short of the amount of tax assessed under section 25.

25. (1) If the Agricultural Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 24 is correct and complete, he shall assess the total agricultural income of the assessee¹[and, except in the case of a company, firm or other association of persons, also his total world income], and shall determine the sum payable by him on the basis of such return.

Assessment.

(3) On the day specified in the notice issued under²[sub-section (4) of section 24] 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 assessee³[and, except in the case of a company, firm or other association of persons, also his total world income], and determine the sum payable by him on the basis of such assessment.

⁵(3A) the powers conferred by sub-section (4) of section 24 and sub-section (3) of this section shall not, except with the permission of the Commissioner, be exercised by the Agricultural Income-tax Officer in the case of agricultural income which is assessed under the provisions of sub-section (1A) of section 8 and regarding which an assessee has submitted, together with his return under section 24, a certified copy of an assessment order under the enactments relating to Indian income-tax.

¹The words within the square brackets were inserted by s. 9 (a) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²Sub-section (2) was omitted by s. 9(b), *ibid.*

³The words, brackets and figures within the square brackets were substituted for the words, brackets and figure "sub-section (2)" by s. 9(c) (ii), *ibid.*

⁴The words within the square brackets were inserted by s. 9(c)(i), *ibid.*

⁵Sub-section (3A) was inserted, with effect from the 1st day of April, 1980, by s. 6(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

⁶Sub-section (4) was omitted by s. 5 of the Bengal Agricultural Income-tax (Amendment)

(Chapter V.—Machinery of assessment.—Sections 26, 26A.)

(5) If any person fails to make the return required by any notice given under sub-section (2) of section 24 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section * * * * * or fails to produce before the Agricultural Income-tax Officer any order under [the enactments relating to Indian income-tax,] or a certified copy thereof, which may be necessary under the provisions of this Act for the purpose of enabling any assessment to be made under section 8, such 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.

Set off of
loss in
computing
taxable
agricultural
income.

26. (1) Where in any year under either head of agricultural income specified in section 5 it is computed that the sum on which agricultural income-tax is payable by the assessee is a negative quantity the assessee shall be deemed to have sustained a loss under that head to that extent and such loss shall be set off against the sum computed under the other head of agricultural income as that on which agricultural income-tax is payable in the same year.

(2) Where the total sum computed under both heads of agricultural income as that on which agricultural income-tax is payable by an assessee 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, 1945, is a negative quantity, the assessee shall be deemed to have sustained a loss to that extent in that year, and such loss shall be carried forward to the following year and set off against the sum on which agricultural income-tax is computed to be payable in such year, and if such loss cannot be wholly set off in such year the amount of such loss not so set off shall be carried forward in the same manner to the next following year and so on, but no amount of such loss shall be carried forward for more than six successive years.

Advance tax.

26A. (1) Notwithstanding anything contained in this Act, every assessee shall pay to the credit of the State Government agricultural income-tax in advance during any financial year in such number of equal instalments, not exceeding four, and by such dates, as may be prescribed in respect of his total agricultural income which would be chargeable to agricultural income-tax for the assessment year immediately following that financial year, and such tax shall be called advance tax.

¹The words "or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section," were omitted by s. 9(e) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²Firstly, the words and figures "Income-tax Act, 1961" were substituted for the words and figures "Indian Income-tax Act, 1922" by s. 2, *ibid.* Thereafter, the words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961," by s. 6(b) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

³Firstly, sections 26A and 26B were inserted by s. 10 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Thereafter, sub-sections (2) and (3) of section 26A and the *Explanation* thereunder were omitted by s. 4(3) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983). Finally, this section was substituted for the original section 26A by s. 3(2) of the West Bengal Finance Act,

of 1944.]

(Chapter V.—Machinery of assessment.—Section 26B.)

(2) Subject to the provisions of sub-section (1) of section 26B, advance tax payable by an assessee under sub-section (1) shall be calculated on his total agricultural income of the latest previous year in respect of which he has been assessed or his total agricultural income received in the previous year immediately preceding the financial year for which advance tax is payable, whichever is higher:

Provided that if the assessee is a partner of a firm and the assessment of the firm has been completed for a previous year later than that for which the last assessment of the assessee has been completed, his share in the profits from the agricultural income of the firm shall, for the purpose of this sub-section, be included in his total agricultural income ¹[on the basis] of the latest assessment of the firm.

26B. (1) ²[if an assessee finds at any time before the date prescribed under sub-section (1) of section 26A that by reason of] his income of the period which would be the previous year for the immediately following assessment year being likely to be more or less than the income on which the advance tax payable by him under section 26A has been computed or for any other reason, the advance tax payable by him would be more or less than the amount which he is so required to pay, ⁴[he shall] send to the Agricultural Income-tax Officer an estimate of—

Estimate by assessee.

- (i) the current total agricultural income and except in the case of a company, firm or other association of persons, also his total world income, and
- (ii) the advance tax payable by him under this Act, and shall pay such amount of advance tax as accords with his estimate in equal instalments on such dates as may be prescribed.

¹The words within the square brackets were inserted, with effect from the 11th day of April, 1994, by s. 4(2) of the West Bengal Taxation Laws (Second Amendment) Act, 1994 (West Ben. Act XXIX of 1994).

²See foot-note 3 on page 606, *ante*.

³The words, figures, letter and brackets within the square brackets were substituted for the words, figures and letter "If an assessee who is required to pay advance tax under section 26A estimates at any time before the last instalment of the advance tax is due in his case that, by reason of" by s. 3(3)(a) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994).

⁴The words within the square brackets were substituted for the words "he may, at his option," by s. 4(1) of the West Bengal Taxation Laws (Amendment) Act, 1981 (West Ben. Act IX of 1981).

(Chapter V.—Machinery of assessment.—Section 26C.)

(2) The assessee may send a revised estimate of the advance tax payable by him ¹[by such date as may be prescribed] 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 been previously assessed under this Act shall in each financial year, before the date on which the last instalment of the advance tax is due in his case, if his current total agricultural income is likely to exceed the amount specified in section 3, send to the Agricultural Income-tax Officer an estimate of—

- (i) the current total agricultural income and except in the case of a company, firm or other association of persons, also his total world income, and
- (ii) the advance tax payable by him under this Act, and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case as have not expired, by instalments which may be revised according to sub-section (2).

²(4) After a regular assessment has been made under section 25, any amount paid as advance tax in pursuance of section 26A or of this section shall be deemed to have been paid towards the regular assessment, and where the amount of advance tax paid as aforesaid exceeds the amount payable under the regular assessment the excess shall be refunded to the assessee.

³*Explanation.*—In this section, the expression "advance tax" means the agricultural income-tax payable in advance in accordance with the provisions of section 26A or of this section.

Payment of
interest.

³26C. The State Government shall pay a simple interest at the rate of two *per centum* for each English calendar month on the amount by which the aggregate sum of instalments of advance tax paid during any financial year in which they are payable under section 26A or section 26B exceeds the amount of the tax determined on regular assessment under section 25 from the first day of the month next after the expiry of three months from the date of such regular assessment up to the month preceding the month in which the refund of the excess amount is made.

¹The words within the square brackets were substituted for the words, figures and letter "on or before the date prescribed under section 26A" by s. 3(3)(b) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994).

²Sub-section (4) and the *Explanation* were inserted by s. 4(4) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

³Sections 26C, 26D, 26E, 26F and 26G were inserted by s. 4(5). *ibid.*

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 26D, 26E.)

26D. (1) Where in any financial year, an assessee has paid advance tax under section 26A or section 26B and the advance tax so paid is less than eighty *per centum* of the tax determined on regular assessment under section 25, simple interest at the rate of two *per centum* for each English calendar month from the first day of January in the financial year in which the advance tax was payable up to the month prior to the month of such regular assessment shall be payable by the assessee upon the amount by which the advance tax paid falls short of the tax determined on regular assessment.

Short
payment of
advance tax.

(2) Where before the date of completion of a regular assessment, tax is paid by the assessee under section 24A or otherwise,—

- (i) interest shall be calculated in accordance with the foregoing provision up to the month prior to the month in which tax is so paid;
- (ii) thereafter interest shall be calculated under sub-section (1) on the amount by which the tax so paid falls short of the tax determined on regular assessment.

26E. (1) Where, on making the regular assessment under section 25 the Agricultural Income-Tax Officer finds that no payment of advance tax has been made in accordance with the provisions of section 26A or section 26B, interest at the rate of two *per centum* for each English calendar month from the first day of January in the financial year in which the advance tax was payable up to the month prior to the month of such regular assessment shall be payable by the assessee.

Interest for
non-payment
of advance
tax.

(2) Where as a result of an order under section 31, section 35, section 36, section 37, section 39, section 63 or section 64, the amount on which interest was payable under this section or under section 26D has been reduced, the interest shall be reduced proportionately and the excess interest paid, if any, shall be refunded.

(3) In such cases and under such circumstances as may be prescribed, the Agricultural Income-tax Officer may reduce or waive the interest payable by the assessee under this section or under section 26D.

(4) In calculating the interest payable under this Act, the amount of advance tax determined on regular assessment under section 25 in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to hundred rupees and if such part is less than fifty rupees, it shall be ignored.

(Chapter V.—Machinery of assessment.—Sections 26F, 26G, 27.)

Sections 26C, 26D, and 26E not to apply in certain cases.

'26F. The provisions for interest as made in section 26C, section 26D and section 26E shall not be applicable in case of an assessee whose agricultural income-tax does not exceed two thousand rupees.

Assessee to be deemed to be in default in case of non payment of advance tax.

'26G. If any assessee—

- (a) does not pay any instalment or instalments of advance tax payable by him under section 26A on the date or dates prescribed, or
- (b) after filing an estimate or a revised estimate of the advance tax payable by him under section 26B, does not pay any instalment in accordance therewith on the date or dates prescribed, or
- (c) fails without reasonable cause to file an estimate or a revised estimate as required under section 26B,

he shall be deemed to be in default, in the cases referred to in clauses (a) and (b), in respect of such instalment or instalments and in the case referred to in clause (c), in respect of the amount that falls short of the last instalment of advance tax that would have been payable by him had he submitted an estimate or a revised estimate as required under section 26B and all the provisions of section 44 and section 45 shall apply in relation to any advance tax payable in pursuance of section 26A and section 26B as if it were an order for payment of tax on regular assessment under section 25:

Provided that if any interest is payable by an assessee under section 26D or section 26E in respect of any period and penalty is imposed under section 45 read with this section, the aggregate of such interest and penalty shall not exceed the amount for which such assessee is deemed to be in default.

Tax of deceased person payable by representative.

27. (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 agricultural income-tax assessed as payable by such person, or any agricultural income-tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies ^{2*} * * * before he is served with a notice under sub-section (2) of section 24 or section 38 as the case may be, his executor, administrator or other legal representative shall, on the

¹See foot-note 3 on page 608, *ante*.

²The words, figures and brackets "before the publication of the notice referred to in sub-section (1) of section 24 or" were omitted by s. 5(2) of the West Bengal Finance Act, 1992 (W.B. Act No. 3 of 1992).

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 28, 29.)

serving of the notice under sub-section (2) of section 24 or under section 38, as the case may be, comply therewith, and the Agricultural Income-tax Officer may proceed to assess the total agricultural income ¹[and the total world income] of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies without having furnished a return which he has been required to furnish under the provisions of section 24 or having furnished a return which the Agricultural Income-tax Officer has reason to believe to be incorrect or incomplete, the Agricultural Income-tax Officer may make an assessment of the total agricultural income ²[and the total world income] of such person and determine the agricultural income-tax payable by him on the basis of such assessment, and for this purpose may by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representatives of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 8, 24 and 25 have required from the deceased person.

28. (1) Where agricultural income is received by a company, firm or ³[association of persons] and the business through which such agricultural income is received by such company, firm or association is discontinued in any year, an assessment may be made in that year on the basis of the agricultural income received during 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 agricultural income so received in the previous year.

Assessment in case of discontinued firm or association.

(2) Any person discontinuing any such business shall give to the Agricultural Income-tax Officer notice of such discontinuance within thirty days thereof, and where any person fails to give the notice required by this sub-section, the Agricultural Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of agricultural income-tax subsequently assessed on him in respect of any agricultural income of the company, firm or ³[association of persons] up to the date of the discontinuance of its business.

29. (1) Where, at the time of making an assessment under section 25, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted, at the time of making the assessment.

Change in constitution of a firm or ownership of business.

¹The words within the square brackets were inserted by s. 11 (a) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²The words within the square brackets were inserted by s. 11(b), *ibid.*

³See Foot-note 2, supra, p. 506.

(Chapter V.—Machinery of assessment.—Section 30.)

- e. (2) Where a person carrying on any business in course of which agricultural income is received has been succeeded in such capacity by another person, such person and such other person shall each be assessed in respect of his actual share of the agricultural income of the previous year:

Provided that, when the person succeeded cannot be found, the assessment of the agricultural income of the year in which the succession took place up to the date of succession and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

Assessment
after
partition of a
Hindu
undivided
family.

30. (1) Where, at the time of making an assessment under section 25, it is claimed by or on behalf of any member of a Hindu undivided family hitherto assessed as undivided that a partition has taken place among members or groups of members of such family, the Agricultural Income-tax Officer shall make due inquiry thereinto, and, if a certified copy of a decree of a competent Civil Court for partition of the joint family property or a document purporting to show that there is separate possession and enjoyment of such property is produced, and in the case of a document other than a certified copy of a decree the Agricultural Income-tax Officer is satisfied that such document has been acted upon by the parties thereof, or if the Agricultural Income-tax Officer is otherwise satisfied that the Hindu undivided family has ceased to exist as such and the agricultural income is being enjoyed separately by the members or groups of the members of such family in definite shares, 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, the Agricultural Income-tax Officer shall make an assessment of the total agricultural income ¹[and also the total world income] received by or on behalf of the joint family as such, as if no partition had taken place, and each member or group of members shall, in addition to any agricultural income-tax for which he or it may be separately liable and notwithstanding anything contained in clause (b) of section 10, be liable for a share of the

¹The words within the square brackets were inserted by s. 12 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 31, 32.)

agricultural income-tax on the agricultural income so assessed according to the portion of the joint family property allotted to him or it; and the Agricultural Income-tax Officer shall make assessment accordingly on the various members and groups of members in accordance with the provisions of section 25:

Provided that all the members and groups of members whose joint family property has been partitioned during previous year shall be liable jointly and severally for the agricultural income-tax assessed on the total agricultural income received by or on behalf of the joint family as such up to the date of partition.

(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.

31. Where an assessee 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 24 or that he did not receive the notice issued under sub-section (4) of section 24, * * * * 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 25.

Cancellation of assessment where cause is shown.

32. (1) If the Agricultural Income-tax Officer, the Assistant Commissioner, the Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that any person—

Penalty for concealment of income.

- (a) has without reasonable cause failed to furnish the return of his total agricultural income [and except in the case of a company, firm or other association of persons, also his total world income] which he was required to furnish * * * * under sub-section (1) or sub-section (2) of section 24 or section 38 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or
- (b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 24 * * * * or

¹The words, brackets and figures "or sub-section (2) of section 25," were omitted by s. 13 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²The words within the square brackets were inserted by s. 14(a), *ibid.*

³The words "by notice given" were omitted by s. 5(3) of the West Bengal Finance Act, 1992 (West Ben. Act I of 1992).

⁴The words, brackets and figures "or sub-section (2) of section 25" were omitted by s. 14 (b) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

(Chapter V.—Machinery of assessment.—Section 33.)

- ¹(c) has concealed any of the particulars or has deliberately furnished inaccurate particulars of his total agricultural income or, except in the case of a company, firm or other association of persons, his total world income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the agricultural income-tax payable by him a sum not exceeding that amount, and in the cases referred to in clauses (b) and (c), in addition to any agricultural income-tax payable by him, a sum not exceeding the amount of the agricultural income-tax which would have been avoided²[if the particulars of total agricultural income or total world income as returned by such person had been accepted as correct]:

Provided that—

- (a) no penalty for failure to furnish the return of his total agricultural income³[or total world income] shall be imposed on⁴ [an assessee whose total world income] is less than five thousand rupees unless he has been served with a notice under sub-section (2) of section 24;
- (b) where a person has failed to comply with a notice under sub-section (2) of section 24 or section 38 and proves that he has no income liable to agricultural income-tax the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees.

(2) No order shall be made against a person under sub-section (1) unless such person has been heard or has been given a reasonable opportunity of being heard.

(3) 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.

(4) When the Appellate Tribunal, the Commissioner or the Assistant Commissioner makes an order under sub-section (1) he shall forthwith send a copy of the same to the Agricultural Income-tax Officer concerned.

33. When any agricultural income-tax or penalty⁵ [or interest] is due in consequence of any order passed under or in pursuance of this Act, the Agricultural Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty⁵ [or interest] a notice of demand in the prescribed form specifying the sum so payable.

Notice of demand.

¹This clause was substituted for original clause (c) by s. 14(c) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²The words within the square brackets were substituted for the words "if the income as returned by such person had been accepted as the correct agricultural income" by s. 14(d), *ibid.*

³The words within the square brackets were inserted by s. 14(e)(i), *ibid.*

⁴The words within the square brackets were substituted for the words "an assessee whose total agricultural income" by s. 14(e)(ii), *ibid.*

⁵The words within the square brackets were inserted by s. 4(6) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 33A, 33B, 34.)

² **33A.** The amount of total agricultural income computed in accordance with the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and, for this purpose, any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten, and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten; and the amount so rounded off shall be deemed to be the total agricultural income of the assessee for the purposes of this Act.

Rounding off of total agricultural income.

33B. The amount of tax or penalty payable or refundable for any period under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, then, if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored.

Rounding off of tax or penalty.

34. (1) Any assessee objecting to ²[the amount of total agricultural income or total world income assessed] income assessed under section 25 or section 31 or the amount of loss computed under section 26 or the amount of agricultural income-tax determined under section 25 or section 31 or denying his liability to be assessed under this Act or objecting to a refusal of an Agricultural Income-tax Officer to make a fresh assessment under section 31 or objecting to any order under section 30 or section 32 made by an Agricultural Income-tax Officer or objecting to any order imposing any penalty by an Agricultural Income-tax Officer under sub-section (1) of section 45 ³[or sub-section (3) of section 24A] or objecting to a refusal of an Agricultural Income-tax Officer to allow a claim to a refund under section 47, 48 or 51 or the amount of the refund allowed by the Agricultural Income-tax Officer under any of those sections, may appeal to the Assistant Commissioner against the assessment or against such refusal or order:

Appeal against assessment under this Act.

⁴[Provided that no appeal shall lie against an assessment made under section 25 unless an amount equal to fifty *per cent.* of the tax assessed under this Act has been deposited by the appellant:

Provided further that no appeal shall lie against an order under sub-section (1) of section 45 unless the agricultural income-tax has been paid.]

²Sections 33A and 33B were inserted by s. 3 of the West Bengal Taxation Laws (Amendment) Act, 1988 (West Ben. Act III of 1988).

³The words within the square brackets were substituted for the words "the amount of agricultural income assessed" by s. 15(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

⁴The words, brackets, figures and letter within the square brackets were inserted by s. 15(b). *ibid.*

⁵These provisos were substituted for the original proviso by s. 15(c). *ibid.*

(Chapter V.—Machinery of assessment.—Section 35.)

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 30 or of the date of the refusal to make a fresh assessment under section 31 or of the intimation of an order under section 47, 48 or 51, 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.

Hearing of
appeal.

35. (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;

Provided that if the assessee or his agent is not present before the Assistant Commissioner when such day and place are fixed or such adjournment is made, the Assistant Commissioner shall inform the assessee or his agent by notice sent by post of the day and place fixed or of any date to which the hearing of such appeal is adjourned as the case may be.

(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 Agricultural Income-tax Officer.

(3) The Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable.

(4) In disposing of an appeal, the Assistant Commissioner may—

(a) in the case of an order of assessment—

(i) confirm, reduce, enhance or annul the assessment; or

(ii) set aside the assessment and direct the Agricultural Income-tax Officer to make a fresh assessment after making such further inquiry as the Agricultural Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Agricultural Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of agricultural income-tax payable on the basis of such fresh assessment; or

(b) in the case of an order under section 47, section 48 or section 51 confirm, cancel or vary such order; or

(c) in the case of an order under sub-section (1) of section 30, confirm such order or cancel it and either direct the Agricultural Income-tax Officer to make further inquiry and pass a fresh order ¹[or] to make an assessment in the manner laid down in sub-section (2) of section 30; or

¹This word "or" within square brackets was inserted by s. 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

of 1944.]

(Chapter V.—Machinery of assessment.—Section 36.)

- ¹(cc) in the case of an order refusing to make fresh assessment under section 31, pass such orders as he may think fit; or
- (d) in the case of an order under ²{sub-section (3) of section 24A or} section 32 or sub-section (1) of section 45, confirm or cancel such order or vary it so as either to enhance or reduce the penalty; or
- (e) in the case of an appeal against a computation of loss under section 26, confirm or vary such computation:

Provided that the Assistant Commissioner shall not enhance an assessment or a penalty or reduce a refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or such reduction.

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

36. (1) Any assessee objecting to an order passed by the Assistant Commissioner under section 32 or section 35 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him.

Procedure of appeal to the Appellate Tribunal.

(2) The Commissioner may, if he objects to an order passed by the Assistant Commissioner under section 35, direct the Agricultural Income-tax Officer to appeal to the Appellate Tribunal against such order and in such case the Agricultural Income-tax Officer shall make the appeal within sixty days from the date on which the order is communicated to the Commissioner by the Assistant Commissioner.

(3) The Appellate Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if ³{it} is satisfied that there was sufficient cause for not presenting it within that period.

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

⁴(4a) The functions of the Appellate Tribunal may be discharged by any of the members, sitting either singly or in Benches of two or more members, as may be determined by the President.

¹Clause (cc) was added by s. 16 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²The words, brackets, figures and letter within the square brackets were inserted by s. 5 of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

³This word was substituted for the word "he" by s. 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

⁴Sub-sections (4a) and (4b) were inserted by s. 4(3) of the West Bengal Taxation Laws (Second Amendment) Act, 1990 (West Ben. Act VIII of 1990).

(Chapter V.—Machinery of assessment.—Section 37.)

(4b) If the members of a Bench are divided, the decision shall be the decision of the majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points to one or more of the members of the Appellate Tribunal; and such point or points shall be decided according to the majority of the members of the Appellate Tribunal who heard the case including those who first heard it:

Provided that if at any time, the Appellate Tribunal consists of only two members, the decision of the Appellate Tribunal shall be that of the President in such case.

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

(6) Save as provided in section 63 the orders passed by the Appellate Tribunal on appeal shall be final.

(7) Where an appeal is made to the Appellate Tribunal under this section the costs shall be in the discretion of the said Tribunal.

37. (1) The Commissioner may, of his own motion or on an application by an assessee, 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 enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit:

¹[Provided that no application for revision shall lie unless an amount equal to fifty *per cent.* of the tax assessed under this Act has been deposited by the assessee:

Provided further that the Commissioner shall not pass any order prejudicial to the interest of the assessee without giving him a reasonable opportunity of being heard:

Provided also that an order declining to interfere shall not be deemed to be an order prejudicial to the interest of the assessee.]

(2) An order passed under sub-section (1) shall be final subject to any reference that may be made to the High Court under section 63.

¹See foot-note 4 on page 617, *ante*.

²This section was substituted for the original section 37 by s. 6 of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

³These provisos were substituted for the original provisos by s. 3 of the Bengal Agricultural Income-tax (Amendment) Act, 1979 (West Ben. Act XXXI of 1979).

of 1944.]

(Chapter V.—Machinery of assessment.—Section 38.)

(3) The Commissioner shall not, of his own motion, revise any order under this section after the expiry of three years from the date of the order sought to be revised.

(4) In the case of an application for revision under this section by the assessee the Commissioner shall not revise any order if—

- (a) the order has been made more than one year previously; or
- (b) where an appeal against the order lies to the 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
- (c) where an appeal against the order has been made to the Assistant Commissioner, the appeal is pending before the Assistant Commissioner; or
- (d) the order has been made the subject of an appeal to the Appellate Tribunal.

(5) Every application by an assessee under sub-section (4) shall be accompanied by a fee of twenty-five rupees.

38. (1) If in consequence of definite information which has come into his possession the Agricultural Income-tax Officer discovers that agricultural income chargeable to agricultural income-tax has escaped assessment in any year, or has been under-assessed, or has been assessed at too low a rate, or has been the subject of excessive relief under this Act, the Agricultural Income-tax Officer may, [in any case in which the income is partially agricultural income assessable under this Act and partially ²[income chargeable under the head of income 'Business' or 'Profits and gains of business or profession', as the case may be, under the enactments relating to Indian income-tax] or in which he has reason to believe that the assessee has concealed ³[any of the particulars of his total agricultural income or total world income or has] deliberately furnished inaccurate particulars thereof, at any time within six years, and in any other case at any time within four years] of the end of that

Income
escaping
assessment.

¹The words and figures within square brackets were substituted for the words "at any time within four years" by s. 6(a) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

²The words within the square brackets were substituted for the words and figures "income chargeable under the Income-tax Act, 1961, under the head 'Business' " by s. 7(a) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVII of 1989). Prior to this substitution the words and figures "Income-tax Act, 1961" were substituted for the words and figures "Indian Income-tax Act, 1922" by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

³The words within the square brackets were substituted for the words "the particulars of his agricultural income or" by s. 17(a)(i), *ibid.*

(Chapter V.—Machinery of assessment.—Section 38.)

year, serve on the person liable to pay agricultural income-tax on such agricultural income, or in the case of a company or the Ruler of ¹[a Part B State], on the principal officer of such company or State, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 24 and may proceed to assess or re-assess such agricultural income² and, if necessary, also the total world 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:

³Provided that the agricultural income-tax shall be chargeable at the rate at which it would have been lawfully charged had the total agricultural income, and, where necessary, also the total world income, been duly assessed.

⁴(2) No order of assessment under section 25 or of assessment or re-assessment under sub-section (1) shall be made at any time after the expiry.—

- (a) in any case in which—
 - (i) section 8 or clause (c) of sub-section (1) of section 32 applies, or
 - (ii) the agricultural income is derived from tea grown in West Bengal and sold by the grower himself or his agent after manufacture, of six years and,
- (b) in other case, of four years from the end of the year in which the agricultural income was first assessable:

Provided that nothing contained in this sub-section shall apply to a re-assessment made in pursuance of an order under section 31, section 35, section 36, section 37, section 63 or section 64.

Explanation 1.—In computing the period of limitation for the purpose of this section, the period during which an assessment proceeding under this Act or an assessment under ⁵[the enactments relating to Indian income-tax] having a bearing on the assessment under this Act is stayed by injunction or order of any court shall be excluded.

¹See foot-note 3 on page 582. *ante*.

²The words within the square brackets were inserted by s. 17(a)(ii) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

³This proviso was substituted for the original proviso by s. 17(a)(iii), *ibid*.

⁴Firstly, sub-section (2) was substituted for the original sub-section (2) by s. 6(h) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949). Thereafter, present sub-section (2) was substituted for the previous sub-section (2) by s. 4(2) of the West Bengal Taxation Laws (Amendment) Act, 1981 (West Ben. Act IX of 1981). Prior to this substitution, in the proviso, the words and figures "section 31, section 35, section 36, section 37," were substituted for the words and figures "section 35, section 36," by s. 17(h) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

⁵The words within the square brackets were substituted by s. 7(b) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989). Prior to this substitution the words and figures "Income-tax Act, 1961" were substituted for the words and figures "Indian Income-tax Act, 1922" by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 38A, 39.)

Explanation II.—The provisions of sub-section (2) shall not apply to an assessment, re-assessment or re-computation, which may be completed at any time, where such assessment, re-assessment or re-computation is made on an assessee or any person in consequence of, or for giving effect to, any finding or direction contained in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act.

38A. (1) Where in pursuance of the provisions of section 8, an assessment under the provisions of ¹[the enactments relating to Indian income-tax] is made on the basis of assessment of agricultural income-tax and a certified copy of the order of any appellate or revising authority or of the High Court or of the Supreme Court referred to in sub-section (3) of section 8 shows that an order of assessment initially made under ²[the enactments relating to Indian income-tax] was altered or amended, then the Agricultural Income-tax Officer may, at any time, of his own motion, or on an application by an assessee made within one year from the date when the order of assessment was so altered or amended under the provisions of ³[the enactments relating to Indian income-tax], modify an order passed by him in respect of assessment of agricultural income-tax under this Act:

Modification of agricultural income.

Provided that an Agricultural Income-tax Officer shall not, of his own motion, modify an assessment unless the assessee has been given a reasonable opportunity of being heard.

39. (1) The Commissioner may at any time within four years from the date of any order passed by him in revision under section 37, the Appellate Tribunal or the Assistant Commissioner may, at any time within four years from the date of any order passed by it or him on appeal and the Agricultural Income-tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him, on his own motion rectify any mistake apparent from the record of the revision, appeal, assessment or refund, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee:

Rectification of mistake.

⁴Provided that if any mistake is apparent from the record of the appeal in any order passed by the Appellate Tribunal before the coming into force of section 2 of the West Bengal Taxation Laws (Second

¹Section 38A was inserted by s. 7 of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

²The words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961" by s. 8 of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

³The first and second provisos to sub-section (1) were substituted for the original proviso by s. 2(3) of the West Bengal Taxation Laws (Second Amendment) Act, 1995 (West Ben. Act III of 1995).

(Chapter V.—Machinery of assessment.—Section 39A.)

Amendment) Act, 1995, such mistake may, on the coming into force of section 2 of the West Bengal Taxation Laws (Second Amendment) Act, 1995, be rectified by the Appellate Tribunal at any time within four years from the date of passing of the said order:

¹Provided further that no such rectification having the effect of enhancing an assessment or reducing a refund shall be made unless the Commissioner, the Appellate Tribunal, the Assistant Commissioner or the Agricultural Income-tax Officer, as the case may be, has given notice to the assessee of his or its intention so to do and has allowed the assessee 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 or reducing a refund 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 33 and the provisions of this Act shall apply accordingly.

(4) Any assessee objecting to any such rectification which has the effect of enhancing the assessment or reducing a refund may, within thirty days of receipt of the notice of demand referred to in sub-section (3), appeal—

- (a) in the case where the rectification is made by an Agricultural Income-tax Officer, to the Assistant Commissioner and the provisions of sub-section (3) of section 34 and section 35 shall apply to every such appeal as if it were an appeal against an order of assessment under section 25 or an order of refund under section 47 or section 48;
- (b) in the case where the rectification is made by the Assistant Commissioner to the Appellate Tribunal and the provisions of sub-sections (4), (5), (6) and (7) of section 36 shall apply to every such appeal as if it were an appeal against an order passed by the Assistant Commissioner under section 35:

Provided that the provisions of section 63 shall not apply to any order passed by the Appellate Tribunal on any such appeal.

Mistake in
the
determination
of interest.

¹39A. Where there is an apparent mistake in the determination of interest under this Act, the Agricultural Income-tax Officer may, on his own motion or upon application made by the assessee within six months from the date of such determination, rectify such mistake and issue a fresh notice of demand.

¹See foot-note 3 on page 621. *ante*.

²Section 39A was inserted by s. 4(7) of the West Bengal Taxation Laws (Second Amendment)

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 40-43.—
Chapter VI.—Recovery of tax and penalties.—Section 44.)

40. (Tax to be calculated to nearest anna.)—Omitted by s. 5 of the Bengal Agricultural Income-tax (Amendment) Act, 1957 (West Ben. Act XXVIII of 1957).

Act V of 1908.

41. The Agricultural Income-tax Officer, the Assistant Commissioner and the Appellate Tribunal shall, for the purposes of this Chapter, and the Commissioner shall, for the purposes of section 37, have the same [powers] as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

Power to take evidence on oath, etc.

- (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 Agricultural Income-tax Officer, Assistant Commissioner or the Appellate Tribunal under this Chapter or before the Commissioner under section 37, shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Act XLV of 1860.

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

Power to call for information.

- (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, common manager, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, common manager, or agent, and of their addresses.

43. The Agricultural Income-tax Officer or any person authorised by him in writing in this behalf 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.

Power to inspect the register of members of any company.

CHAPTER VI

Recovery of tax and penalties.

44. (1) Any amount specified as payable in a notice of demand under section 33 or an order under section 35, section 36 or section 37, shall be paid within the time, at the place and to the person mentioned in the

Tax when payable.

¹This word was substituted for the word "power" by s. 2 of, and the First Schedule to, the

(Chapter VI.—Recovery of tax and penalties.—Section 44.)

- 2 notice or order, of 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:

1* * * * *

²(1a) If the amount specified in any notice of demand issued under section 33 is not paid within the time mentioned therein, the assessee shall be liable to pay simple interest at the rate of two *per centum* for each English calendar month following the month in which the demand is payable up to the month prior to the month in which such demand is paid:

Provided that, where as a result of an order under section 31, section 35, section 36, section 37, section 39, section 63 or section 64, the amount on which interest was payable under this section has been reduced, the interest shall be reduced proportionately and the excess interest paid, if any, shall be refunded.

(2) ³[Without prejudice to the provisions of sub-section (1a) if an assessee] makes an application within the time mentioned in the notice of ⁴[demand under] section 33 for being allowed to pay the tax due by instalments, the Agricultural Income-tax Officer may in his discretion, by order in writing allow the assessee to pay the tax due in instalments not exceeding four in number at such intervals as the said officer may fix in his discretion:

Provided that if as a result of an application made by the assessee, the Agricultural Income-tax Officer allows the assessee to pay the tax due in instalments, the assessee shall be deemed to have waived all his rights of appeal under this Act:

Provided further that if, on being allowed to pay the tax due by instalments the assessee defaults in the payment of any one instalment he shall be deemed to be a defaulter in respect of the total remaining amount of tax due.

¹The proviso was omitted by s. 18 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

²Sub-section (1a) was inserted by s.4(8)(a) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

³The words, figure and letter within the square brackets were substituted for the words "If an assessee" by s. 4(8)(a)(i) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

⁴The words within square brackets were substituted for the words "demand in" by s. 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act

of 1944.]

(Chapter VI.—Recovery of tax and penalties.—Section 45.)

¹(3) Where an assessee has presented an appeal under section 34 after depositing the amount required under the first proviso to sub-section (1) of that section, the Agricultural Income-tax Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the remaining unpaid tax, even though the time for making the deposit has expired, as long as such appeal remains undisposed of.

45. (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 the arrears, a sum not exceeding half that amount shall be recovered from the assessee by way of penalty.

Made and time of recovery.

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

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

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have ³* * * * * the powers which under the Code of Civil Procedure, 1908, a Civil Court has * * * * * for the purpose of the recovery of an amount due under a decree.

(4) No proceeding for the recovery of any tax payable under this Act shall be commenced after the expiration of three years after,—

- (a) the last date on which the tax is payable without the assessee being deemed to be in default, or
- (b) the date on which the last instalment fixed under sub-section (2) of section 44 falls due, or
- (c) the date on which any appeal relating to the payment of tax has been disposed of,

whichever is the later:

¹Sub-section (3) was inserted by s. 4(8)(a)(ii) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

²The words within the square brackets were inserted by s. 4(9), *ibid.*

³The words "in respect of the attachment and sale of debts due to the assessee" and the words "in respect of the attachment and sale of debts due to a judgment-debtor" in the proviso to sub-section (3) of section 45 were omitted by s. 7 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

Act V of 1908.

(Chapter VI.—Recovery of tax and penalties.—Section 45A.)

¹Provided that in computing the said period of three years the time during which the recovery of arrears of agricultural income-tax has been stayed, either wholly or in part, by an injunction or any other order of a competent court shall be excluded.

Other modes of recovery.

²45A. (1) Notwithstanding the issue of a certificate to the Collector under sub-section (3) of section 45, the Agricultural Income-tax Officer may recover the tax by any one or more of the modes provided in this section.

(2) If any assessee is in receipt of any ³[income chargeable under the head of income "Salaries" under the enactments relating to Indian income-tax,] the Agricultural Income-tax Officer may require any person paying the same, to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted into a Treasury to the credit of the State Government.

(3) (a) The Agricultural Income-tax Officer may, at any time, or from time to time, by notice in writing, require any person, from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay into a Treasury to the credit of the State Government, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than the amount due.

(b) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is provided, to be equal.

(c) A copy of such notice shall be forwarded to the assessee at his last address known to the Agricultural Income-tax Officer, and in the case of a joint account to all the joint holders at their last addresses known to the Agricultural Income-tax Officer.

¹This proviso was added with retrospective effect by s. 6 of the Bengal Agricultural Income-tax (Amendment) Act, 1957 (West Ben. Act XXVIII of 1957).

²Section 45A was inserted by s. 8 of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

³The words within the square brackets were substituted for the words and figures "income chargeable under the head "Salaries" under the Income-tax Act, 1961," by s. 9 of the Bengal Agricultural Income-tax (Amendment) Act, 1980 (West Ben. Act XXIII of 1980).

of 1944.]

(Chapter VI.—Recovery of tax and penalties.—Section 45A.)

- (d) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post-office, banking company or an insurer it shall not be necessary for any pass-book, deposit, receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
- (e) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of such notice shall be void as against any demand contained in the notice.

(4) Where a person to whom a requisition or notice under this section is sent proves to the satisfaction of the Agricultural Income-tax Officer that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee or that the money demanded or any part thereof is not likely to be due to the assessee or be held for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be.

(5) The Agricultural Income-tax Officer may, at any time or from time to time, amend or revoke any requisition or notice issued under this section or extend the time for making any payment in pursuance of such requisition or notice.

(6) A receipt shall be granted for any amount paid in compliance with a requisition or notice under this section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(7) Any person discharging any liability to the assessee after receipt of a requisition or notice under this section shall be personally liable to the Agricultural Income-tax Officer to the extent of the assessee's liability for any sum due under this Act or to the extent of his liability to the assessee, whichever is less.

(8) Subject to the provisions of sub-section (4), if a person to whom a requisition or notice under this section is sent fails to make payment in pursuance thereof, he shall be deemed to be an assessee in default in respect of the amount specified in the requisition or notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in

(Chapter VI.—Recovery of tax and penalties.—Section 46.—
Chapter VII.—Refunds.—Section 47.)

(9) The Agricultural Income-tax Officer may apply to the court, in whose custody there is money belonging to the assessee, for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax:

Provided that any dues or property exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any requisition or notice made under this section.

Act V of
1908.

Recovery of
penalties.

46. Any sum imposed by way of penalty under this Act shall be recoverable in the manner provided in this chapter for the recovery of arrear of agricultural income-tax.

CHAPTER VII

Refunds.

Refunds.

47. (1) If any individual, Hindu undivided family, company, Ruler of [a Part B State], firm or other association of persons satisfies the Agricultural Income-tax Officer that the amount of agricultural income-tax paid by him or by it or on his or its behalf or treated as paid on his or its behalf for any year exceeds the amount with which he or it is properly chargeable under this Act for that year, he or it shall be entitled to a refund of any such excess.

(2) The Assistant Commissioner in the exercise of his appellate powers or the Commissioner in the exercise of his powers of revision if satisfied to the like effect shall cause a refund to be made by the Agricultural Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Where agricultural income of one person is included under any provision of this Act in the total agricultural income of any other person such other person only shall be entitled to a refund under this section in respect of such agricultural income.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief.

of 1944.]

(Chapter VII.—Refunds.—Section 48.)

48. (1) Notwithstanding anything contained in section 47, a partner of a firm or a member of an association of persons on whose behalf agricultural income-tax is, by section 17, deemed to have been paid by such firm or association, shall be entitled to a refund of agricultural income-tax on account of any difference between the rate of agricultural income-tax applicable under this Act to the total agricultural income of such firm or association and the average rate which would be applicable to the total world income of such partner or member if such total world income were agricultural income chargeable to agricultural income-tax under this Act.

Refunds of tax deemed to have been paid by firms and associations on behalf of others.

(2) Any partner of a firm or member of an association of persons who is deemed to be entitled under the provisions of sub-section (1) to a refund of agricultural income-tax in respect of the previous year may apply to the Agricultural Income-tax Officer in the prescribed manner for such refund, and if the Agricultural Income-tax Officer after such inquiry as he thinks necessary is satisfied that a refund under the provisions of sub-section (1) is due he shall compute the amount of such refund according to the provisions of sub-section (3) and such amount shall be paid to the partner or member, as the case may be.

(3) The amount of any refund of agricultural income-tax due under the provisions of sub-section (1) shall be the product of the amount of agricultural income on which tax is deemed to have been paid by a firm or association of persons and has been received by a partner or member, as the case may be, and the difference between the rate of agricultural income-tax applicable to the total agricultural income of the said firm or association chargeable to agricultural income-tax under this Act, and the average rate of such tax applicable to an amount equivalent to the total world income of such partner or member in the previous year.

(4) "Average rate" in sub-section (3) means the rate obtained by dividing the amount of agricultural income-tax which would be payable [by an assessee] in the year of assessment if his total world income in the previous year were agricultural income chargeable to agricultural income-tax at the rates applicable under this Act by the said total world income.

¹Sub-sections (1), (2) and (3) were substituted for original sub-sections (1), (2) and (3) by s. 7 of the Bengal Agricultural Income-tax (Amendment) Act, 1957 (West Ben. Act XXVIR of 1957).

²The words within square brackets were substituted for the words "by assessee" by s. 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

(Chapter VII.—Refunds.—Sections 49-52.)

- ¹(5) For the purpose of determining the total world income,—
- (a) where the total income of an assessee under ²[the enactments relating to Indian income-tax,] has been computed for the purposes of ³[those enactments], that computation shall be accepted as determining the total income under ³[those enactments] for the purposes of this Act and if such computation has not been made the total income of an assessee under ⁴[those enactments] shall be computed in the manner prescribed;
- (b) the agricultural income derived from land outside West Bengal shall be calculated in the manner prescribed.

Explanation.—A certified copy of an order computing the total income under ⁴[the enactments relating to Indian income-tax,] shall be conclusive evidence of the contents thereof.

49. [*Reciprocal relief in respect of double taxation with other Government.*—Omitted by s. 20 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975).

Power to set off amount of refunds against tax remaining payable.

50. Where under any of the provisions of this Act, a refund is found to be due to any person, the Agricultural Income-tax Officer, the Assistant Commissioner or the 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 agricultural income-tax if any, remaining payable by the person to whom the refund is due.

Power of representative of deceased person or persons disabled to make claim on his behalf.

51. 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 47 or section 48 is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Limitation of claims for refunds.

52. No claim to any refund to agricultural income-tax under this chapter shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the agricultural income was received.

¹Sub-section (5) was substituted for the original sub-section by s. 19 of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Prior to this substitution there was a change as per foot-note 1 on page 580. *ante* in clause (b) of original sub-section (5).

²The words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961," by s. 10(a)(i) of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989).

³The words within the square brackets were substituted for the words "that Act" by s. 10(a)(ii), *ibid*.

⁴The words within the square brackets were substituted for the words and figures "the Income-tax Act, 1961" by s. 10(b) *ibid*.

of 1944.]

(Chapter VIII.—Offences and penalties.—Sections 53-56.)

CHAPTER VIII

Offences and penalties.

- 53. (1) If a person fails without reasonable cause or excuse—
 - (a) to furnish in due time any of the returns mentioned in section 24 or section 42;
 - (b) to produce or cause to be produced, on or before the last date allowed by the Agricultural Income-tax Officer under the first proviso to sub-section (4) of section 24 or the date mentioned in the notice under the said sub-section, whichever is the later, such accounts, or documents as are referred to in the notice;
 - (c) to grant inspection or allow copies to be taken in accordance with the provisions of section 43,

Failure to make payments or deliver returns or statements or allow inspections.

he shall, on conviction of such offence before a Magistrate, be punishable with a fine which may extend to fifty rupees.

(2) If a person after having been convicted of any offence referred to in sub-section (1) continues to commit such offence, he shall be punished for each day after the first during which he continues so to offend with fine which may extend to five rupees.

54. If a person makes a statement in a verification mentioned in section 24 or sub-section (3) of section 34 or sub-section (4) of section 36 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

False statement in declaration.

55. (1) A person shall not be proceeded against for an offence under section 53 or section 54 except at the instance of the Commissioner.

Prosecution to lie at the instance of Commissioner.

(2) The Commissioner may, subject to such conditions as may be prescribed, either before or after the institution of proceedings compound any such offence.

56. (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

Disclosure of information by public servant.

(Chapter VIII.—Offences and penalties.—Section 56.)

this chapter, or in any record of any assessment¹ * * proceedings 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 sub-section (3) be entitled to require any servant of the²[Government] to produce before it any such return, accounts, documents or record or any part of such record, or to give evidence before it in respect thereof.

1 of 1872.

(2) If, save as provided in sub-section (3), any servant of the²[Government] discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to—

- (a) the disclosure of any of the particulars referred to in sub-section (1) for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, returns, accounts, documents, affidavit, deposition, record or evidence or for the purposes of carrying into effect the provisions of this Act;
- (b) the disclosure to an officer of the Central Government of such facts as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on income other than agricultural income;
- (c) the production by a servant of the²[Government] before a Court of any document, declaration or affidavit filed or the record of any statement or deposition made in a proceeding under section 30 or to the giving of evidence by a servant of the²[Government] in respect thereof.
- ³(d) the disclosure of any of the particulars referred to in sub-section (1) to an officer of the Central Government or the State Government for the purpose of audit of receipts and refunds of agricultural income-tax imposed under this Act.

Act XLV
of 1860.

(4) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

¹The comma after the word "assessment" in sub-section (1) of section 56 was omitted by s. 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

²See foot-note 2 on page 580, *ante*.

³Clause (d) was added by s. 2 of the Bengal Agricultural Income-tax (Amendment) Act, 1974 (West Ben. Act III of 1974).

of 1944.]

(Chapter IX.—Miscellaneous.—Sections 57, 58.)

CHAPTER IX

Miscellaneous.

57. (1) The [State] Government may, subject to the condition of previous publication, make rules² consistent with the provisions of this Act for carrying out the purposes of this Act.

Power to make rules.

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

- (a) prescribe in accordance with the provisions of this Act the manner of ascertainment and determination of agricultural income;
- (b) prescribe the procedure to be followed on application for refunds allowable under this Act;
- (c) provide for any matter which by this Act is to be prescribed.

58. (1) An assessee, who is entitled or required to attend before the Appellate Tribunal or any agricultural income-tax authority in connection with any proceeding under this Act otherwise than when required under section 41 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or agricultural income-tax practitioner, and not being disqualified by or under sub-section (3).

Appearance by authorised representative.

(2) In this section—

- (i) a person regularly employed by the assessee shall include any officer of a banking company with which the assessee maintains a current account or has other regular dealings.

Explanation.—“Banking company” means a banking company as defined in ³section 277F of the ⁴Indian Companies Act, 1913;

- (ii) “lawyer” means a Barrister-at-law or Solicitor or any other person entitled to plead in any Court of law in ⁵[the whole of India except Part B States];

VII of 1913.

¹See foot-note 3 on page 582, *ante*.

²For the Bengal Agricultural Income-tax Rules, 1944, made under section 57, see notification No. 46 F.T., dated the 27th January, 1945, published in the *Calcutta Gazette* of 1945, part I, pages 181-220, as subsequently amended from time to time.

³Section 277F and the following sections 277G to 277N under the heading “Banking Companies” in Part XA of the Indian Companies Act, 1913 (VII of 1913), were repealed and re-enacted by the Banking Companies Act, 1949 (X of 1949).

⁴The Indian Companies Act, 1913 was repealed and re-enacted by the Companies Act, 1956 (I of 1956).

⁵The words “all the Provinces of India” were originally substituted for the words “British India” by para. 4(2) of the India (Adaptation of Existing Indian Laws) Order, 1947, and thereafter these words within square brackets were substituted for the words “all the Provinces of India” by para. 4(1) of the Adaptation of Laws Order, 1950.

(Chapter IX.—Miscellaneous.—Sections 59, 60.)

- (iii) "accountant" means a registered accountant enrolled in the Register of Accountants, maintained by the Central Government under the Auditor's Certificate Rules, 1932, or holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an Association of Accountants recognised by the Central Board of Revenue;
- (iv) "agricultural income-tax practitioner" means any person who has acquired such educational qualifications as may be prescribed and who has, subject to the payment of such fees as may be prescribed, been registered in the manner prescribed as such a practitioner.

(3) If any lawyer or registered accountant is found guilty of misconduct in connection with any agricultural income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner, the Commissioner may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

- (a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard;
- (b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the High Court; and
- (c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred until the disposal of the appeal.

Receipts
to be given.

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

Service
of notices.

60. (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.

Act V of
1908.

(2) Any such notice or requisition may—

- (a) in the case of a firm, or a Hindu undivided family, be addressed to any member of the firm or to the manager of the family; and
- (b) in the case of the Ruler of ²[a Part B State], a company or any other ³[association of persons] be addressed to the principal officer thereof.

¹Clause (iv) was substituted for the original clause by s. 8 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

²See foot-note 3 on page 582, *ante*.

³See foot-note 2 on page 586, *ante*.

of 1944.]

(Chapter IX.—Miscellaneous.—Section 61.)

61. (1) Where an assessee is a company having a registered office in ¹[West Bengal], it shall be assessed by the Agricultural Income-tax Officer of the area in which such registered office is situated.

Place of
assessment.

(2) Where an assessee is a company not having a registered office in ¹[West Bengal] or is a firm or other ²[association of persons], it shall be assessed by the Agricultural Income-tax Officer of the area where the principal accounts relating to its agricultural income are kept.

(3) In all other cases the assessee shall be assessed by the Agricultural Income-tax Officer of the area in which such assessee resides and where the assessee resides outside ¹[West Bengal] by the Agricultural Income-tax Officer of the area in which the agent or the principal officer of such assessee resides:

Provided that if the accounts relating to the agricultural income of an assessee are kept in any place in ¹[West Bengal], such assessee shall have the option of being assessed by the Agricultural Income-tax Officer of the area in which such place is situated.

Explanation.—In the case of a Hindu undivided family, an assessee shall for the purpose of this sub-section be deemed to reside where the manager of the family resides.

(4) Where an option is exercisable by an assessee under the proviso to sub-section (3), he shall exercise such option ²[within sixty days from the end of the previous year or, where a notice under sub-section (2) of section 24 is served,] within thirty days from the service of such notice.

(5) Where any question arises under this section as to the place of assessment, such question shall be determined by the Assistant Commissioner after giving the assessee an opportunity of being heard.

(6) Where an assessment has once been made under this Act by an the Agricultural Income-tax Officer, no objection relating to the place of assessment shall lie against such assessment.

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

¹See foot-note 1 on page 580, *ante*.

²See foot-note 2 on page 586, *ante*.

³The words, figures and brackets within the square brackets were substituted for the words, figures and brackets "within thirty days of the publication of the notice under sub-section (1) of section 24 or where a notice under sub-section (2) of that section is served," by s. 5(4) of the West Bengal Finance Act, 1992 (West Ben. Act I of 1992).

(Chapter IX.—Miscellaneous.—Sections 62, 63.)

Indemnity.
2.

62. Every person retaining or paying any tax in pursuance of this Act in respect of agricultural income belonging to another person is hereby indemnified for the retention or payment thereof.

Reference to
High Court
by Appellate
Tribunal or
Commissioner.

63. (1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with a notice of an order under sub-section (5) of section 36, by application in the prescribed form, accompanied, when the application is made by the assessee, by a fee of fifty rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and the Appellate Tribunal shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

(2) Within sixty days of the date on which an assessee is served with a notice of an order under section 37, enhancing an assessment or otherwise prejudicial to him, he may, by application, accompanied by a fee of fifty rupees, require the Commissioner to refer to the High Court any question of law arising out of such order, and the Commissioner shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it with his opinion thereon to the High Court:

Provided that if, in the exercise of the powers under sub-section (3), the Appellate Tribunal or the Commissioner, as the case may be, refuses to state the case required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application, and he receives so, the fee paid shall be refunded.

(3) If on any application being made under sub-section (1) or sub-section (2) the Appellate Tribunal or the Commissioner, as the case may be, refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, in the case of an application under sub-section (1), or the assessee in the case of an application under sub-section (2), may, within ninety days from the date on which he is served with a notice of refusal, apply to the High Court and the High Court may, if it is not satisfied of the correctness of the decision, require the Appellate Tribunal or the Commissioner, as the case may be, to state the case and to refer it and on receipt of any such requisition the Appellate Tribunal or the Commissioner, as the case may be, shall state the case and refer it accordingly.

(4) If on any application being made under sub-section (1) or sub-section (2) the Appellate Tribunal or the Commissioner, as the case may be, rejects it on the ground that it is time-barred, the assessee or the

¹Section 63 was substituted for original section by s. 9 of the Bengal Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

of 1944.]

(Chapter IX.—Miscellaneous.—Section 63.)

Commissioner, as the case may be, in the case of an application under sub-section (1) and the assessee in the case of an application under sub-section (2), may, within sixty days from the date on which he is served with a notice of the rejection, apply to the High Court and the High Court, if it is not satisfied of the correctness of the decision, may require the Appellate Tribunal or the Commissioner, as the case may be, to treat the application as made within the time allowed under sub-section (1) or sub-section (2), as the case may be.

(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 Appellate Tribunal or the Commissioner, as the case may be, to make such additions thereto or 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 a copy of that judgment under the seal of the Court and the signature of the Registrar or the Appellate Tribunal or the Commissioner, as the case may be, for passing such orders as are necessary to dispose of the case conformably to such judgment.

(7) Where a reference is made to the High Court, 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 assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that the Commissioner intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to the Supreme Court.

(9) Section 5 of the Limitation Act, 1963, shall apply to an application to the Appellate Tribunal under sub-section (1) or to the High Court under sub-section (3) or sub-section (4).

36 of 1963.

(10) When any person defaults to pay the costs ordered by the High Court, the Agricultural Income-tax Officer concerned may apply, for the realisation of the amount, to the District Court within whose jurisdiction the assessee ordinarily resides and such Court shall, on receipt of the Agricultural Income-tax Officer's application, execute the order as if it were its own decree.

(Chapter IX.—Miscellaneous.—Sections 64, 65.)

Reference to be heard by a Bench of the High Court, and appeal to lie in certain cases to the Supreme Court.

64. (1) When any case has been referred to the High Court under section 63, it shall be heard by a Bench of not less than two judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall so far as may be, apply notwithstanding anything contained in the Letters Patent of the High Court or in any other law for the time being in force.

Act V of 1908.

(2) An appeal shall lie to ¹[the Supreme Court] from any judgement of the High Court delivered on a reference made under section 63 in any case which the High Court certifies to be a fit one for appeal to ¹[the Supreme Court].

(3) The provisions of the Code of Civil Procedure, 1908 relating to appeals to ¹[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 63:

Provided further that the High Court may, on petition made for the executing of the order of ¹[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 judgement of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of ¹[the Supreme Court] in the manner provided in sub-sections (5) and (7) of section 63 in the case of a judgement of the High Court.

(5) Nothing in this section shall be deemed—

* * * * *

(b) to interfere with any rules made by the ³[Supreme Court], and for the time being in force, for the presentation of appeals to ¹[the Supreme Court], or their conduct before the said ⁴[Judicial Committee].

Bar of suits in Civil Courts.

65. 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 ⁵[Government] for anything in good faith done or intended to be done under this Act.

¹The words within square brackets were substituted for the words "His Majesty in Council" by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²Clause (a) of sub-section (5) was omitted by s. 10 of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977).

³The words within square brackets were substituted for the words "Judicial Committee of the Privy Council" by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁴Sic. The expression "Judicial Committee" has apparently by mistake been left unadapted and should be read as "that Court".

⁵See foot-note 2 on page 580 ante.

of 1944.]

(Chapter IX.—Miscellaneous.—Sections 66, 67.—The Schedule.)

66. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 63 the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

Computation of periods of limitation.

67. (1) Notwithstanding anything to the contrary contained in this Act, the State Government may, if it considers necessary so to do, by general or special order to be published in the *Official Gazette*, exempt any class of persons or association of persons from payment of the whole or any part of agricultural income-tax or reduce the rate of agricultural income-tax payable by any class of persons or association of persons.

Power to exempt from payment of agricultural income-tax, etc.

(2) The State Government may add to, amend, vary or rescind any order under sub-section (1).

THE SCHEDULE.

(See section 3.)

Rates of agricultural income-tax.

A. (1) In the case of every individual or Hindu undivided family (other than a Hindu undivided family consisting of brothers only).—

	Rate.
(a) On the first ten thousand rupees of the total agricultural income	Nil.
(b) On the next five thousand rupees of the total agricultural income	Seventeen paise in the rupee.
(c) On the next five thousand rupees of the total agricultural income	Twenty-three paise in the rupee.
(d) On the next five thousand rupees of the total agricultural income	Thirty paise in the rupee.
(e) On the next five thousand rupees of the total agricultural income	Forty paise in the rupee.
(f) On the next ten thousand rupees of the total agricultural income	Fifty paise in the rupee.
(g) On the balance of the total agricultural income	Sixty paise in the rupee.

¹Section 67 was added by s. 4 of the Bengal Agricultural Income-tax (Amendment) Act, 1979 (West Ben. Act XXXI of 1979).

²Firstly, the Schedule was substituted for the original Schedule by s. 5 of the West Bengal Taxation Laws (Amendment) Act, 1969 (West Ben. Act XXV of 1969). Thereafter, the Schedule was resubstituted for the previous Schedule by s. 2) of the Bengal Agricultural Income-tax (Amendment) Act, 1975 (West Ben. Act VI of 1975). Prior to these substitutions there occurred some changes in the original Schedule by West Ben. Act III of 1949 and West Ben. Act XXVIII of 1957.

³This paragraph was substituted for the previous paragraph A by s. 4(10) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 (West Ben. Act XV of 1983).

[Ben. Act IV of 1944.]

(The Schedule.)

(2) In the case of every Hindu undivided family which consists of brothers only:—

	Rate.
(a) If the share of a brother is ten thousand rupees or less	Six paise in the rupee.
(b) If the share of a brother exceeds ten thousand rupees	The average rate applicable to the share of such brother if he were assessed as an individual.

Explanation.—For the purposes of this Schedule—

- (i) "brother" includes the son and the son of a son of a brother and the widow of a brother;
- (ii) "share of a brother" means the portion of the total agricultural income of a Hindu undivided family which would have been allotted to a brother if a partition of the property of such family had been made on the last day of the previous year;
- (iii) "average rate" means the amount of agricultural income-tax payable by an individual on his total agricultural income divided by the amount of such total agricultural income.

¹B. In the case of every domestic company, firm or other association of persons—

	Rate of tax.
on the whole of the total agricultural income.	50 paise in the rupee.

¹C. In the case of a foreign company—

on the whole of the total agricultural income.	Eighty paise in the rupee.
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¹Firstly, paragraphs B and C were substituted for the previous paragraph B by s. 11 of the Bengal Agricultural Income-tax (Amendment) Act, 1977 (West Ben. Act XXII of 1977). Thereafter paragraph B was resubstituted for the previous para. B by s. 6 of the Bengal Agricultural Income-tax (Amendment) Act, 1980 (West Ben. Act XII of 1980). Then paragraph B was resubstituted for the previous paragraph B by s. 11 of the Bengal Agricultural Income-tax (Amendment) Act, 1989 (West Ben. Act XVIII of 1989). Again paragraph B was substituted for the previous paragraph B by s. 4 of the West Bengal Finance Act, 1991 (West Ben. Act VI of 1991). Thereafter paragraph B was resubstituted for the previous paragraph B by s. 3(4) of the West Bengal Finance Act, 1994 (West Ben. Act XVI of 1994). Finally this paragraph was substituted for the previous paragraph B by s. 4(2) of the West Bengal Finance Act, 1996 (West Ben. Act X of 1996).