

CHAPTER IV

ASSESSMENT, DEDUCTION AND EXEMPTIONS

19. Return of income. (1) Every person, if his total agricultural income or the total agricultural income in respect of which he is assessable under this Act during the previous year exceeded the limit of the taxable income prescribed in section 6, shall furnish before the 31st day of December of the relevant assessment year, a return of his agricultural income or the agricultural income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars, as may be prescribed

See:Rule 13 & 14

(2) In the case of any person who, in the opinion of Superintendent of Taxes or Agricultural Income-tax Officer is assessable under this Act, whether on his own total agricultural income or on the total agricultural income of any other person during the previous year, the Superintendent of Taxes or Agricultural Income-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date service of the notice, a return of his agricultural income the agricultural income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars may be prescribed .

See:Rule 12 & 14

- (3) If any person who has not been served with a notice under sub-section (2) has sustained a loss of profits or gains any previous year and claims that the loss or any part thereof should be carried forward under sub-section (2) of section 16 he may furnish, within the time allowed under sub-section (1) a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).
- (4) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2), may furnish the return before the assessment is made.
- (5) If any person having furnished a return under sub-section (1) or sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made.
- (6) No return under sub-section (1) need be furnished by any person for any previous year if he has already furnished a return of agricultural income for such year in accordance with the provisions of sub-section (2):

Provided that no return submitted under this section shall be valid unless the taxes due for the year is paid in full in accordance with the provisions of the Act.

Amendments: (1) By Assam Act No. IX of 1967 Section 19 was substituted. The second proviso to sub-section (1) was inserted by Assam Act No. XIV of 1968.

(2) By Assam Act No. X of 1984 w.e.f. 1-4-1984, in sub-section (1), the first proviso, the paragraph

occurring thereunder and the second proviso were deleted.

The proviso to Section 19(1) prior to deletion read as under:

'Provided that on an application made in the prescribed manner, the Superintendent of Taxes or Agricultural Income-tax Officer may, in his discretion, extend the date for furnishing the return upto a period not beyond the 28th Day of February of the relevant financial year and a simple interest at six per cent per annum shall be payable from the 1st day of January of the relevant financial year to the date of the furnishing return as extended by the Superintendent of Taxes or Agricultural Income-tax Officer on the amount of Agricultural Income-tax payable on the Total agricultural income as finally assessed, reduced by the advance tax, if any, paid.'

If the return is not furnished within the 28th February of the relevant financial year extended by the Superintendent of Taxes or Agricultural Income-tax Officer simple interest upto a maximum of 24 percent per annum as may be prescribed shall be payable from the 1st Day of March of the relevant financial year to the date of the furnishing return on the amount of agricultural income tax payable on the total agricultural income assessed, reduced by the advance tax, if any, paid. Provided further that no interest under this sub-section shall be levied if the amount of tax paid within the aforesaid 31st December is not less than ninety per centum of tax as finally assessed.

(3) In sub-section (2) the proviso was deleted by Assam Act X of 1984 w.e.f. 1-4-1984.

The proviso to Section 19(2) prior to its deletion, read as under:

'Provided that on an application made in the prescribed manner the Superintendent of Tax or Agricultural Income-tax Officer may, in his discretion, extend the date for the furnishing of the return and when the date of furnishing the return, whether fixed originally or on extension, falls beyond the 31st December of the relevant financial year, the provision of the proviso to sub-section (1) shall apply.'

(4) In sub-section (4) and (5), the words "and the provisions of the proviso to sub-1 section (1) shall apply in every such case" were deleted by Assam Act No. X of 1984 w.e.f. 1-4 - 1984.

(5) The words "assessment year" have been substituted in place of "financial year" by Assam Act VI of 1989 w.e.f. 1-4 -1989.

(6) By Assam Act No. XX of 1994 published in the Assam Gazette of 6-5-1994 w.e.f. 1-9-1995(effective from assessment year 1996-97) the proviso to section 19 has been substituted by the present proviso.

The proviso prior to its amendment as such, read as under:

'Provided that no return submitted under this section shall be valid unless it is accompanied by a treasury receipt showing payment of the tax due as provided in sub-section (2) of Section 35'.

19A. Return by whom to be signed. The return under section 19 shall be signed and verified

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- (a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

- (b) in the case of a Hindu undivided family, by the Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;
- (c) in the case of a company or local authority by the principal officer thereof;
- (d) in the case of a firm, by any partner thereof, not being minor;
- (e) in the case of any other association, by any member of the association or the principal officer thereof; and
- (f) in the case of any other person, by that person or by some person competent to act on his behalf.

19B. Provisional assessment. (1)The Superintendent of Taxes or Agricultural Income-tax Officer may, at any time after the receipt of a return made under section 19, proceed to make in a summary manner a provisional assessment of tax payable by the assessee on basis of his return and the accounts and documents, if any, accompanying it. Where the amount of tax payable as per provisional assessment exceeds the amount paid or deemed to have been paid, the provisions of section 20C of the Act shall apply in his case.

See: Rule 13

- (2) In making any assessment under this section due effect shall be given to the allowances and deductions as admissible under this Act and the Rules.
- (3) After a regular assessment has been made, any amount paid or deemed to have been paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

Where the amount of tax payable as per regular assessment exceeds the amount paid or deemed to have been paid towards the provisional assessment, the provisions of section 20C of the Act shall apply in every such case.

- (4) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits of any issue, which may arise in the course of the regular assessment.
- (5) There shall be no right to appeal against a provisional assessment under sub-section (1).

20. Assessment. (1) If the Superintendent of Taxes or Agricultural Income-tax Officer is satisfied that a return made under section 19 is correct and complete he shall assess the

total agricultural income of the assessee, and shall determine the sum payable by him on the basis of such return.

See: Rule 15 & 23(4)

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

Provided that the Superintendent of Taxes or Agricultural income-tax Officer shall not require the production of any accounts relating to a period more than eight years prior to the previous year.

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

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

20A. Assessment in cases of discontinued firm or association.

- (1) Where agricultural income is received or deemed to be received by a firm or association of individuals and the business of such firm or association is discontinued in any year, an assessment may be made in that year on the basis of the agricultural income received or deemed to be 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 received or deemed to be received in the previous year. Every person who was a partner of such firm or member of such association at the time of such discontinuance shall be jointly and severally liable to assessment on such agricultural income and for the amount payable as tax, and all the provisions of the Act shall, so far as may be, apply accordingly.

(2) Any person discontinuing any such business shall give to the Superintendent of the Taxes or Agricultural Income-tax Officer notice of such discontinuance within fifteen days thereof, and where any person fails to give the notice required by this sub-section, the Superintendent of Taxes or 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 firm or association of individuals up to the date of the discontinuance of its business.

20B. Assessment in case of transfer of property. (1) Where a person liable to pay tax under this Act (hereinafter in this section referred to as the predecessor) has been succeeded by another person (hereinafter in this section referred to as the successor) who continues agricultural operations —

- (a) the predecessor shall be assessed in respect of the agricultural income of the previous year in which the succession took place up to the date of succession;
 - (b) the successor shall be assessed in respect of the agricultural income of the previous year after the date of succession.
- (2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the agricultural income-tax for the previous year up to the date of succession and for the years preceding that year shall be made on the successor in the like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.
- (3) Where any sum, payable under this section in respect of the agricultural income of the previous year in which the succession took place up to the date of succession or for the previous year preceding that year assessed on the predecessor, cannot be recovered from him, the Agricultural Income-tax Officer, shall, after making such enquiries as he might deem fit, record a finding to effect and the sum payable by predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid :

Provided that the successor shall not be made so liable to pay sum without giving him an opportunity of being heard.

20C. [Deleted by Assam Act XX of 1994 w.e.f. 1-9-1995, effective from assessment year 1996-97].

Prior to omission Section 20C as inserted by Assam Act No. 1984, w.e.f. 1-4 - 1984(effective from assessment year 1984-85), and as amended by the Assam Act No. VI of 1989, w.e.f. 1-4 -1989(effective from assessment year 1989-90), and as amended by Assam Act No. XXIII of 1989, w.e.f. 28-12-1989(effective from assessment year 1990-91), read as under :

20C. Interest payable by the assessee

- (1) *Where on making an assessment of tax under any provision of this Act for any assessment year it is found that the tax paid by or on behalf of assessee in respect of the said assessment year on or before the 31st day of December of the said assessment year falls short of the amount of tax as finally assessed in respect of the said assessment year, he shall be liable, notwithstanding anything contained in any law for the time being in force to pay simple interest on the amount of shortfall at the rate of twelve per centum per annum from the 1st Day of January of the said assessment year upto the date of assessment-*

Provided that if the amount of tax paid in respect of the relevant assessment year amounts to or exceeds seventy five per centum of the amount of tax as finally assessed, no interest under this sub-section shall be payable from the date next following the date on which the tax -amount to or exceeds seventy five per centum of the tax as finally assessed.

- (2) *Where an assessee does not pay the amount of tax demanded from him after an assessment made under any provisions of this Act within the date specified in the notice of demand served on him in this behalf he shall be*

liable to pay simple interest from the 1st day of the month next following the said date upto the date of full payment at the rate of sixteen per centum per annum on the amount of tax as finally assessed reduced by the amount of tax paid on or before the said first day until the tax is fully paid.

- (3) *Where the amount of tax paid on or before the 31st Day of March, 1984 by or on behalf of any assessee under this Act in respect of any assessment year falling during the period from 1st April, 1967 to 31st March, 1984 falls short of the amount of tax due from him in respect of such assessment year, whether or not such tax has been assessed, the assessee shall be liable to pay simple interest on the amount of shortfall at the rate of twelve per centum per annum until the tax is paid in full:*

Provided that if the amount of tax paid in respect of the relevant assessment year on or before the 31st day of March, 1984 amounts to or exceeds seventy five per centum of the amount of tax as finally assessed, no interest under this sub-section shall be payable:

Provided further that no interest under this sub-section shall be payable from the date next following the date on which the tax paid, if any, amounts to or exceeds seventy five per centum of the tax as finally assessed. (Both the provisos were inserted by Assam Act XXIII of 1989)

Explanation. - In this sub-section "amount of tax due" means the amount of tax as finally assessed whether the assessment is made on or before the 31st day of March 1984 or after that date.

- (4) *Where an assessee pays any part of the tax after the commencement of interest under sections (1), (2) or (3) interest shall be payable upto the date of part payment on the entire amount as specified in the said subsections and thereafter on the balance or such amount.*
- (5) *Where in any case any interest becomes payable under this section, the authority competent to assess the tax in that case under this Act shall record an order to that effect specifying the amount of interest payable and the amount of tax on which and the period for which the interest is payable. Notwithstanding anything contained in this Act, an order under this sub-section can be passed at any time when interest under this section is found*

to be due.

- (6) *The provisions of this Act relating to payment and recovery of tax shall so far as may be apply to payment of interest under this Section as if such interest were tax under this Act.*

Provided that where any order is passed under sub-section (3) of section 36 of this Act in respect of any dues, any interest relatable to the same dues and accrued under this section upto the date of such order and any further interest accruing after such date shall be recovered in the course of proceedings initiated in accordance with the said sub-section(3) in respect of the said dues and for that purpose no order under sub-section (5) of this section or notice of demand under this Act shall be necessary in respect of such interest.

20D. Assessment in case of variation of Central assessment (1)

Where in any case in consequence of any order relating to computation of income made under the Income Tax Act, 1961, by any authority constituted under that Act the income of an assessee as assessed under that Act in respect of any period is revised leading to enhancement or, as the case may be, reduction of the agricultural income of the assessee in respect of the period, the assessee shall, as specified in sub-section (2) and (3), submit a return of his agricultural income or as the case may be, a revised return of his agricultural income in respect of the period to the Superintendent of Taxes or Agricultural Income-tax Officer disclosing therein his agricultural income as enhanced or reduced as aforesaid.

- (2) The return or revised return under sub-section (1) shall be submitted in a case, in which the income has been or is revised under the Income Tax Act, 1961, on or before the 31st December, 1989 not later than 31st March, 1990, and in a other case, within ninety days of such revision.

- (3) All the provisions of this Act, except to the extent specified in this section, shall, so far as may be, apply to a return or a revised return submitted under this section as if such return or revised return were submitted under section 19.

- (4) The rate of tax applicable to the agricultural income disclosed in the return or revised return submitted under this section shall be the same as that applicable to the period to which the agricultural income relates.

- (5) Where in any case the agricultural income of an assessee has been or is varied as specified in sub-section (1), the Superintendent of Taxes or Agricultural Income-tax Officer may, at any time, serve a notice on the assessee requiring him to submit a return or revised return as required under the subsection (1), by such date as may be specified in a notice served on the assessee in this behalf and the assessee shall accordingly submit a return or revised return and the provisions of this Act shall apply as if the notice served under this sub-section were a notice under sub-section (2) of section 19.

- (6) An assessee shall be liable to pay simple interest at the rate of two per centum for each English calendar month, from the first day of the month next following the expiry of the period specified in sub-section (2), on the amount by which the tax paid on the return or revised return submitted under this section falls short of the amount of tax as finally assessed in respect of that portion of the agricultural income which had not been returned by the assessee under section 19. Interest as aforesaid shall be payable till the

amount as finally assessed is paid by the assessee and to that extent the provisions of sections 35C, 35D and 35E shall not apply.

Amendments: Section 20D has been inserted w.e.f. 28-12-1989 (effective from assessment year 1990-91) by Assam Act No. XXIII of 1989.

In sub-section (6) of Section 20D, the words "two percentum for each English calendar months" have been substituted for the words "sixteen percentum per annum" w.e.f. 1-9-1995 (effective from assessment year 1996-97) by Assam Act No. XX of 1994.

By the same Act the word, letter and figures "Section 20C" have been substituted by "Section 35C, 35D and 35E".

In sub-section (2), in the last line. the words "sixty days" have been substituted by the words "ninety days" by the Assam Act No. III of 2000, w.e.f. 17-5-2000 (effective from assessment year 2001-2002)

21. Cancellation of assessment in certain cases and fresh assessment thereof. Where an assessee, or in case of a company the Principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided satisfies the Superintendent of Taxes or Agricultural Income-tax Officer that he was prevented by the sufficient cause from making the return required by section 19 or he did not receive the notice issued under sub-section (2) of section 19 or sub-section (2) of section 20 or that he had not a reasonable opportunity to comply or was prevented by sufficient cause complying with the terms of the last mentioned notices, the Superintendent of Taxes or Agricultural Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 20.

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

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish under sub-section (1) or sub-section (2) of section 19 or has without reasonable cause failed to furnish it within the time and in the manner required in the provisions made under the above-mentioned sub-section, or

(b) has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income and thereby returned it below its real amount,

he may direct that the assessee shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of agricultural income-tax payable by him a sum not exceeding that amount and in the case referred to in clause (b) in addition to any tax paid by him, a sum not exceeding the amount of the agricultural income-tax which would

have been avoided if the income so returned by him had been accepted as the correct income:

Provided that —

- (a) no penalty for failure to furnish the return of his total agricultural income shall be imposed on an assessee whose total agricultural income is less than rupees five thousand unless he has been served with a notice under sub-section (2) of section 19;
- (b) where a person has failed to comply with a notice under sub-section (2) of section 19 or under section 30 and proves that he has no income liable to tax, no penalty shall be imposed under this sub-section;
- (c) no penalty shall be imposed under this sub-section upon any person assessable as the agent of any person not resident in Assam for failure to furnish the return required under section 19 unless a notice under sub-section (2) of that section has been served on him;
- (d) no order under this section shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard:

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

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

23. Notice of demand. Where any agricultural income-tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Superintendent of Taxes or Agricultural Income-tax officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the so payable.

See: Rule 15 & 30

24. Appeal against assessment under this Act. (1) Any person aggrieved by an order passed under this Act by any authority appointed under section 18 other than the Commissioner or the Joint Commissioner of Taxes, not being an order passed under this section may appeal to the Deputy Commissioner of Taxes (Appeals) against such order within thirty days from the date of service of such order in the prescribed manner:

See: Rule 16, 17 & 19

Provided that the authority before whom the appeal is filed may admit the appeal after the expiration of thirty days if he is satisfied that for reasons beyond the control of the appellant or for any other sufficient causes it could not be filed within the time:

Provided further that no appeal under this section against the assessment of any tax,

penalty or interest shall be entertained by the appellate authority unless he is satisfied that the amount of tax, penalty or interest assessed, if not otherwise directed by him, has been paid:

Provided further that in any case or class of cases the Commissioner may, by order in writing, direct that the appeal under this section shall lie to such Deputy Commissioner of Taxes (Appeals) or such other officer of equivalent rank as may be specified in such order.

- (2) Every appeal under this section shall be presented in the prescribed form and shall be verified in the prescribed manner.
- (3) The appellate authority shall fix a date and place for hearing of the appeal, and may, from time to time, adjourn the hearing and make such further enquiry as he thinks fit.
- (4) In disposing of the appeal under sub-section (1) against an order of assessment or penalty, the appellate authority may —
 - (a) Confirm, reduce, enhance or annul the assessment;
 - (b) Set aside the assessment and direct a fresh assessment after such enquiry as may be ordered; or
 - (c) Confirm, reduce or annul the order of penalty.

Amendments: The words "Joint Commissioner of Taxes" and "Deputy Commissioner of Taxes (Appeals)" have been substituted in place of the words "Deputy Commissioner of Taxes" and "Assistant Commissioner of Taxes (Appeals)" respectively by Assam Act No. IX of 1993 w.e.f. 14-5-1993 (effective from assessment year 1994-95).

25. Appeal against order of refusal of refund. [~~Deleted by Assam Act XXVI of 1972~~].

26. Appeal to the Board of Revenue. (1) Any assessee objecting to an order passed in appeal under section 24 or passed in revision under sub-section (1) of section 27 may appeal to the Board within sixty days of the date on which such order is communicated to him.

(2) The Board may admit an appeal after the expiration of the sixty days referred to in sub-section (1) if it is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

(3) An appeal to the Board shall be in such form and shall be verified and presented in such manner as may be laid down by the Board and shall be accompanied by a fee of twenty five rupees.

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

27. Revision by Commissioner. (1) The Commissioner may call for and examine the record of any proceedings under this Act, if he consider that any order passed therein by any authority appointed under section 18 other than himself is erroneous in so far as it is prejudicial to the interest of revenue, and he may, after giving the assessee an opportunity of being heard

and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstance of the case justify, including an order enhancing or modifying the assessment or canceling the assessment and directing a fresh assessment.

- (2) In the case of any order other than an order to which sub-section (1) applies, passed under this Act by any authority appointed under section 18 other than himself the Commissioner may of his own motion, and in the case of an order passed under section 24, subject to such rules as may be prescribed, on a petition by an assessee for revision, call for the records of any proceedings under this Act in which any such order has been passed and make such enquiry to be made, and subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner may dispense with the enquiry required to be made under this sub-section, if he, for reasons to be recorded in writing, considers such enquiry to be unnecessary.

- (3) In the case of a petition for revision under sub-section (2) by an assessee, the petition must be made within ninety days from the date on which the order in question was communicated to him or the date on which he otherwise comes to know of it, whichever is earlier: See: Rule 18 &19.

Provided that the Commissioner may admit the petition after the expiration of the period of ninety days, if he is satisfied that for reasons beyond the control of the petitioner or for any other sufficient cause, it could not be filed within the time.

Explanation. - An order by the Commissioner of Taxes declining to interfere shall for the purpose of this section, be deemed not to be an order prejudicial to the assessee.

- (4) The Commissioner shall not revise any order under this section in the following cases:
- (a) on petition under sub-section (2) where an appeal against the order lies under section 26 and the assessee has not waived his right of such appeal, or
 - (b) where the order is pending on appeal under section 26.

28. Reference (1) The assessee or the Commissioner may, within sixty days from the date of service of any order under section 26, by petition in writing, require the Board to refer to the High Court any question of law arising out of such order of the Board or the Board may make such reference out of its own motion. Where a petition is made by an assessee, it shall be accompanied by a fee of one hundred rupees.

- (2) Within sixty days of the receipt of the petition under sub-section (1), the Board shall, subject to the provisions in subsection (3), draw up, after such hearing and enquiry as may be considered necessary, a statement of the case and refer it with its opinion thereon to the High Court.

- (3) The Board may reject the application under sub-section and refuse to state the case on the ground that it is time-barred or otherwise incompetent, or that no question of law arises and the applicant may, within thirty days of such refusal withdraw the application and if he does so, the fee paid shall be refunded.
- (4) Where the application under sub-section (1) is rejected on the ground that no question of law arises and where no action is taken by the applicant under sub-section (3), he may, within ninety days from the date of such rejection, apply to the High Court against the order rejecting the application and if, upon receipt of such an application, the High Court is not satisfied with the correctness of the decision, it may require the Board to state the case and refer it and, on receipt of any such requisition, the Board shall state and refer the case accordingly.
- (5) Where the application under sub-section (1) is rejected on the ground that it is time-barred and where no action is taken by the applicant under sub-section (3), he may, within ninety days of the date of such rejection, apply to the High Court against the order rejecting the application and if, upon receipt of such an application, the High Court is not satisfied with the correctness of the decision, it may require the Board to treat the application under sub-section (1) as made within time.
- (6) Where the High Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the questions of law raised thereby, it may refer the case back to the Board to make such additions thereto or such alterations therein as may be directed and the Board shall thereupon comply with the directions and submit the case accordingly.
- (7) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Board a copy of such judgment under the seal of the Court and signature of the Registrar, and the Board shall, on receipt of the copy of the judgment, order disposal of the case accordingly.
- (8) Where a reference is made on the application of an assessee, the cost shall be in the discretion of the High Court.
- (9) Notwithstanding that a reference has been made under this section to the High Court, payment of tax shall not be stayed pending disposal of such reference; but where the amount of tax is reduced, the excess shall be refunded in accordance with the provisions of this Act.
- (10) Section 5 of the Indian Limitation Act, 1963 (Act XXXVI of 1963) shall apply to an application to the High Court under this section.

29. Appeal against any judgment of the High Court. (i) An appeal shall lie to the Supreme Court of India from any judgment of the High Court delivered in a

reference made under foregoing section in any case which the High Court certifies to be fit one for appeal to the Supreme Court of India.

- (ii) The provisions of the Code of Civil Procedure relating to the appeals to the Supreme Court of India shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in cases of appeals from decree of High Court:

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

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

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

30. Income escaping assessment. If for any reason any agricultural income chargeable to agricultural income-tax has escaped assessment for any assessment year, or has been assessed at too low a rate or has been the subject of undue relief under this Act, the Superintendent of Taxes or Agricultural Income-tax Officer may at any time within eight years of the end of that assessment year serve on the person liable to pay agricultural income-tax on such agricultural income, or in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 19, and may proceed to assess or reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub section :

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment as the case may be:

Provided further that in computing the period of eight years mentioned in this section the period during which the Superintendent of Taxes or the Agricultural Income-tax Officer was restrained or prevented from issuing the notice under this section by an order or injunction of any court or authority shall be excluded.

Amendments: The second proviso has been substituted w.e.f. 18-4-1984 by Assam Act No. X of 1984.

The words "assessment year" have been substituted for words "financial year" w.e.f. 1-4-1989 (effective from assessment year 1989-90) by Assam Act No. VI of 1989.

31. Rectification of mistakes. (1) The authority which passed an order on appeal or revision may, at any time within three years from the date of such order, and the Superintendent of Taxes or Agricultural Income-tax Officer may, at any time within three years from the date of any assessment order passed by him, of his own motion, rectify any

mistake apparent from the record of the appeal or assessment, as the case may be, and shall within the like period rectify any such mistake as has been brought to his notice by an assessee :

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

- (2) When any such rectification has the effect of reducing the assessment, the Superintendent of Taxes or 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 the refund, the Superintendent of Taxes or 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 23 and the provisions of this Act shall apply accordingly.

See: Rule 15

32. Tax and interest to be calculated to the nearest multiple of rupees ten - In the determination of the amount of agricultural income tax, interest or a refund payable under this Act, if the amount is not a multiple of rupees ten, it shall be rounded off to the nearest multiple of ten rupees and, while calculating to achieve this purpose, if the total tax, interest or refund, as the case may be, contains a part of rupees ten which is amounting to rupees five or more, it shall be rounded off to the next higher multiple of rupees ten and, if such part is less than rupees five it shall be ignored.

Amendments: Section 32 has been fully substituted by the Assam Act XIII of 1999 w.e.f. 1-4-1999 (effective from assessment year 1999-2000) published in the Assam Gazette of 1st June, 1999. Prior to its substitution, the section read as under:

32. Tax to be calculated to the nearest anna (Sic). - In the determination of the amount of a refund payable under this Act, if the amount is not a multiple of five naye paise, it shall be rounded off to the next higher multiple of five naye paise.

33. Power to take evidence on oath. (1) The Commissioner of Taxes, the Deputy Commissioner of Taxes, the Assistant Commissioner of Taxes and the Superintendent of Taxes or Agricultural Income-tax Officer, shall, for the purpose of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, (V of 1908) when trying a suit in respect of the following matters namely: -

- (a) enforcing the attendance of any person and examining him on oath or affirmation;

- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses;

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

- (2) If any person assessed to agricultural income-tax in respect of agricultural income mentioned in sub-clause (1) of clause (a) of section 2 produces before the Superintendent of Taxes or Agricultural Income-tax Officer for the purpose of calculating his agricultural income any rent roll or other similar papers showing the amount of rent received by him, he shall not be entitled to recover or to institute a suit to recover rent due to him for any tenure or holding included in such return at a rate higher than the rate mentioned in such return as payable for such return or holding, unless the rent shown in such return has, since the date of the return been lawfully enhanced.
- (3) Any person who has produced a rent roll referred to in sub-section (2) may, within one year of producing such roll, apply to the Superintendent of Taxes or Agricultural Income-tax Officer to make any correction therein, and the Superintendent of Taxes or Agricultural Income-tax Officer may, if he is satisfied that such correction should be made, pass an order correcting such rent roll.
- (4) Where the Superintendent of Taxes or Agricultural Income-tax Officer passes any order under sub-section (3), he may assess under section 30 any income escaping assessment by reason of the original incorrectness of any entry corrected.

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

- (1) require any firm or Hindu undivided or joint family to furnish him with a return of the names of members of firm or the name of the manager or the brothers or sons brothers of the family, as the case may be, and of addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian or agent to furnish him with a return of the names of the persons for or to whom he is trustee, guardian or agent and of their addresses.

34A. Disclosure of information by Public Servant. (1) All particulars contained in any statement made, return furnished, or account or documents produced in accordance with this Act, or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act other than proceedings before a Criminal

Court, or in any record of any proceedings under this Act, shall, save as provided in sub-section (3), be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any public servant to produce before it any such statement, return, accounts, documents or record or any part thereof, or to give evidence before it in respect thereof.

- (2) If, save as provided in sub-section (3), a public servant discloses any of the particulars referred to in sub-section (1) he shall be punishable with imprisonment for a term which may extend to six months, and shall also be liable to fine:

Provided that it shall be a defence for the accused to prove that such disclosure was made before this Act came into force.

- (3) Nothing in this section shall apply to the disclosure of any of the particulars referred to in sub-section (1) for the purpose —
- (a) of a prosecution under the Indian Penal Code, 1860, or the Prevention of Corruption Act, 1947 in respect of any such statement, return, accounts, document or evidence;
 - (b) of a prosecution under this Act;
 - (c) of assessment to an officer of the Central Government as may be necessary for the purpose of enabling the Central Government to levy or realise any income-tax imposed by it;
 - (d) of assessment to any officer of the State Government as may be necessary for the purpose of enabling such Officer to levy or realise any tax imposed by the State Government ;or
 - (e) of audit of receipt or refunds under this Act by any officer appointed by the Controller and Auditor General of India for such purpose.

Amendments: In sub-section (3), clause (e) has been inserted w.e.f. 18-4-984 by Assam Act No. X of 1984.