

CHAPTER –V

Recovery of Tax and Penalties

35. Advance tax. (1) Notwithstanding anything contained in this Act an assessee shall pay to the credit of the State Government, as advance tax, an amount equal to the agricultural income tax calculated in his total agricultural income derived during the latest previous year in respect of which he has been assessed in such number of equal instalments not exceeding four and on such dates as may be prescribed:

See: Rule29(i)

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 assessee's last assessment 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 on the basis of latest assessment of the firm.

35 A. Estimate by assessee. (1) If an assessee, who is required to pay advance tax under section 35, estimates at any time before the last instalment of the advance tax is due in his case and finds that by reason of his income of the year, for which he is liable to pay advance tax being likely to be more or less than the income on which the advance tax payable by him under section 35 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, he shall furnish to the Agricultural Income Tax Officer an estimate of—

- (i) the current total agricultural 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.

See: Rule 29(i) & (ii)/Form (III)

- (2) The assessee may send a revised estimate of the advance tax payable by him on or before date prescribed under section 35 and adjust excess or deficiency in respect of any instalment or instalments.

See: Rule 29 (ii)/Form (IV)

- (3) Any person who has not been previously assessed this Act shall in each financial year, before the date on which the last installment of the advance tax is due in his case, if his current total agricultural income likely to exceed the amount specified in section 35, send to the Agricultural Income Tax Officer an estimate of -

- (i) the current total agricultural income; and
- (ii) the advance tax payable by him under the Act, and shall pay such amount of advance tax as ac with his estimate on such of the dates applicable in his case as have not

expired, by instalment which may be revised according to sub-section (2).

- (4) After a regular assessment has been made under section 20, any amount paid as advance tax in pursuance of section 35 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 this regular assessment the excess shall be refunded to assessee.

Explanation.- In this section, the expression "advance tax" means the agricultural income tax payable in advance in accordance with the provisions of section 35 or of this section.

- (5) In the case of an assessee who has been already assessed by way of regular assessment in respect of total agricultural income of any previous year and who has not paid any advance tax under section 35, the Agricultural Income Tax Officer, if he is of the opinion that such assessee is liable to pay advance tax, may at any time during the financial year but not later than last day of February, by an order in writing require such assessee to pay advance tax calculated on the total agricultural income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total agricultural income returned by the assessee in any return of agricultural income furnished by him for any subsequent year, whichever is higher, shall be taken and the agricultural income-tax thereon shall be calculated at the rates in force in the financial year, and issue to such assessee a notice of demand under section 23 specifying the instalment or instalments in which such tax is to be paid.

See: Rule 29(iii)(a) /Form-V,VI

- (6) If after the making of an order by the Agricultural Income Tax Officer under sub-section (5) and at any time before the 1st day of March, a return of agricultural income is furnished under section 19 or a regular assessment is made in respect of a previous year later than referred to in sub-section (5), the Agricultural Income Tax Officer may make an amended order and issue to such assessee a notice of demand under section 23 requiring the assessee to pay, on or before the due date or each of the dates prescribed under section 35 falling after the date of the amended order, the appropriate percentage so prescribed under section 35, of the advance tax computed on the basis of the total agric income returned or in respect of which regular assessment aforesaid has been made.

See: Rule 29(iii)(a)

- (7) An assessee who is served with an order by the Agricultural Income Tax Officer under sub-sect (5) or an amended order under sub-section (6), may if in his estimate the advance tax payable on his current income would be less than or more than amount of advance tax specified in such order or amended order, send an intimation as provided in sub-section (1) to the Agricultural Income Officer to that effect and pay such advance tax accords with his estimation the instalment or instalments on or before the due date or each the due dates prescribed under section 35 falling after the date of such intimation.

See: Rule 29(iii) (b)/Form-VII

35 B. Short payment of advance tax. (1) Where in any financial year, an assessee has paid advance tax under section 35 or section 35-A and the advance tax so paid is less than seventy five per centum the tax determined on regular assessment under section 20, simple interest at the rate of two per centum for each English Calendar month from the first day of April of succeeding financial year in which advance tax was payable up to the month prior to the month of 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.

- (2) Where before the date of completion of a regular assessment, tax is paid by the assessee in accordance] with the provisions of the Act, interest shall be calculated in accordance with the foregoing provision up to the month prior to the months in which tax paid and 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.

35 C. Interest payable by assessee. (1) Where on making the regular assessment under section 20, the Agricultural Income Tax Officer finds that no payment of advance tax has been made in accordance with the provisions of section 35 or section 35 A, interest at the rate of two per centum for each English Calendar month from the first day of April succeeding 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.

- (2) Where as a result of an order under section 21, section 24, section 26, section 27, section 31, section 28 or section 29 the amount on which interest was payable under this section or section 35C has been reduced, the interest shall be reduced proportionately and the excess interest paid, if any, shall be refunded.

35 D. Interest for non-payment of tax demanded. (1) Where an assessee does not pay the amount of tax demanded from him after an assessment made under any provision 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 following the said date up to the date of full payment at the rate of two per centum for each English Calendar month 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.

- (2) In calculating the interest payable under this Act, the amount of advance tax or tax determined on regular assessment under section 20 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 rupees it shall be ignored.

Explanation 1. - In this section where an assessee pays any part of the tax after the commencement interest under sub-section (1) interest shall be payable up to the date of part payment on the entire amount as specified in the said sub-section and thereafter on the balance of such payment.

Explanation 2. - 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.

Explanation 3. - The provisions of this Act relating to payment and recovery of tax shall, so far as may be, be applicable to payment of interest under this section as if such interest were tax under this Act:

Provided that where any order is passed under subsection (3) of section 36 of this Act in respect of any dues, any interest relatable to the same dues and accrued under this section up to the date of such order and any further interest accruing after such date shall be recovered in the course of proceeding initiated in accordance with the aforesaid sub-section in respect of the said dues and for that purpose no order under sub-section (1) of this section or notice of demand under this Act shall be necessary in respect of such interest.

35 E. Sections 35B, 35C and 35D not to apply in certain cases. The Provisions for interest as made in section 35B, section 35C and section 35D shall not be applicable in case of an assessee whose agricultural income tax does not exceed two thousand five hundred rupees.

35 F. When assessee deemed to be in default. If an assessee —

- (a) does not pay any instalment or instalments of advance tax payable by him under section 35 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 35A 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 35A;

He shall be deemed to be in default, in the case referred to in clause (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 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 35A and all the provisions of section 36 shall apply in relation to any advance tax payable in pursuance of section 35 and section 35A as if it were an order for payment of tax on regular assessment under section 20 :

Provided that if any interest is payable by an assessee under n 35C or section 35D or section 35E in respect of any period and penalty is imposed under section 36 read with this section, the aggregate of such interest and penalty shall not exceed the amount for which such assessee is deemed to be

35 G. Submission of evidence of payment with return. An assessee shall except when taxes have been paid in advance in full, submit alongwith the annual return a receipt from a Government Treasury or crossed cheque or crossed demand draft in favour of the Agricultural Income Tax Officer for the full amount of tax payable for the year on the basis of the return after deducting therefrom the advance taxes if any already paid for the year.

35 H. Interest for deferment of advance tax. Where, in any financial year, the assessee who is liable to pay advance tax under section 35 or 3 5A, has failed to pay such tax by the prescribed date, he shall be liable to pay simple interest at the rate of one and half percent per month with effect from the immediate next day of the day prescribed for payment of advance tax for the respective quarter, on the unpaid amount by which the tax to be paid for that quarter falls short, till the date of full payment of such short fall:

Provided, however that the provisions of this section shall apply only upto the end of the financial year, after which the provisions of section 35C as renumbered, shall apply.

Amendments: (1) Sections 35A to 35H were originally inserted by Assam Act No. XX of 1994, published in the Assam Gazette of 6th May 1994. But these sections came into force w.e.f. 1-9-95,(effective from assessment year 1996-97) the date notified by the State Government vide Notification No. FTX.94/92/Pt./99 in exercise of powers conferred by section 1 (3) of the Assam Act No. XX of 1994

(2) By Assam Act No. XIII of 1999 w.e.f. 1-4-1999(effective from assessment year 1999-2000) published in the Assam Gazette of 1st June of 1999, the original provision of section 35B was deleted and the existing sections 35C, 35D, 35E, 35F, 35G and 35H have been renumbered as 35B, 35C, 35D, 35E, and 35F and 35G respectively.

Section 35B prior to its omission read as under:

'35B. Interest payable by State Government. - The State Government shall pay a simple interest at the rate of two per centum for each English Calander month on the amount by which the aggregate some of instalments of advance tax paid during any financial year in which they are payable under section 35 of section 35A, exceeds the amount of tax. determined on regular assessment under section 20 from the first day of the month next after the expiry of three months from the date of such regular assessments upto the month preceding the month in which the refund of the excess amount is made."

3) After renumbering, the present section 35H has been inserted by Assam Act XIII of 1999 w.e.f. 1-4-1999, (effective from assessment year 1999-2000).

36. Mode of recovery. (1) If the demand in respect of any under this Act is not paid on or before the date specified in section 35-G and 35H, the assessee shall be deemed to be in default:

Provided that the Superintendent of Taxes or Agricultural tax Officer may, in respect of any particular assessee and for reasons to be recorded in writing, extend the date of payment of dues or allow such assessee to pay the same by instalments and in such cases the assessee shall not be deemed to be in default, but in all such cases the provisions of sections 35C, 35D and 35E shall apply.

(2) Where an assessee is in default, the Superintendent of Taxes or Agricultural Income-tax Officer may, in his discretion, direct that in addition to the amount due, a sum not exceeding that amount shall be recovered from the defaulter by way of penalty:

Provided that no order of imposition of penalty under this section shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard.

(3) Where an assessee is in default, the Superintendent of Taxes or Agricultural Income-tax Officer may order that the amount due shall be recoverable as an arrear of land revenue and may proceed to realise the amount as such.

(4) When agricultural income-tax payable by a trustee, or is under section 10 payable by a Mutawali of a Musalman Wakf to in section 3 of the Musalman Wakf Validating Act, 1913 (Act 6 of 1913) and such trustee or Mutawalli is in default, the Superintendent of Taxes or Agricultural Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrear due from the assessee, and the Collector on receipt of such certificate shall proceed to recover from such trustee or Mutawalli the amount specified therein as arrears of land revenue :

Provided that, any land held by trustee or Mutawalli as such shall not be attached or

sold in execution of bakijai proceeding but such arrears may be realised from the income of the trust or wakf estate by the appointment of a receiver of any property of the trust or wakf.

Amendments :

In sub-section (1), "Section 35G and 35H" have been substituted for "sub-section (4) of Section 35", w.e.f. 1-9-95 (effective from assessment year 1996- 97) by Assam Act No. XX of 1994.

In proviso to sub-section (1) of Section 36, the words and figure " section 20C of this Act" was substituted in place of words and figure "proviso to section 19(1)" w.e.f. 1-4-1984 by Assam Act No. X of 1984. Thereafter in the proviso section (1), "Section 35C, 35D and 35E" have been substituted for "Section w.e.f.1-9-1995 (effective from assessment year 1996-97) by the Assam Act 1994.

In sub-section (2) of Section 36, the proviso has been inserted w.e.f. 1-4-1999(effective from assessment year 1999-2000) by Assam Act No. XIII of 1999.

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

38. [Deleted by Assam Act XIX of 1974]