

ACT No. XXI OF 1930.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 4th April, 1930.)

An Act further to amend the Indian Income-tax Act, 1922, for certain purposes.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for certain purposes hereinafter appearing; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Income-tax (Amendment) Act, 1930. Short title and commencement.

(2) It shall come into force on the 1st day of April, 1930.

2. In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act),— Amendment of section 2, Act XI of 1922.

(a) after clause (6) the following clause shall be inserted, namely:—

“(6A) ‘firm’, ‘partner’ and ‘partnership’ have the same meanings respectively as in the Indian Contract Act, 1872”; and

(b) for clause (14) the following shall be substituted, namely:—

“(14) ‘registered firm’ means a firm registered under the provisions of section 26A;”.

3. In sub-section (4) of section 23 of the said Act,—

(a) after the word “judgment” the words “and, in the case of a registered firm, may cancel its registration” shall be added; and Amendment of section 23, Act XI of 1922.

(b) the following proviso shall be added, namely:—

“Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration”.

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Insertion of
new section 23A
in Act XI of
1922.

4. After section 23 of the said Act the following section shall be inserted, namely:—

Power to assess
individual
members of
certain firms,
associations and
companies.

“23A. (1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

Explanation.—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its members and that its profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains, having regard to the said needs, has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined, and thereupon the proportionate share

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of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon :

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

Explanation.—For the purpose of this sub-section,—

- (a) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply or of two or more companies none of which is a company to which those provisions apply;
- (b) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public;
- (c) unless the contrary is proved, a company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons;
- (d) “nominee” means a person who may be required to exercise his voting power on the directions

of,

of, or holds shares directly or indirectly on behalf of, another person.

- (3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard.
- (4) (i) Where any member of a firm or association of individuals makes default in the payment of tax on his share of profits and gains which has been included in his total income under the provisions of sub-section (1), such tax may be recovered from the firm or association, as the case may be.
- (ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced.
- (iii) Where tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.
- (5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year."

Insertion of new section 26A in Act XI of 1922.

Procedure in registration of firms.

5. After section 26 of the said Act the following section shall be inserted, namely:—

" 26A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares

shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

- (2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed."

6. For section 28 of the said Act the following section shall be substituted, namely:—

Amendment of section 28, Act XI of 1922.

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

Penalty for concealment of income or improper distribution of profits.

- (2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No

- (3) No order shall be made under sub-section (1) or sub-section (2), unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.
- (4) 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.
- (5) An Assistant Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer."

Insertion of
new section 33A
in Act XI of
1922.

Reference to
Board of
Referees.

7. After section 33 of the said Act the following section shall be inserted, namely:—

- “ 33A. (1) Any person aggrieved by an order of an Income-tax Officer under sub-section (1) or sub-section (2) of section 23A may, within thirty days of the date on which he was served with notice of such order, lodge an appeal in the office of the Commissioner.
- (2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.
 - (3) The Commissioner shall refer such appeal, with a statement of his own opinion thereon, to a Board of Referees for decision; and the Board of Referees shall decide the appeal after hearing the appellant and any person deputed by the Commissioner:

Provided that, before making a reference to a Board of Referees, the Commissioner may, and at the request of the appellant shall, in exercise of his powers of revision under section 33, decide the matters in dispute, and thereupon the assessee may withdraw his appeal or proceed with it.

- (4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order; and where a decision reverses or modifies the order of the Income-tax Officer,

Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessment already made.

(5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority, and shall not be revised by the Commissioner in exercise of his powers under section 33.

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer not inferior in rank to a Subordinate Judge or a Judge of a Small Cause Court who has held judicial office for a period of not less than ten years.

(7) Subject to the provisions of sub-section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees."

8. In section 45 of the said Act,—

Amendment of
section 45,
Act XI of 1922.

(a) after the words "notice of demand" the words and figures "under sub-section (4) of section 23A or" shall be inserted; and

(b) after the word and figures "section 30" the words and figures "or under section 33A" shall be inserted.

9. In section 52 of the said Act, after the word and figures "section 22" the words and figures "or sub-section (2) of section 26A" shall be inserted, and after the word and figures "section 32" the words and figures "or sub-section (2) of section 33A" shall be inserted.

Amendment of
section 52, Act
XI of 1922.

10. In sub-section (2) of section 54 of the said Act, after the first proviso the following proviso shall be inserted, namely:—

Amendment of
section 54, Act
XI of 1922.

" Provided, further, that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26A, or to the giving

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giving of evidence by a public servant in respect thereof."

Amendment of
section 86, Act
XI of 1922.

11. In sub-section (2) of section 66 of the said Act,—

- (a) after the word and figures "section 32", the words and figures "or of a decision by a Board of Referees under section 33A" shall be inserted; and
- (b) after the word "order", in the second and third places where it occurs, the words "or decision" shall be inserted.