

ACT No. XVIII OF 1933.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 11th
September, 1933.)

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 the purposes hereinafter
appearing: It is hereby enacted as follows:—

1. This Act may be called the Indian Income-tax (Second
Amendment) Act, 1933. Short title.

2. In section 5 of the Indian Income-tax Act, 1922 (herein-
after referred to as the said Act),— Amendment
of section 5,
Act XI of
1922.

(a) for sub-section (3) the following sub-section shall be
substituted, namely:—

“(3) The Governor General in Council may appoint a
Commissioner of Income-tax for any area specified
in the order of appointment.”;

(b) in sub-section (4),—

(i) for the words “in respect of such classes of persons
and such classes of income” the words “in respect
of such persons or classes of persons and of such
incomes or classes of income” shall be substituted,
and

(ii) after the words “in respect of such areas as the
Commissioner of Income-tax may direct” the
following words shall be inserted, namely:—

“and, where two or more Assistant Commissioners of
Income-tax or Income-tax Officers have been
appointed for the same area, in accordance with
any orders which the Commissioner of Income-
tax may make for the distribution and allocation
of the work to be performed”; and

(c) in sub-section (6), for the word “province” the word
“area” shall be substituted.

3. In

Price anna 1 or 1½d.

Indian Income-tax (Second Amendment). [ACT XVIII]

Amendment of
section 8, Act
XI of 1922.

3. In the first proviso to section 8 of the said Act, after the word "Provided" the word " , further, " shall be inserted, and before the said proviso as so amended the following proviso shall be inserted, namely:—

"Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee."

Amendment of
section 9, Act
XI of 1922.

4. For clause (iv) of sub-section (1) of section 9 of the said Act the following clause shall be substituted, namely:—

"(iv) where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself;"

Amendment of
section 11, Act
XI of 1922.

5. For sub-section (2) of section 11 of the said Act the following sub-section shall be substituted, namely:—

"(2) Such profits or gains shall be computed after making the following allowances, namely:—

(i) any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, and not being personal expenses of the assessee;

(ii) in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation, the allowances specified in clauses (vi) and (vii) of sub-section (2) of section 10 subject to all the conditions specified in those clauses."

Amendment of
section 16, Act
XI of 1922.

6. In sub-section (1) of section 16 of the said Act, for the words and figure "the provisos to section 8" the words and figure "the second and third provisos to section 8" shall be substituted.

Amendment of
section 18, Act
XI of 1922.

7. In section 18 of the said Act,—

(a) sub-section (1) shall be omitted;

(b) in sub-section (2), after the word "income-tax" the words "but not super-tax" shall be inserted;

(c) in

of 1933.] *Indian Income-tax (Second Amendment).*

(e) in sub-section (3),—

- (i) after the word "shall" the words "unless otherwise prescribed in the case of any security of the Government of India" shall be inserted,
- (ii) after the word "income-tax" the words "but not super-tax" shall be inserted, and
- (iii) the following proviso shall be added, namely:—

"Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income herein referred to to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be."

(d) after sub-section (3) as so amended the following sub-sections shall be inserted, namely:—

"(3A) Where the Income-tax Officer has reason to believe that the total income of any person residing out of British India to whom any interest not being 'Interest on Securities' is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for paying such interest to such person to deduct at the time of payment income-tax and super-tax at the rates determined by the Income-tax Officer to be applicable to the total income of such person in that year.

(3B) Where the person responsible for paying any interest not being 'Interest on Securities' to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for paying such interest shall, if he has not reason to believe that the recipient is resident in British India, and no order under sub-section (3A) has been received in respect of

such

Indian Income-tax (Second Amendment). [ACT XVIII

such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total, and super-tax on the amount by which such total exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

- (3C) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.
- (3D) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (3C) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.”;
- (e) in sub-section (5), after the word “income-tax” the words “or super-tax” shall be inserted;
- (f) in sub-section (7),—
- (i) after the words “as required by” the words “or under” shall be inserted, and for the word “personally” the words “an assessee” shall be substituted, and
- (ii) the

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

“Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.”; and

(g) in sub-section (9), after the word “income-tax”, in both places where it occurs, the words “or super-tax” shall be inserted, and for the word, brackets and figure “sub-section (3)”, the words, brackets and figures “sub-section (3), (3A), (3B), (3C) or (3D)” shall be substituted.

8. In section 19 of the said Act, for the words and figures “any other head than those mentioned in sub-section (1) of section 18” the words “any head other than ‘salaries’ or ‘interest on securities’” shall be substituted. Amendment of section 19, Act XI of 1922. X

9. After section 20 of the said Act the following section shall be inserted, namely:— Insertion of new section 20A in Act XI of 1922. Supply of information regarding interest.

“20A. The person responsible for paying any interest not being ‘Interest on Securities’ shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person.”

10. In section 24 of the said Act,—

(a) in sub-section (2), after the words “any member of such firm” the words “or any person who being a minor has been admitted to the benefits of partnership in such firm” shall be inserted; and Amendment of section 24, Act XI of 1922. X

(b) to the same sub-section as so amended the following shall be added, namely:— X

“or to his share of the benefits of partnership, as the case may be”.

11. After section 24 of the said Act, the following sections shall be inserted, namely:— Insertion of new sections 24A and 24B in Act XI of 1922. Assessment in case of departure from British India.

“24A. (1) When it appears to the Income-tax Officer that any person may leave British India during the current financial year, or shortly after its expiry, and that he has no present intention of **returning**

Indian Income-tax (Second Amendment). [ACT XVIII

returning, the Income-tax Officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed to the probable date of his departure from British India. For each completed previous year included in this period an assessment shall be made on the total income of such person at the rate at which it would have been charged had such income been fully assessed, and for the period from the expiry of the last of such previous years to the probable date of departure, the Income-tax Officer shall estimate the total income of such person and assess it at the rate in force for the financial year in which such assessment is made:

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment or have been assessed at too low a rate in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22.

24B. (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 tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before he is served with a notice under sub-section (2) of section 22 or section 34,

Tax of
deceased
person payable
by representa-
tive.

as the case may be, the Income-tax Officer may serve on his executor, administrator or other legal representative a notice under sub-section (2) of section 22 or under section 34, as the case may be, and may proceed to assess the total 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 sub-section (2) of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person."

12. In section 30 of the said Act,—

Amendment of
section 30,
Act XI of
1922.

- (a) in sub-section (1), after the words "objecting to a refusal of an Income-tax Officer" the words "to register a firm under section 26A or" shall be inserted, and
- (b) in sub-section (2), after the words "objected to" the words "or of the intimation of the refusal to register a firm under section 26A," shall be inserted.

13. In sub-section (3) of section 31 of the said Act,—

Amendment of
section 31, Act
XI of 1922.

- (a) after the words "in the case of an order refusing" the words "to register a firm under section 26A or" shall be inserted, and
- (b) in sub-clause (c), for the words "to make a fresh assessment" the words "to register the firm or to make a fresh assessment, as the case may be" shall be substituted.

14. In sub-section (1) of section 32 of the said Act, for the words "the making of such order" the words "the date on which he was served with notice of such order" shall be substituted.

Amendment of
section 32, Act
XI of 1922.

15. To

Indian Income-tax (Second Amendment). [ACT XVIII

Amendment of
section 38, Act
XI of 1922.

15. To section 38 of the said Act the following clause shall be added, namely:—

“(3) require any person whom he has reason to believe to be engaged in business, to furnish him with a return containing particulars of the location and style of his principal place of business, and of his branch businesses, if any, the names and addresses of his partners in any business, and the extent of his own share and the shares of all such partners in the profits of such business or businesses.”

Amendment of
section 46, Act
XI of 1922.

16. To sub-section (2) of section 46 of the said Act the following proviso shall be added, namely:—

“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 in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of *v. of 1908.* the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree.”

Amendment of
section 48,
Act XI of
1922.

17. In section 48 of the said Act,—

(a) in sub-section (1),—

(i) after the word “declared” the following words shall be inserted, namely:—

“or that his total income in such year is below the minimum chargeable with income-tax”, and

(ii) after the words “between those rates” the following words shall be added, namely:—

“or at the rate applicable to the profits and gains of the company at the time of the declaration of such dividend, as the case may be”;

(b) in sub-section (2),—

(i) after the words “registered firm” the words “or any person who being a minor has been admitted to the benefits of partnership in such firm” shall be inserted,

(ii) after the words “of that year” the following words shall be inserted, namely:—

“or that his total income of the previous year was below the minimum chargeable with income-tax”, and

(iii) after

OF 1933.] *Indian Income-tax (Second Amendment).*

(iii) after the words "between those rates" the following words shall be added, namely:—

"or at the rate at which income-tax has been levied, as the case may be"; and

(c) in sub-section (3),—

(i) after the words "in that year" the following words shall be inserted, namely:—

"or that his total income of the previous year was below the minimum chargeable with income-tax", and

(ii) after the words "between those rates" the following words shall be added, namely:—

"or at the rate at which income-tax has been deducted, as the case may be".

18. After section 48 of the said Act, the following section shall be inserted, namely:—

Insertion of new section 48A in Act XI of 1922.

"48A. (1) If in any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income-tax Officer is satisfied, upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income-tax Officer shall allow a refund to such person of the amount so paid or so paid in excess.

General power to make refunds.

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

(3) 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."

19. After

Indian Income-tax (Second Amendment). [ACT XVIII]

Insertion of new sections 49A and 49B in Act XI of 1922.
Power to set off amount of refunds against tax remaining payable.

19. After section 49 of the said Act the following sections shall be inserted, namely:—

“49A. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or 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 tax, if any, remaining payable by the person to whom the refund is due.

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

49B. 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 48 or 43A or 49, 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.”

Insertion of new section 50A in Act XI of 1922.
Appeal against refusal of refund.

20. After section 50 of the said Act, the following section shall be inserted, namely:—

“50A. (1) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 or 48A or 49 or to the amount of the refund made in any such case, may appeal to the Assistant Commissioner.

(2) The appeal shall be presented within thirty days of the date on which the refusal of the refund or the amount of the refund allowed was communicated to the appellant.

(3) The appeal shall be made in the prescribed form and shall be verified in the prescribed manner.

(4) The Assistant Commissioner may, after giving the appellant an opportunity of being heard, pass such orders as he thinks fit.”

Amendment of section 51, Act XI of 1922.

21. In clause (c) of section 51 of the said Act, after the word and figures “section 19A,” the word and figures “section 20A,” shall be inserted.

Amendment of section 52, Act XI of 1922.

22. In section 52 of the said Act, after the words and figures “section 19A or” the words and figures “section 20A or” shall be inserted, and after the word and figures “section 33A” the words and figures “or sub-section (3) of section 50A” shall be inserted.

23. In

of 1933.] *Indian Income-tax (Second Amendment).*

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

Amendment of section 54, Act XI of 1922.

“(cc) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or”.

I of 1899.

24. In section 57 of the said Act, sub-sections (2) and (3) shall be omitted, and sub-section (4) shall be renumbered as sub-section (2).

Amendment of section 57, Act XI of 1922. X

25. In section 58 of the said Act,—

(a) in sub-section (1),—

Amendment of section 58, Act XI of 1922.

(i) for the word “except” the words “relating to the charge, assessment, collection and recovery of income-tax except those contained in” shall be substituted, and for the words and figure “the provisos to section 8” the words and figure “the second and third provisos to section 8” shall be substituted,

(ii) the figures “18”, where they occur between the figures “17” and “19”, shall be omitted,

(iii) for the word and figures “and 48” the words, figures and letters “48, 58F and sub-sections (2) and (3) of section 58G” shall be substituted, and

(iv) the proviso shall be omitted; and

(b) in sub-section (2), before the word and figures “section 57” the words, brackets, figures and letters “sub-sections (3A), (3B), (3C) and (3D) of section 18” shall be inserted.

26. In section 58G of the said Act,—

Amendment of section 58G, Act XI of 1922.

(a) sub-sections (1) and (2) shall be re-numbered as sub-sections (2) and (3), and before sub-section (2) as so renumbered the following sub-section shall be inserted, namely:—

“(1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930.”;

VIII of 1933.

(b) in

Indian Income-tax (Second Amendment). [Act XVIII

(b) in sub-section (2) as now re-numbered, the words "and super-tax" shall be omitted; and

(c) in sub-section (3) as now re-numbered, for the word, brackets and figure "sub-section (1)", the word, brackets and figure "sub-section (2)" shall be substituted.

Amendment of
section 60,
Act XI of
1922.

27. In sub-section (2) of section 60 of the said Act, after the words "in advance" the words "or by reason of his having received in any one financial year salary for more than twelve months" shall be inserted.

Amendment of
section 66,
Act XI of
1922.

28. In section 66 of the said Act,—

(a) in sub-section (2), after the word and figures "section 32" the words and figures "or of an order under section 33 enhancing an assessment or otherwise prejudicial to him" shall be inserted;

(b) before the existing proviso to sub-section (2) the following proviso shall be inserted, namely:—

"Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33:"

(c) in the existing proviso to sub-section (2),—

(i) after the word "Provided" the word "further" shall be inserted,

(ii) after the word "question" the following words shall be inserted, namely:—

"or if the Commissioner rejects the application on the ground that it is time-barred or otherwise incompetent, or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case," and

(iii) after the word "may" the words "within thirty days from the date on which he receives notice of the order passed by the Commissioner" shall be inserted;

(d) after sub-section (3) the following sub-section shall be inserted, namely:—

"(3A) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time-barred, the assessee may, within two months from the date on which he is

served

served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2)."; and

(e) after sub-section (7) the following sub-section shall be inserted, namely:—

“(7A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (3A).” ^{IX of 1908.}