

Rep. by Act 35 of 1950.

Act No. XXIII of 1948

[PASSED BY THE DOMINION LEGISLATURE]

An Act to amend the Taxation on Income (Investigation Commission) Act, 1947

(Received the assent of the Governor General on the 12th April 1948)

WHEREAS it is expedient to amend the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title.**—This Act may be called the Taxation on Income (Investigation Commission) (Amendment) Act, 1948.

2. **Amendment of section 4, Act XXX of 1947.**—After sub-section (2) of section 4 of the Taxation on Income (Investigation Commission) Act, 1947 (hereinafter referred to as the said Act), the following sub-sections shall be added, namely:—

“(3) The Commission shall be appointed to act, in the first instance, up to the 31st day of March, 1950, but the Central Government may extend its term of appointment for any period up to the 31st day of March, 1951.

(4) The Central Government may appoint a Secretary to the Commission and such other staff as may be necessary.”

3. **Substitution of new section for section 5, Act XXX of 1947.**—For section 5 of the said Act, the following section shall be substituted, namely:—

“5. *Power of Central Government to refer cases for investigation.*—

(1) The Central Government may at any time before the 30th day of June 1948 refer to the Commission for investigation and report any case or points in a case in which the Central Government has *prima facie* reasons for believing that a person has to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief, and may at any time before the 30th day of June 1948 apply to the Commission for the withdrawal of any case or points in a case thus referred, and if the Commission approves of the withdrawal, no further proceedings shall thereafter be taken by or before the Commission in respect of the case or points so withdrawn.

(2) The Commission may, after examining the material submitted by the Central Government with reference to any case or points in a case and making such investigation as it considers necessary, report to the Central Government that in its opinion further investigation is not likely to reveal any substantial evasion of taxation on income and on such report being made the investigation shall be deemed to be closed.

(3) No reference made by the Central Government under sub-section (1), at any time before the 30th day of June, 1948 shall be called in question, nor shall the sufficiency of the material on which such a reference has been made be investigated in any manner by any Court.

(4) If in the course of investigation into any case or points in a case referred to it under sub-section (1), the Commission has reason to believe—

(a) that some person other than the person whose case is being investigated has evaded payment of taxation on income, or

(b) that some points other than those referred to it by the Central Government in respect of any case also require investigation,

it may make a report to the Central Government stating its reasons for such belief and, on receipt of such report, the Central Government shall, notwithstanding anything contained in sub-section (1), forthwith

2. *Taxation on Income (Investigation Commission) (Amendment)* [ACT XXIII

refer to the Commission for investigation the case of such other person or such additional points as may be indicated in that report."

4. **Substitution of new section for section 6, Act XXX of 1947.**—For section 6 of the said Act, the following section shall be substituted, namely:—

16. *Powers of Commission.*—(1) The Commission shall have power to require any person to prepare and furnish by a specified date written statements of accounts and affairs verified on oath and, if so required, also duly certified by a qualified auditor, giving information on such points and matters as may be specified; and any person so required shall notwithstanding anything in any law to the contrary be bound to comply with the requirements of the Commission.

(2) The Commission shall also have power to administer oaths, and shall have all the powers of a civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of taking evidence on oath, enforcing the attendance of witnesses and of persons whose cases are being investigated, compelling the production of documents and issuing commissions for the examination of witnesses.

(3) If in the course of any investigation it appears to the Commission to be necessary to examine any accounts or documents or to interrogate any person or obtain any statements from any person, the Commission may authorise any income-tax authority not below the rank of an Income-tax Officer (hereinafter referred to as the "authorised official") in that behalf, subject to such directions as may be issued by the Commission from time to time, and the authorised official shall examine the accounts or documents, interrogate the person or obtain the statements from the person:

Provided that the authorised official shall in the discharge of his duties be entitled to employ such ministerial and subordinate executive staff as he may consider necessary.

(4) The authorised official shall subject to the direction of the Commission have the same powers as the Commission under sub-sections (1) and (2), and any person having charge or custody of accounts or documents required to be examined shall notwithstanding anything in any law to the contrary be bound to produce them to the authorised official and to give to such official any information in respect thereof which he may require; and any person interrogated by the authorised official or called upon by him to make or prepare a statement or furnish information shall notwithstanding anything in any law to the contrary be bound to comply with his directions and answer all questions relating to the case put to him by such official.

(5) If any person whose case or the points in whose case is or are being investigated by the Commission refuses or fails to attend in person in compliance with a notice in that behalf duly served upon him or to give and furnish statements when called upon to do so, the Commission may, if satisfied that the refusal or failure was wilful, close the investigation of the case and proceed to draw up its report on the case or on the points to the best of its judgment and may in its discretion also direct that such sum as it may specify in the direction shall be recovered from the person by way of penalty for the refusal or failure, without prejudice to any penalty under the Indian Income-tax Act, 1922 (XI of 1922), and thereupon the sum so specified shall be recoverable as if the direction were given under sub-section (1) of section 46 of the Indian Income-tax Act, 1922 (XI of 1922), by the Income tax Officer having jurisdiction to assess the person.

(6) If in any proceedings before an authorised official any person whose case or the points in whose case is or are being investigated refuses

or fails to attend in person or to produce or cause to be produced accounts or documents or to answer questions or to prepare statements or to furnish information when called upon to do so, the authorised official shall report such refusal or failure to the Commission, and thereupon the provisions of sub-section (5) shall apply as if the refusal or failure took place in the course of the investigation by the Commission itself.

(7) The Commission and, subject to the direction of the Commission, any authorised official may make such enquiries in such manner as it or he may deem fit and obtain statements on oath from any person who is considered likely to be in possession of any information or document relevant to the case or points in the case referred to the Commission or is in the opinion of the Commission likely to be reported by it to the Central Government for reference under the provisions of sub-section (4) of section 5; and for the purposes of these enquiries, the Commission and the authorised official shall have all the powers conferred on them by sub-sections (1), (2), (3) and (4).

(8) All materials gathered by the Commission or the authorised official and materials accompanying the reference under sub-section (1) of section 5 may be brought on record at such stage as the Commission may think fit.

(9) Subject to any rules made in this behalf under the Act any authorised official shall at all reasonable times have full and free access to all books, documents and other papers which in his opinion are relevant to the proceedings in any case or cases under this Act, and if specially authorised in this behalf by the Commission, to any buildings and places where he may have reason to believe that such books, documents or papers may be found; and he shall have power to place identification marks on such books, documents or papers and to make extracts or copies therefrom or, if he considers it necessary, to take possession of or seize such books, documents or papers.

(10) The Commissioners and all authorised officials shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860), and the Commission shall be deemed to be a civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898) references in the said Chapter to the presiding officer of a Court being deemed to include the Chairman of the Commission.

5. Substitution of new section for section 7, Act XXX of 1947.—For section 7 of the said Act, the following shall be substituted, namely:—

“7. *Procedure of Commission.*—(1) The Commission shall, subject to the provisions of this Act, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding a vacancy in the number of the Commissioners; and the powers of the Commission under sub-sections (1), (2), (3), (7) and (8) of section 6 and sub-sections (2), (4) and (6) of this section may be exercised by any member thereof authorised by the Commission in this behalf.

(2) In making an investigation under clause (b) of section 3, the Commission shall act in accordance with the principles of natural justice, shall follow as far as practicable the principles of the Indian Evidence Act, 1872 (I of 1872), and shall give the person whose case is being investigated a reasonable opportunity of rebutting any evidence adduced against him; and the power of the Commission to compel production of documents shall not be subject to the limitation imposed by section 130 of the Indian Evidence Act, 1872 (I of 1872), and the Commission shall be deemed to

Taxation on Income (Investigation Commission) (Amendment) [ACT XXIII

be a court and its proceedings legal proceedings for the purpose of sections 5 and 6 of the Bankers' Books Evidence Act, 1891 (XVIII of 1891).

(3) Any person whose case is being investigated by the Commission may be represented by a pleader, a registered accountant or an employee duly authorised to act on his behalf, provided that no person shall be entitled to be present or to be represented in the course of an enquiry under sub-sections (3) and (7) of section 6.

(4) No person shall be entitled to inspect, call for, or obtain copies of, any documents, statement or papers or materials furnished to, obtained by or produced before the Commission or any authorised official in any proceedings under this Act; but the Commission, and after the Commission has ceased to exist such authority as the Central Government may in this behalf appoint, may, in its discretion, allow such inspection and furnish such copies to any person:

Provided that, for the purpose of enabling the person whose case or points in whose case is or are being investigated to rebut any evidence brought on the record against him, he shall, on application made in this behalf and on payment of such fees as may be prescribed by Rules made under this Act, be furnished with certified copies of documents, statements, papers and materials brought on the record by the Commission.

(5) Save in cases in which the Commission may exercise its powers under section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898),—

(a) no suit, prosecution or other legal proceeding shall be instituted against any person in any civil or criminal Court for any evidence given or produced by him in any proceedings before the Commission, and

(b) no evidence so given or produced shall be admissible in evidence against such person in any suit, prosecution or other proceeding before such Court, except with the previous sanction of the Central Government.

(6) In any proceedings under this Act, the Commission may, in its discretion, admit in evidence and act upon any document notwithstanding that it is not duly stamped or registered.

(7) Nothing in sub-section (1) of section 54 of the Indian Income-tax Act, 1922 (XI of 1922) or of that section as applied to excess profits tax by section 21 of the Excess Profits Tax Act, 1940 (XV of 1940) shall apply to the disclosure of any of the particulars referred to therein in any proceeding before the Commission or in any report made by the Commission to the Central Government or in any report made to the Commission by an authorised official."

5. Substitution of new section for section 8, Act XXX of 1947.—For section 3 of the said Act, the following shall be substituted, namely:—

“9. Power to direct re-opening of assessment proceedings.—(1) Save as otherwise provided in this Act, the materials brought on record shall be considered by all the three members of the Commission sitting together and the report of the Commission shall be in accordance with the opinion of the majority.

(2) After considering the report, the Central Government shall by order in writing direct that such proceedings as it thinks fit under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940) or any other law, shall be taken against the person to whose case the report relates in respect of the income of any period commencing after the 31st day of December 1938; and, upon such a direction being given, such proceedings may be taken and completed under the appropriate law notwithstanding the restrictions contained in section 34 of the Indian Income-tax Act, 1922 (XI of 1922), or section 15 of the Excess Profits Tax Act, 1940 (XV of 1940), or any other law and notwithstanding any lapse of time or any decision to a different effect given in the case by any Income-tax authority or Income-tax Appellate Tribunal.

(3) On a direction being given under sub-section (2), and not otherwise, a copy of the report of the Commission, so far as it relates to the case of the person concerned, shall be furnished to him.

(4) In all assessment or reassessment proceedings taken in pursuance of a direction under sub-section (2), the findings recorded by the Commission on the case or on the points referred to it shall, subject to the provisions of sub-sections (5) and (6), be final; but no proceedings taken in pursuance of such direction shall be a bar to the initiation of proceedings under section 34 of the Indian Income-tax Act, 1922 (XI of 1922).

(5) In respect of any order made in the course of proceedings taken in pursuance of a direction issued under sub-section (2), the provisions of sections 30, 31, 33 and 33A of the Indian Income-tax Act, 1922 (XI of 1922) and the corresponding provisions of the Excess Profits Tax Act, 1940 (XV of 1940) shall not apply so far as matters declared final by sub-section (4) are concerned; but the person concerned may, within 60 days of the date upon which he is served with a copy of such order, by application in the prescribed form accompanied by a fee of Rs. 100, require the appropriate Commissioner of Income-tax to refer to the High Court any question of law arising out of such order, and thereupon the provisions of sections 66 and 66A of the Indian Income-tax Act, 1922 (XI of 1922) shall as far as may be apply, with the modification that the reference shall be heard by a Bench of not less than three Judges of the High Court.

(6) Notwithstanding anything contained in this section, the Commission shall have power either of its own motion or on the application of the person concerned or of the Central Government, to correct clerical or arithmetical mistakes in its report or errors therein arising from any accidental slip or omission; and after the Commission has ceased to exist, the Commissioner of Income-tax having jurisdiction over the case may exercise the powers conferred upon him by section 35 of the Indian Income-tax Act, 1922 (XI of 1922) as if the Commission's report was an order passed by him.

(7) Notwithstanding anything to the contrary contained in this Act or in any other law, for the time being in force, any evidence in the case

Taxation on income (Investigation Commission) (Amendment) [ACT XXIII OF 1948]

admitted before the Commission or an authorised official shall be admissible in evidence in any proceedings directed to be taken under sub-section (2).

(8) Save as otherwise provided in this Act, the provisions of section 54 of the Indian Income-tax Act, 1922 (XI of 1922) shall apply to all statements, returns, accounts, documents, evidence, affidavits, depositions or record made, given, produced or obtained in connection with or in the course of the proceedings of the Commission or of any authorised official."

7. Amendment of section 9, Act XXX of 1947.—In section 9 of the said Act, for the words, figures and brackets "any person authorised by it under sub-section (2) of section 6", substitute "any authorised official."