

Act No. XLVIII of 1948

[PASSED BY THE DOMINION LEGISLATURE]

(Received the assent of the Governor General on the 8th September 1948)

An Act further to amend the Indian Income-tax Act, 1922, and the Business Profits Tax Act, 1947.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922 (XI of 1922) and the Business Profits Tax Act, 1947 (XXI of 1947), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Income-tax and Business Profits Tax (Amendment) Act, 1948.
(2) Sections 3 to 12 shall be deemed to have come into force on the 30th day of March, 1948, and the amendment made in the Indian Income-tax Act, 1922 (XI of 1922) by section 2 shall be deemed to be operative so as to apply in relation to all assessments subsequent to the assessment for the year ending on the 31st day of March, 1948.
Sections 13 to 15 shall be deemed to have come into force on the day on which the Business Profits Tax Act, 1947 (XXI of 1947) came into force.

CHAPTER II

AMENDMENT OF ACT XI OF 1922

2. Amendment of section 2, Act XI of 1922.—For clause (6) of section 2 of the Indian Income-tax Act, 1922 (hereinafter in this Chapter referred to as the said Act), the following shall be substituted, namely:—
“(6) ‘‘company’’ means an Indian company as defined in clause (7A) or any Indian or non-Indian association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act.”
3. Amendment of section 4, Act XI of 1922.— In *Explanation 2* to sub-section (1) of section 4 of the said Act, the words ‘‘and not being pension payable without India’’ shall be omitted.
4. Amendment of section 9, Act XI of 1922.—In section 9 of the said Act, after sub-section (3), the following sub-section shall be added, namely:—
“(4) For the purposes of this section, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate.”
5. Amendment of section 12B, Act XI of 1922.—In section 12B of the said Act,—
 - (a) in the third proviso to sub-section (2), after the words ‘‘property of the assessee’’ the words, brackets and figure ‘‘or of the previous owner where the cost of the capital asset to the previous owner is to be taken in accordance with sub-section (3)’’ shall be inserted;
 - (b) to sub-section (3) the following proviso shall be added, namely:—
‘‘Provided that where the capital asset became the property of the assessee—
 - (i) before the 1st day of April, 1947, under a deed of gift or on the partition of a Hindu undivided family, the actual cost allowable to him shall be the fair market value of the capital asset on the date of the

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gift or the date of the partition, as the case may be, if such value is greater than the actual cost to the previous owner or the fair market value thereof on the 1st day of January, 1939, where the third proviso to sub-section (2) applies;

(ii) on or after the 1st day of April, 1947, on the partition of a Hindu undivided family, the cost allowable to him shall be the fair market value on the date of the partition."

6. Amendment of section 14, Act XI of 1922.—To sub-section (1) of section 14 of the said Act, after the words "income of the family" the words "or in the case of an impartible estate where such sum has been paid out of the income of the holder of the estate belonging to the family" shall be added.

7. Insertion of new section in Act XI of 1922.—After section 33A of the said Act, the following section shall be inserted, namely:—

"33B. *Power of Commissioner to revise Income-tax Officer's orders.*—

(1) The Commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, 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 circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-section (1)—

(a) to revise an order of re-assessment made under the provisions of section 34; or

(b) after the expiry of two years from the date of the order sought to be revised.

(3) Any assessee objecting to an order passed by the Commissioner under sub-section (1) may appeal to the Appellate Tribunal within 60 days of the date on which the order is communicated to him.

(4) An appeal to the Appellate Tribunal under sub-section (3) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a treasury receipt in support of having paid the fee of Rs. 100, and such appeal shall be dealt with in the same manner as if it were an appeal under sub-section (1) of section 33."

8. Amendment of section 34, Act XI of 1922.—For section 34 of the said Act, the following section shall be substituted, namely:—

"34. *Income escaping assessment.*—(1) If—

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is 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 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; 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—

(i) the Income-tax Officer shall not issue a notice under this sub-section, unless he has recorded his reasons for doing so and the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice;

(ii) the tax shall be chargeable at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be; and

(iii) where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year was substituted.

Explanation.—Production before the Income-tax Officer of account books or other evidence from which material facts could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

(2) Where an assessment is reopened in circumstances falling under clause (b) of sub-section (1), the assessee may, if he has not impugned any part of the original assessment order for that year either under section 30 or under section 33A, claim that the proceedings under sub-section (1) of this section shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the items alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made:

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under section 33B or section 35, or by a decision of the High Court or of the Privy Council under section 66 and section 66A.

(3) No order of assessment under section 23 to which clause (c) of sub-section (1) of section 28 applies or of assessment or re-assessment in cases falling within clause (a) of sub-section (1) of this section shall be made after the expiry of eight years, and no order of assessment or re-assessment in any other case shall be made after the expiry of four years, from the end of the year in which the income, profits or gains were first assessable:

Provided that where a notice under sub-section (1) has been issued within the time therein limited, the assessment or re-assessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of eight years or four years, as the case may be:

Provided further that nothing contained in this sub-section shall apply to a re-assessment made under section 27 or in pursuance of an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A."

9. Amendment of section 46, Act XI of 1922.—After sub-section (5) of section 46 of the said Act, the following sub-section shall be inserted, namely:—

“(5A) The Income-tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income-tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the tax-payer in respect of arrears of income-tax and penalty or the whole of the money when it is equal to or less than that amount.

The Income-tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

Any person making any payment in compliance with a notice under this sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income-tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the Income-tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceedings may be taken by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of section 46.

Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax Officer.”

10. Omission of section 49, Act XI of 1922.—Section 49 of the said Act shall be omitted.

11. Amendment of section 49A, Act XI of 1922.—In section 49A of the said Act,—

(a) in sub-section (1),—

(i) for the words “on which has been paid” the words “on which have been paid” shall be substituted;

(ii) between the words “under this Act and” and “Dominion income-tax”, the word “either” shall be inserted;

(iii) after the words “Dominion income-tax in one or more countries” at the end, the words “or Burma income-tax” shall be added;

(b) after sub-section (2), the following sub-section shall be added, namely:—

“(3) For the purposes of this section ‘Burma income-tax’ means any income-tax or super-tax charged under any law in force in Burma where the laws of Burma provide for relief in respect of tax charged on income both in Burma and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.”

12. Amendment of section 49AA, Act XI of 1922.—In section 49AA of the said Act, after the word “Pakistan”, wherever it occurs, the words “or the United Kingdom” shall be inserted.

CHAPTER III

AMENDMENT OF ACT XXI OF 1947

13. Amendment of section 2, Act XXI of 1947.—In section 2 of the Business Profits Tax Act, 1947 (hereafter in this Chapter referred to as the said Act),—

after clause (8), the following clause shall be inserted, namely:—

“(8A) “director’s remuneration” includes all remuneration payable by a company to a director thereof in respect of any services rendered to or employment with the company in any capacity whatever;”

14. Amendment of section 9, Act XXI of 1947.—In section 9 of the said Act,—

(a) after the words “an individual”, wherever they occur, the words “or a Hindu undivided family”, after the words “such individual”, wherever they occur, the words “or Hindu undivided family”, after the word “he” and the word “him”, where they occur, the words “or it”, and after the word “his” the words “or its” shall be inserted;

(b) after the word “partner”, the words “or by a company which for the purposes of this section is deemed to be a firm in which he or it is interested” shall be inserted;

(c) to the last proviso the following words shall be added, namely:—
“and such individual or Hindu undivided family shall not be treated as a working partner in relation to such business for the purpose of sub-clause (b) of clause (1) of section 2.”

15. Amendment of Schedule II, Act XXI of 1947.—In rule 2 of Schedule II to the said Act,—

(a) for sub-rules (1) and (2), the following sub-rule shall be substituted, namely:—

“(1) Where the company is one to which rule 3 of Schedule I applies, its capital shall be the sum of the amounts of its paid-up share capital and of its reserves in so far as they have not been allowed in computing the profits of the company for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), diminished by the cost to it of its investments or other property the income from which is not includable in the profits, so far as that cost exceeds any debt for money borrowed by it.”;

(b) sub-rule (3) shall be renumbered as sub-rule (2).