

**THE ASSAM AGRICULTURAL  
INCOME-TAX ACT, 1939  
(Assam Act IX of 1939)**

**An  
Act**

*to provide for the imposition of a tax on agricultural income*

WHEREAS it is expedient to impose a tax on agricultural income arising from lands situated in the State of Assam:

It is hereby enacted as follows: -

CHAPTER I

Preliminary

1. Short title. (1) This Act may be called the Assam Agricultural Income-tax Act, 1939.

(2) It shall take effect from the 1st of April 1939.

Historical Backgrounds:

In the India's first Income Tax Act of 1860, agricultural income was made taxable like any other source of income and no distinction was made between agricultural and non-agricultural income for taxation purpose.

In 1886, when a regular Income Tax Act was passed agricultural income was exempted from Income tax.

The Government of India Act of 1935, provided for the distribution of legislative powers between the federal legislature and the provincial legislature and by enumerating the tax on agricultural income in the provincial list under entry 41 of the Seventh Schedule, it was made a State subject.

The Constitution of India retained the same provision in entry 46 of List II - State List, in its Seventh Schedule.

Enacted in the year of 1939, the Assam Agricultural Income-tax Act has undergone several amendments from time to time.

**Extents: -**

This Act covers agricultural incomes arising from lands situated in the State of Assam.

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context -

- (a) "Agricultural income" means -
- (1) Any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in Assam or subject to a local rate assessed and collected by officers of the Government as such;
  - (2) Any income derived from such land by –
    - (i) agriculture, or
    - (ii) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
    - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

Explanation. - Agricultural income derived from such land by the cultivation of tea means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to the Indian Income-tax;

- (b) "Agricultural Income-tax" means the tax payable under this Act;
- (bb) "Inspector of Taxes or Agricultural Income-tax Inspector" means person appointed to be an Inspector of Taxes or Agricultural Income-tax Inspector under sub-section (2) of section 18;
- (c) "Senior Superintendent of Taxes", "Superintendent of Taxes" or "Agricultural Income-tax Officer" means a person appointed to be a Superintendent of Taxes or Agricultural Income-tax Officer under sub-section(2) of section 18;
- (d) (1) Save as otherwise provided in this section, 'previous year' for the purpose of this Act means the financial year immediately preceding assessment year:

Provided that in the case of agricultural income derived from a source newly coming into existence in the said financial year, the previous year

shall be the period beginning with the date on which the source of income newly comes into existence and ending in the same financial year.

(2) "Previous Year" in relation to the assessment year commencing on the first day of April, 1989, means the period which begins with the date immediately following the last day of the previous year relevant to the assessment year commencing on the first day of April, 1988 and as on the 31<sup>st</sup> day of March, 1989:

Provided that where the assessee has adopted more than one period as the "Previous Year" in relation to the assessment year commencing on the 1st day of April, 1988 for different sources of his income, the "previous year" in relation to the assessment year commencing on the 1st day of April 1989 shall be reckoned separately in the manner aforesaid in respect of each such source of income, and the longer or the longest of the periods so reckoned shall be the previous year for the said assessment year.

(3) Where the previous year in relation to the assessment year commencing on the 1st day of April, 1989 referred to in sub-clause (2) above exceeds a period of 12 months, hereinafter referred to as the "transitional previous year", the provisions of this Act shall apply subject to the modifications specified in sub-clause (4) and (5) of this clause.

(4) Where the assessee's agricultural income for a period of thirteen months or more is included in his total agricultural income for the transitional previous year the allowance in respect of depreciation admissible under the provisions of this Act shall be increased by multiplying it by a fraction of which the numerator is the number of months in the transitional previous year and the denominator is twelve.

(5) The tax chargeable on the total agricultural income of the transitional previous year shall be calculated at the average rate on the amount obtained by multiplying such total agricultural income by a fraction of which the numerator is twelve and the denominator is the number of months in the transitional previous year as if the resultant amount were the total agricultural income.

(6) The State Government may if it considers it desirable or expedient so to do for avoiding genuine hardship, by general or special order, grant appropriate relief in any case or class of cases where the transitional previous year is longer than twelve months;

(e) "Assessee" means a person by whom agricultural income-tax is payable;

(f) "Deputy Commissioner of Taxes" means a person appointed to be a Deputy Commissioner of Taxes under sub-section (2) of section 18;

(ff) "Deputy Commissioner of Taxes (Appeals)" means a person appointed to be a Deputy Commissioner of Taxes (Appeals), under sub-section (2) of section 18;

(g) "Board" means the Assam Board of Revenue constituted under section 3 of the Assam Board of Revenue Act, 1959 (Assam Act VIII of 1960) or under any statutory modification or re-enactment thereof;

(h) "Commissioner" means a person appointed to be a Commissioner of Taxes under sub-section (2) of section 18;

(i) "Company" means a company as defined in the Indian Companies Act, 1956, or formed in pursuance of an Act of Parliament of the United Kingdom or of Royal Charter, or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in India whether incorporated or not, and whether its principal place of business is situated in India or not, which the Commissioner may, by general or special order, declare to be Company for the purposes of this Act;

(j) "assessment year" means and shall be deemed always to have meant the period of twelve months commencing on the 1st day of April every year;

(k) "firm", "Partner" and "Partnership" have the same meanings respectively as in the Indian Partnership Act, 1932 (Act IX of 1932), provided that the expression "Partner" includes any person who being a minor has been admitted to the benefit of Partnership;

(l) "landlord" has the same meaning as in the Assam (Temporarily Settled Districts) Tenancy Act, 1935 (Assam Act III of 1935); Sylhet Tenancy Act, 1936 (Assam Act IX of 1936); Goalpara Tenancy Act, 1929 (Assam Act I of 1929);

(m) "Person" includes –

(i) An individual,

(ii) A Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or body of individuals, whether incorporated or not,

- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (n) "Prescribed" means prescribed by Rules made under this Act;
- (o) "Principal Officer" used with reference to any company or association means: -
  - (i) The secretary, treasurer, manager or agent of the company or association, or
  - (ii) Any person connected with the company or association upon whom the Superintendent of Taxes or Agricultural Income-tax Officer has served a notice of his intention of treating him as principal officer thereof;
- (oa) "Schedule" means the schedule to this Act; and
- (p) "Total agricultural income" means the aggregate of amounts of agricultural income referred to in clause (a) of section 2 and determined in the manner laid down in or under this Act.

## CHAPTER II

### CHARGE OF AGRICULTURAL INCOME-TAX

**3. Charge of agricultural income tax:** Agricultural income-tax at the rate or rates specified in the schedule, subject to the provisions of section 6, shall be charged for each assessment year in accordance with and subject to the provisions of this Act on the total agricultural income of the previous year of every person:

Provided that the State Government may, by notification in the Official Gazette, vary the rates of tax under this Act and on such notification being issued, the rate of tax shall be deemed to have been amended accordingly:

Provided further that the rate of tax to be specified or varied by the State Government shall not exceed fifty per centum.

**Amendment:** *In the principal Act, in section 3, the provisos has been inserted vide notification no. LGL.61/2009/31 Dtd. 07-09-2010 published in the Assam Gazette Extraordinary No.274 Dated 07-09-2010.*

**Amendments:** (i) The words "every person" have been substituted by the Amendment Act XIX of 1974 w.e.f. 10-7-1974 by deleting the words "every individual Undivided Family or joint family, company, firm and other association of individuals"

(ii) The words "the Schedule' have been substituted for the "the Assam Finance Acts" w.e.f 1-4-1982 by President's Act No. I of 1982.

(iii)The words "assessment year" have been substituted for the words "financial year" by Assam Act No. VI of 1989 w.e.f. 1-4 -1989.

**4. Exemption.** Except as provided elsewhere in this Act, agricultural incomet-tax shall not be assessed on, and be payable by an assessee in respect of -

(i)any income which he receives as a member of a Hindu joint or undivided family where agricultural income of such family has been assessed to agricultural income-tax under this Act;

See :Rule 22

(ii) any sum which he receives by way of dividend as a shareholder in any company where the agricultural income of the company has been assessed to agricultural income tax under this Act;

(iii) such an amount of the agricultural income of any firm which has been assessed to agricultural income-tax under this Act as is proportionate to his share in the firm at the time of such assessment as is received by him;

(iv) any sum which he receives as his share of the agricultural income of an association of individuals other than a Hindu joint or undivided family, company or firm where such agricultural income has been assessed to agricultural income-tax under this Act;

(v) any sum which he receives after the tax in respect thereof has been assessed under section 9 to 14 and realised.

**5. Application of the Act:** Save as hereinafter provided, this Act shall apply to all agricultural income derived from the land situated the State of Assam.

**6. Limit of taxable income and rate of tax:** Agricultural income tax shall be payable by every person whose total agricultural income the previous year exceeds the limits specified in the Schedule at such rates as are specified therein.

### Amendments

(1) The old Section 6, itself provided for the exemption limit of 3000/-. The Section was then substituted by Assam Act No. XIX of 1974 w.e.f. 7-74 which required that the exemption limit and the rates of tax for every should be specified in the annual Assam Finance Acts.

(2) The words "Assam Finance Acts" were replaced by the word "Schedule" w.e.f. 1-4 -1982 by President Act I of 1982.

(3) The words "previous year" have been substituted place of "previous agricultural year" w.e.f. 1-4-1989.

**7. Determination of agricultural income:** The agricultural income mentioned in sub-clause (1) of clause (a) of section 2 shall be deemed to be the sum realised in the previous year on account of agricultural income mentioned in the said sub-clause (1) after making the following deductions:

See: Rule 2(1), 6.7 & 20

(a) the sum actually paid in the previous year as revenue to the Government or as rent to superior landlord in respect the land from which such agricultural income is derived;

(b) the sum actually paid in the previous year in respect of such land as any local rate collected under enactment in force Assam;

(c) a sum equal to 15 per cent of the total amount of the rent which accrued due in the previous year, in respect of the charge for collecting the same;

(d) any rate paid under the Village Chowkidari Act, 1870, in respect of any building used by the assessee as an office for the collection of the rents due in respect of the land from which such agricultural income is derived;

(e) any expenses incurred on the maintenance of any irrigation or protective work constructed for the benefit of the land from which such agricultural income is derived;

(f) in respect of the current repairs to any capital asset used in connection with the collection of rents due in respect of the land from which agricultural income is derived, the amount paid on account thereof;

(g) interest actually paid on any amount borrowed and actually spent on any capital expenditure incurred after the First April 1937 for the benefit of the land from which the

such agricultural income is derived;

(h) depreciation in respect of any capital asset purchased or constructed after First April, 1937 for the benefit of the land from which such agricultural income is derived, or for the purpose of deriving such agricultural income from such land at such rates as may be prescribed by the Central Government for computing profits or gains of any business for the purpose of assessment of income-tax thereon and in default of such prescription prescribed by rules under Section 50;

See:Rule 6 & 7

(i) any interest actually paid on any mortgage of any other kind of debt or any interest actually paid on any other capital charge incurred for the purpose of acquiring the property from which such agricultural income is derived;

(j) when the property from which such agricultural income is derived is subject to a mortgage created before the 1st day of January 1939, the amount of any interest actually paid on such mortgage;

(k) any malikana or similar levy actually paid by the assesses in respect of the land from which such agricultural income is derived;

(l) any sum actually paid as interest in respect of loans taken under the Agricultural Loans Act, 1884, and the Land Improvement Loans Act, 1883; and

(m) any sum actually donated for charitable purposes if such donation in aggregate is not more than Rs.5 lakh or ten per centum of the total agricultural income, whichever is less; provided that such sum is actually spent for such purpose in the State of Assam;

See:Rule 2(1), 2(3) & 2(4)

(n) such other deductions on account of depreciation or any other cause as may be prescribed by rules under section 50.

See:Rule 2(1), 6& 7

**Amendments:** (1) The words "previous year" have been substituted in place of "previous agricultural year" by the Assam Act No. VI of 1989 w.e.f. 1-4 -1989.

(2) Clause (m) has been substituted by Assam Ordinance No. III of 1994 with retrospective effect from 1-4 -1993(effective from assessment year 1993-94). The ordinance was subsequently replaced by the Assam Act No. XXVIII of 1994 which came into force from 6-5-1994.

Prior to its substitution, clause (m) read as under:

*"(m) any sum actually donated for charitable purposes, if such donation in aggregate is not more than Rs. 1,00,000 or ten per centum of the total agricultural whichever is less;"*



**8. Determination of agricultural income mentioned in sub-clause (2) of clause (a) of section 2.**

- (1) The agricultural income mentioned in sub-clause (2) of clause (a) of section 2 shall be assessed on the net amount of such income determined in the prescribed manner.

2) Rules prescribing the manner of determining the net amounts of agricultural income for the purpose of this clause shall provide that the following deductions shall be made from the gross amounts of such income, namely:

See: Rule 2(2), 3 to 8 & 20
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- (a) the sum actually paid in the previous year as revenue to the Government or as rent to a superior landlord in respect of the land from which such agricultural income is derived;
- (b) the sum actually paid in the previous year in respect of such land as any local rate collected under any enactment in force in Assam;
- (c) any rent paid under the Village Chowkidari Act, 1870, in respect of any building used for the purposes of the cultivation of land from which such agricultural income is derived;
- (d) the expenses of cultivating the crop from which such agricultural income is derived and of transporting such crop to market, including the maintenance of agricultural implements and cattle required for the purpose of such cultivation and for transporting the crop to market;
- (e) any tax, or rate paid under any enactment in force in Assam on the cultivation or sale of the crop from which such agricultural income is derived;
- (f)
  - (i) any expenses incurred on the maintenance of any irrigation or protective works constructed for the benefit of the land from which agricultural income is derived;
  - (ii) any expenses incurred on the maintenance of any capital asset, if such maintenance is deemed to be required for the purpose of deriving such agricultural income from such land;
  - (iii) interest actually paid on any amount borrowed and actually spent on any capital expenditure incurred the benefit of the land from which such agricultural income is derived, or for the purpose of deriving agricultural income from such land;
  - (iv) (a) depreciation of any asset required for the benefit of the land

from which such agricultural income is derived or for the purpose of deriving such agricultural income from such land, subject the provisions of this Act in manner allowed and at the rates prescribed for the purposes of Indian Income-tax or in default of such prescription as prescribed by rules under section 50 of this Act;

- (b) in respect of any such machinery or plant which in consequence of its having become obsolete has been sold or discarded, the difference between the written down value as defined the purposes of Indian Income-tax and amount for which the machinery or plant is actually sold or its scrap value;
- (v) any sum paid in order to effect an insurance against loss or damage of crop or property from which agricultural income is derived:

See:Rule 8

Provided that notwithstanding anything contained in this Act in the case of an assessee in whose case deduction on the account is made in assessment any amount received by him from the insurance company in any year shall be deemed to be for the purpose of this Act agricultural income after deducting the share or portion thereof assessed to the Indian Income-tax;

- (vi) any interest paid on any mortgage or other capital charge incurred for the purpose of acquiring the property from which such agricultural income is derived or for the purposes of cultivation of the property;
- (vii) Omitted

**Amendment:** *In the principal Act, in section 8, in subsection (2), in clause (f), sub-clause (vii) has been omitted vide Notification no. LGL.22/2002/90 Dated 7<sup>th</sup> December, 2007 published in the Assam Gazette Extraordinary No. 377 Dated 10<sup>th</sup> December, 2007.*

Prior to this the sub-clause (vii) read as follows:

*(vii) any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of earning or deriving the agricultural income; provided that such expenditure, if laid out or expended wholly and exclusively for the purpose of earning income chargeable to tax under the Income Tax Act, 1961 (43 of 1961) would have been admissible for deduction under that Act;*

- (g) any sum actually donated for charitable purposes, if such donation is not

See Rule 2(2),2(3) & 2(4)

more than Rs.5 lakh or ten per centum of the total agricultural income whichever is less; provided that such sum is actually spent for such purposes in the State;

(h) such other deductions as may be prescribed by the rules made under section 50 of this Act:

See :Rule 2(2)

Provided always that no deduction shall be made under this clause if it has already been made under section 7 of this Act or in the assessment under the Income-tax Act, 1961.

Provided further that in case of agricultural income from cultivation and manufacture of tea the agricultural income for the purposes of this Act shall be deemed to be that portion of the income from cultivation, manufacture and sale which is agricultural income within the meaning of the Indian Income-tax Act and shall be ascertained by computing the income from the cultivation, manufacture and sale of tea as computed for Indian Income-tax Act.

**Amendment:** *In the principal Act, in section 8, in subsection (2), in clause (h) has been substituted vide Notification no. LGL.22/2002/90 Dated 7<sup>th</sup> December, 2007 published in the Assam Gazette Extraordinary No. 377 Dated 10<sup>th</sup> December, 2007.*

(3) In determining the net agricultural income, such percentage the agricultural income of the assessee as may be notified by the State Government from time to time and deposited with the Assam Financial Corporation in the previous year, in an (hereinafter referred to as the Plantation Development maintained by the assessee with the Assam Financial Corporation for utilisation for the purposes specified below in clause (e) of this sub-section, shall be allowed as deduction assessee from the agricultural income provided the same has not already been allowed as deduction under any of the provisions of the Indian Income Tax Act, 1961:

Provided further that where such assessee is a firm, or any association of persons or any body of individuals the deduction under this sub-section shall not be allowed in the computation of the income of any partner, or as the case may be, any of such firms, association of persons or body of individuals:

Provided further that if any withdrawal from the deposit is not utilized for the purpose for which it is sanctioned, it shall be treated as agricultural income of the year of the withdrawal and assessed accordingly.

(a) extension of planting, replanting, replacement rejuvenation or consolidation of areas of plantations or interplanting of planted areas including preparation of land, care and maintenance of such areas and

- provision of nurseries and shade trees;
  - (b) extension of factories and godowns;
  - (c) purchase of tractors, trailers, power tillers, power for the purpose of expansion of plantation;
  - (d) purchase of spraying equipment for weed control and plant protection measures;
  - (e) measures for controlling floods, soil erosion and water logging including drainage.
- (4)
- (a) In determining the net agricultural income, any amount invested in the setting up of power generation units and industrial units within the State of Assam other than tea plantation and manufacturing shall be allowed as deduction to the assessee from the agricultural income, provided the same has not already been allowed as deduction under any other provision of this Act or under any provisions of the Income Tax Act, 1961 or the same has not been received as any subsidy or grant by the assessee from the Government of India or the Government of Assam.
  - (b) For the purpose of this sub-section, the State Government shall have the power to formulate a scheme by notification in the Official Gazette, specifying the industries which shall be eligible for the benefits of the scheme and may, by a notification in the Official Gazette, specify the conditions, subject to which the benefits of the scheme may be extended to the power generation units or the industrial units.
  - (c) The State Government may, from time to time and in the public interest, modify, amend or alter the scheme in such manner and to such extent as the State Government may deem fit.
  - (d) Any scheme formulated under this sub-section shall, as soon as may be after it is notified in the Official Gazette, be laid before the house of State Legislature, while it is in session for a total period of thirty days, which may be comprised in one or more session in which it is so laid or the session immediately following and if, the House agrees in making any modification in the scheme the shall thereafter have effect only in such modified form:

Provided that any such modification shall be without prejudice to the validity of any thing previously done the scheme.
  - (e) Any scheme formulated and modified under this section or any modification, amendment, alteration or reenactment thereof shall be deemed to form a part Assam Agricultural Income Tax Act, 1939 and all the provisions of the said Act shall apply accordingly.
- (5) In determining the net agricultural income, a deduction at the rate of 5 (five)

rupees for every kilogram of tea exported through Inland Container Depot (ICD), Amingaon shall be allowed to the assessee from his agricultural income:

**Amendment:** *In the principal Act, in section 8, in subsection (5) for the words, brackets and figure "50 (fifty) paise" the words, brackets and figure "1 (one) rupee" has been substituted vide notification no. LGL.22/2002/111 Dated 24<sup>th</sup> March published in the Assam Gazette Extraordinary No. 82 Dated 25<sup>th</sup> March, 2008.*

**Amendment:** *In the principal Act, in section 8, in subsection (5) for the words, brackets and figure "1 (one) rupee" the words, brackets and figure "5 (five) rupees" has been substituted vide notification no. LGL.61/2009/20 Dated 4<sup>th</sup> January 2010 published in the Assam Gazette Extraordinary No. 3 Dated 4<sup>th</sup> January 2010.*

Provided that this deduction shall be effective on and from 1<sup>st</sup> April, 2009 for a period of one year only:

**Amendment:** *In the principal Act, in section 8, in subsection (5), in the first proviso the has been substituted vide notification no. LGL.22/2002/111 Dated 24<sup>th</sup> March published in the Assam Gazette Extraordinary No. 82 Dated 25<sup>th</sup> March, 2008.*

**Amendment:** *In the principal Act, in section 8, in subsection (5), in the first proviso the words and figures "Provided that this deduction shall be effective on and from 1<sup>st</sup> April, 2009 for a period of one year only:" has been substituted vide notification no. LGL.61/2009/20 Dated 4<sup>th</sup> January 2010 published in the Assam Gazette Extraordinary No. 3 Dated 4<sup>th</sup> January 2010.*

Provided further that the State Government may, by notification in the Official Gazette, extend the period of deduction for further periods, not exceeding one year at a time, subject to such conditions and restrictions as may be specified in the said notification.

**Amendments:** (1) The words "previous year" have been substituted in place of "previous agricultural year" w.e.f 1-4 -1989(effective from assessment year 1989-90) by Assam Act No. VI of 1989.

(2) Section 8(2)(f)(vii) has been substituted w.e.f. 28-12-1989(effective from assessment year 1990-91) by Assam Act No. XXIII of 1989.

Prior to such amendment, the sub-clause (vii) read as under:

*"(vii) any expenditure (not being in the nature of capital expenditure out or expended wholly and exclusively for the purpose of earning \ deriving the agricultural income;"*

(3) Section 8(2)(g) has been substituted w.e.f. 1-4 -1993(effective from assessment year 1993-94) by Assam Ordinance No. III of 1994. The Ordinance was subsequently replaced by Assam Act No. XXVIII of 1994 w.e.f. 6-5-1994.

Prior to the substitution, clause (g) read as under:

*“(g) any sum actually donated for charitable purposes, if such donation is not more than Rs. 1,00,000 or ten per centum of the total agricultural income, whichever is less.”*

(4) Section 8(3) was inserted by the Assam Ordinance No. III of 1994 published in the Assam Gazette of 2nd February 1994. This sub-section came into force with retrospective effect from 1-4-1993 (effective from assessment year 1993-94) by virtue of provision contained in sub-section (3) of Section 1 of the said Ordinance. The Ordinance was subsequently replaced by the Assam Act No. XXVIII of 1994 w.e.f. 6-5-1994, the date of publication in the Assam Gazette. But by virtue of 'repeal and saving' provision of Section 5(2) of the Assam Act XXVIII of 1994, in respect of anything done under the provisions of the Ordinance III of 1994 shall be deemed to be done under the provision of this Act, as if this Act had come into force date the said Ordinance came into force.

The words "in the previous year" have been substituted in place of the words "before furnishing the return of his income" by the Assam Act No. VII of 1995 w.e.f. 18-4-1995 (effective from assessment year 1996-97), the date of publication in the Assam Gazette.

(5) Section 8(4) was inserted by Assam Ordinance III of 1994 w.e.f. 1-4-1993 (effective from assessment year 1993-94).

It originally read as follows:

*'(4) any amount as may be notified in this behalf by the State Government invested for setting up of industries, other than tea plantation and manufacturing within the State of Assam'.*

The above Ordinance was replaced by Assam Act No. XXVIII of 1994 w.e.f. 1-4-1994, as follows:

The original sub-section was fully substituted by the Assam Ordinance No. of XII of 1994 w.e.f. 25-11-1994, as follows:

*'(4) in determining the net agricultural income, any amount invested in the setting up of power generation projects and industries within the State of Assam other than tea plantation and manufacturing shall be allowed as deduction to the assessee from his agricultural income, provided the same has not already been allowed a deduction under any other provisions of this Act or under any provisions of the Indian Income Tax Act, 1961 or the same has not received as any subsidy or grant by the Government of India or the Government of Assam.*

Explanation.- The Government of Assam shall notify in the Official Gazette, the scheme enumerating from time to time the industries eligible for the purposes of benefit the provision of the Act.'

The above provision has been substituted by the present provision w.e.f. 18-4-1995 (effective from assessment year 1996-97) by Assam Act No. VII of 1995.

(6) Section 8(5) has been inserted w.e.f. 1-4-1998 (effective from assessment year 1998-99) by Assam Act No. VI of 1998 published in the Assam Gazette dated 5th-June, 1998.

**8A. Liability of the husband or father for income of the wife or minor child.** The total agricultural income of any individual shall for the purpose of assessment include -

(a) so much of the total agricultural income of a wife (not living separately) or minor child of such individual as arises directly or indirectly-

- (i) from the ownership of the wife or of the minor child in an estate, tenure, tenancy or holding of which the husband or the father, as the case may be, is a joint owner;
  - (ii) from assets transferred directly or indirectly to the wife by such individual otherwise than for adequate consideration or in connection with an agreement to live apart;
  - (iii) from assets transferred directly or indirectly to minor child, not being a married daughter, by such individual otherwise than for adequate consideration.
- (b) so much of the total agricultural income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual for the benefit of his wife or minor child or both.

**8B. Determination of agricultural income in relation to book profit of the assessee for the purpose of levy of agricultural income tax:**

Notwithstanding anything contained in any other provisions of this Act, in case of an assessee, being a company, which derives income from cultivation, manufacture and sale of tea, if the agricultural income tax payable under this Act on the sixty percent portion of agricultural income computed as per provisions of the Income Tax Act, 1961(Central Act 43 of 1961) is less than ten percent of the sixty percent of the book profit computed in the manner as referred to in section 115 JB of the Income Tax Act, 1961(Central Act 43 of 1961), sixty percent of such book profit shall be deemed to be the agricultural income tax under this Act of such assessee and the assessee shall be liable to pay agricultural income tax at the rate of eighteen percent of such agricultural income:

Provided that the State Government may, by notification in the Official Gazette, vary the rate of tax under this Act and on such notification being issued, the rate of tax shall be deemed to have been amended accordingly:

Provided further that the rate of tax to be specified or verified by the State Government shall not exceed thirty percentum.

**Amendment:** *In the principal Act, in section 8, after section 8A a new section 8B has been inserted vide Notification no. LGL.22/2002/124 Dated 12<sup>th</sup> February 2009 published in the Assam Gazette Extraordinary No. 55 Dated 12<sup>th</sup> February 2009.*

**Amendment:** *In the principal Act, in section 8B for the word “ten” appearing between the words “at the rate of” and “percent of such agricultural income” the word “eighteen” has been substituted vide Notification no. LGL.61/2009/31 Dated 7<sup>th</sup> September 2010 published in the Assam Gazette Extraordinary No. 61 Dated 7<sup>th</sup> September 2010.*

**Amendment:** *In the principal Act, in section 8B, the provisos has been inserted vide Notification no. LGL.61/2009/31 Dated 7<sup>th</sup> September 2010 published in the Assam Gazette Extraordinary No. 61 Dated 7<sup>th</sup> September 2010.*

**8C. Tax credit in respect of tax paid under section 8B.** (1) Where any amount of tax paid as per provisions of section 8B by an assessee, being a company which derives income from cultivation, manufacture and sale of tea, for any assessment year, then credit in respect of tax so paid shall be allowed to him in accordance with the other provisions of this section.

(2) The tax credit to be allowed under this section shall be the difference of the tax paid for any assessment year under section 8B and the amount of tax payable by the assessee on his agricultural income from the activity of cultivation, manufacture and sale of tea computed in accordance with the other provisions of this Act :

Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(3) The amount of tax credit determined under this section shall be carried forward and set off in accordance with the provision of sub-section (4) and (5) but each carry forward shall not be allowed beyond the three assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1).

(4) The tax credit shall be allowed set off in a year when tax becomes payable on the agricultural income from the activity of cultivation, manufacture and sale of tea computed in accordance with the provisions of this Act other than section 8B.

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his agricultural income from the activity of cultivation, manufacture and sale of tea that would have been payable under the provision of section 8B for that assessment year.

(6) Whereas as a result of any proceeding, the amount of tax payable under this Act is reduced or increased, as the case may be, the amount of tax credit allowed under this section shall also be increased or reduced respectively.

**Amendment:** *In the principal Act, after section 8B a new section 8C has been inserted vide notification no.LGL.61/2009/4 Dated 1<sup>st</sup> September, 2009 published in the Assam Gazette Extraordinary No. 288 Dated 1<sup>st</sup> September, 2009.*

**9. Exemption of charitable trust.** (1) Any agricultural income derived from property held under a trust or other legal obligations wholly or partly for religious or charitable purposes shall, to the extent it is applied or finally set apart for the aforesaid purposes, not be liable income tax under this Act.

(2) In this section, "purposes of a charitable nature" include relief of the poor, education, medical relief, and advancement of any other object of general public utility.

**10. Exclusion of agricultural income of certain waqf.** All agricultural income of Muslim Trusts referred to in section 3 of the Musalman Wakf Validating Act, 1913, created before the commencement this Act, shall be excluded from the operation of this Act:

Provided that the share of a beneficiary under a trust under the aforesaid Act, of the description commonly known as Wakf-alal-aulad shall not be exempted and the basis of the taxation shall be the share of each beneficiary:

Provided further that if a beneficiary's income is assessable under the above-mentioned proviso, the Superintendent of Taxes or Agricultural income -tax Officer may require the Mutawalli to deduct the amount of tax from the payment to be made to the beneficiary and pay the same to the Superintendent of Taxes or Agricultural Income Income-tax Officer. On such requisition the Mutawalli shall be liable to pay the same.

**11. Assessment of a Hindu undivided or joint family. [Deleted]**

**12. Assessment of tax on land held for the benefit of several persons.** (1) Save as provided in sections 10, 13 and 14, if a person holds land from which



agricultural income is derived partly for his own benefit and partly for the benefit of beneficiaries or wholly for the benefit of a beneficiary or beneficiaries, agricultural income-tax shall be assessed on the total agricultural income derived from such land at the rate which would be applicable if such person had held the land exclusively for his own benefit and agricultural income-tax so payable shall be assessed on the person holding such land, and he shall be liable to pay the same.

(2) Any person holding such land shall be entitled before paying to any beneficiary the amount of agricultural income which such beneficiary is entitled to receive from the agricultural income derived from such land, to deduct the amount of agricultural income tax at the rate at which the agricultural income is or will be assessed under sub-section (1).

Explanation.- In this section "beneficiary" means a person entitled to a portion of the agricultural income derived from the land.

**13. Assessment of tax on common manager, receiver, etc.** Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator, or the like on behalf of persons jointly interested in such land or in the agricultural income derived therefrom, the aggregate of sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received or receivable by him shall be assessed on such common manager, receiver, administrator or the like and he shall be deemed to be the assessee in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same.

**14. Court of Wards, etc.** In the case of agricultural income taxable under this Act, which is received by the Court of Wards, the Administrator General, or Official Trustee, the tax shall be levied upon and be recoverable from such Court of Wards, Administrator General or Official Trustee in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such agricultural income is received, and all the provisions of this Act shall apply accordingly.

**14A. Residuary provision for computation and recovery of tax in certain cases.** (1) In any case covered by sections 13 and 14 where any agricultural income or any part thereof is not specifically received on behalf of any one person, or where the individual shares of the persons on whose behalf they are received are indeterminate or unknown, the tax shall be levied and be recoverable at the rate applicable to the total amount of such income.

(2) Nothing contained in sections 13 and 14 shall prevent either the direct assessment of the person on whose behalf agricultural income therein referred to is received or the recovery from such person of the tax payable in respect of such income.

**15. Exemption in case of life insurances.** (1) (a) Agricultural income-tax shall not be payable by an assessee in respect of any sum paid by him out of his total agricultural income to effect an insurance on his own life or on the life of his wife or his child or children, or in respect of a contract for a deferred annuity on his own life or on life of his wife, or as a contribution to any provident fund to which the Provident Funds Act, 1925, applies:

Provided that agricultural income tax shall be payable on the remainder of the total agricultural income of such assessee at the rate which would have

been applicable if such deduction had not been made.

(b) Nothing in this sub-section shall be deemed to entitle an assessee, who is assessed to income-tax under the Income-tax Act 1961 (43 of 1961) as amended up-to-date, to claim a deduction in respect of any sum paid by him, as mentioned in clause (a), if such sum was exempted under section 15 of the said Act.

- (2) Where the assessee is a Hindu undivided or joint family there shall be exempted under sub-section (1) any sum paid to effect an insurance on the life of any male member of the family.
- (3) The aggregate of any sums exempted under this section shall not exceed one-sixth of the total agricultural income of the assessee.

**16. Carrying forward of loss of profits or gains.** (1) Where any assessee sustain a loss of profits or gains in any year under any of the items mentioned in sub-clauses (1) and (2) of clause (a) of section 2, he shall be entitled to have the amount of the loss set-off against his income, profits or gains under any other item in that year.

(2) Where any assessee sustains a loss of profits or gains any year being a previous year not earlier than the previous year for the assessment year ending on the 31st day March, 1940, the loss shall be carried forward to the following year and set-off against the profits or gains if any of the assessee from the agricultural income for that year and if it cannot be wholly so set-off the amount of loss not so set-off shall be carried forward to the following year and so on but no loss shall be carried forward for more than years :

Provided that if any assessee fails to file his return loss of profits or gains for any year in time in accordance with the provisions of sub-section (1) of section 19, his claim for carry-forward and set off of such loss against future income as per provisions of sub-section (1) or subsection (2) of this section shall not be entertained.

#### **Amendments**

Proviso to sub-section (2) of section 16 has been inserted w.e.f 1-4-1998 (effective from assessment year 1998-99) by Assam Act No. VI of published in the Assam Gazette dated 5th June 1998.

17. *Deleted.*

## CHAPTER III

### TAXING AUTHORITIES

**18. Income-tax Authorities.** (1) There shall be the following classes of Income Tax Authorities for the purpose of this Act, namely: -

- (a) Commissioner of Taxes;
- (b) Additional Commissioner of Taxes;
- (c) Joint Commissioner of Taxes;
- (d) Deputy Commissioner of Taxes (Appeals);
- (e) Deputy Commissioner of Taxes;
- (f) Senior Superintendent of Taxes;
- (g) Agricultural Income Tax Officer;
- (h) Superintendent of Taxes;
- (i) All Assam Investigation Officer;
- (j) Inspector of Taxes;
- (k) Agricultural Income Tax Inspector;

(2) The State Government may appoint one Commissioner of Taxes and as many other officers as mentioned in subsection (1) of section 18 as the State Government may deem fit.

(3) The Commissioner of Taxes shall perform his functions in respect of whole of the State of Assam and the other officers mentioned in sub-section (1) shall perform their functions in respect of such areas or such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as the Commissioner of Taxes may, by notification in the Official Gazette, direct.

#### Amendments

The whole section has been substituted w.e.f. 14-5-1993(effective from as sessment year 1994-95) by Assam Act No. IX of 1993.

## CHAPTER IV

### ASSESSMENT, DEDUCTION AND EXEMPTIONS

**19. Return of income.** (1) Every person, if his total agricultural income or the total agricultural income in respect of which he is assessable under this Act during the previous year exceeded the limit of the taxable income prescribed in section 6, shall furnish before the 31st day of December of the relevant assessment year, a return of his agricultural income or the agricultural income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars, as may be prescribed

See:Rule 13 & 14

(2) In the case of any person who, in the opinion of Superintendent of Taxes or Agricultural Income-tax Officer is assessable under this Act, whether on his own total agricultural income or on the total agricultural income of any other person during the previous year, the Superintendent of Taxes or Agricultural Income-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date service of the notice, a return of his agricultural income the agricultural income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars may be prescribed .

See:Rule 12 & 14

- (3) If any person who has not been served with a notice under sub-section (2) has sustained a loss of profits or gains any previous year and claims that the loss or any part thereof should be carried forward under sub-section (2) of section 16 he may furnish, within the time allowed under sub-section (1) a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).
- (4) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2), may furnish the return before the assessment is made.
- (5) If any person having furnished a return under sub-section (1) or sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made.
- (6) No return under sub-section (1) need be furnished by any person for any previous year if he has already furnished a return of agricultural income for such year in accordance with the provisions of sub-section (2):

Provided that no return submitted under this section shall be valid unless the taxes due for the year is paid in full in accordance with the provisions of the Act.

**Amendments:** (1) By Assam Act No. IX of 1967 Section 19 was substituted. The second proviso to sub-section (1) was inserted by Assam Act No. XIV of 1968.

(2) By Assam Act No. X of 1984 w.e.f. 1-4-1984, in sub-section (1), the first proviso, the paragraph

occurring thereunder and the second proviso were deleted.

The proviso to Section 19(1) prior to deletion read as under:

*'Provided that on an application made in the prescribed manner, the Superintendent of Taxes or Agricultural Income-tax Officer may, in his discretion, extend the date for furnishing the return upto a period not beyond the 28th Day of February of the relevant financial year and a simple interest at six per cent per annum shall be payable from the 1st day of January of the relevant financial year to the date of the furnishing return as extended by the Superintendent of Taxes or Agricultural Income-tax Officer on the amount of Agricultural Income-tax payable on the Total agricultural income as finally assessed, reduced by the advance tax, if any, paid.'*

*If the return is not furnished within the 28th February of the relevant financial year extended by the Superintendent of Taxes or Agricultural Income-tax Officer simple interest upto a maximum of 24 percent per annum as may be prescribed shall be payable from the 1<sup>st</sup> Day of March of the relevant financial year to the date of the furnishing return on the amount of agricultural income tax payable on the total agricultural income assessed, reduced by the advance tax, if any, paid. Provided further that no interest under this sub-section shall be levied if the amount of tax paid within the aforesaid 31st December is not less than ninety per centum of tax as finally assessed.*

(3) In sub-section (2) the proviso was deleted by Assam Act X of 1984 w.e.f. 1-4-1984.

The proviso to Section 19(2) prior to its deletion, read as under:

*'Provided that on an application made in the prescribed manner the Superintendent of Tax or Agricultural Income-tax Officer may, in his discretion, extend the date for the furnishing of the return and when the date of furnishing the return, whether fixed originally or on extension, falls beyond the 31st December of the relevant financial year, the provision of the proviso to sub-section (1) shall apply.'*

(4) In sub-section (4) and (5), the words "and the provisions of the proviso to sub-1 section (1) shall apply in every such case" were deleted by Assam Act No. X of 1984 w.e.f. 1-4 - 1984.

(5) The words "assessment year" have been substituted in place of "financial year" by Assam Act VI of 1989 w.e.f. 1-4 -1989.

(6) By Assam Act No. XX of 1994 published in the Assam Gazette of 6-5-1994 w.e.f. 1-9-1995(effective from assessment year 1996-97) the proviso to section 19 has been substituted by the present proviso.

The proviso prior to its amendment as such, read as under:

*'Provided that no return submitted under this section shall be valid unless it is accompanied by a treasury receipt showing payment of the tax due as provided in sub-section (2) of Section 35'.*

**19A. Return by whom to be signed.** The return under section 19 shall be signed and verified

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- (a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

- (b) in the case of a Hindu undivided family, by the Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;
- (c) in the case of a company or local authority by the principal officer thereof;
- (d) in the case of a firm, by any partner thereof, not being minor;
- (e) in the case of any other association, by any member of the association or the principal officer thereof; and
- (f) in the case of any other person, by that person or by some person competent to act on his behalf.

**19B. Provisional assessment.** (1)The Superintendent of Taxes or Agricultural Income-tax Officer may, at any time after the receipt of a return made under section 19, proceed to make in a summary manner a provisional assessment of tax payable by the assessee on basis of his return and the accounts and documents, if any, accompanying it. Where the amount of tax payable as per provisional assessment exceeds the amount paid or deemed to have been paid, the provisions of section 20C of the Act shall apply in his case.

See: Rule 13
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- (2) In making any assessment under this section due effect shall be given to the allowances and deductions as admissible under this Act and the Rules.
- (3) After a regular assessment has been made, any amount paid or deemed to have been paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

Where the amount of tax payable as per regular assessment exceeds the amount paid or deemed to have been paid towards the provisional assessment, the provisions of section 20C of the Act shall apply in every such case.

- (4) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits of any issue, which may arise in the course of the regular assessment.
- (5) There shall be no right to appeal against a provisional assessment under sub-section (1).

**20. Assessment.** (1) If the Superintendent of Taxes or Agricultural Income-tax Officer is satisfied that a return made under section 19 is correct and complete he shall assess the

total agricultural income of the assessee, and shall determine the sum payable by him on the basis of such return.

See: Rule 15 & 23(4)

- (2) If the Superintendent of Taxes or Agricultural Income-tax Officer has reason to believe that a return made under section 19 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on the date to be specified therein, either to attend at the office of the Superintendent of Taxes or Agricultural Income-tax Officer or to produce or to cause to be there produced any evidence on which such person may rely in support of the return.
- (3) On the day specified in the notice under sub-section (2) or as soon afterwards as may be, the Superintendent of Taxes or Agricultural Income-tax Officer after hearing such evidence as such person may produce and such other evidence as the Superintendent of Taxes or Agricultural Income-tax Officer may require on specified points, shall, by an order in writing, assess the total agricultural income of the assessee and determine the sum payable by him on such assessment:

Provided that the Superintendent of Taxes or Agricultural income-tax Officer shall not require the production of any accounts relating to a period more than eight years prior to the previous year.

- (4) If the principal officer of any company or other person fails to make a return under sub-section (1) or sub-section (2) of section 19, as the case may be, or having made the return fails to comply with all the terms of the notice issued under sub-section (2) of this section, or to produce any evidence required under sub-section (3) of this section, the Agricultural Income-tax Officer shall make the assessment to the best of his judgment, and determine the sum payable by the assessee on the basis of such assessment :

Provided that before making such assessment Superintendent of Taxes or Agricultural Income-tax Officer may allow the assessee such further time as he thinks fit make the return or to comply with the terms of the notice or to produce the evidence.

**20A. Assessment in cases of discontinued firm or association.**

- (1) Where agricultural income is received or deemed to be received by a firm or association of individuals and the business of such firm or association is discontinued in any year, an assessment may be made in that year on the basis of the agricultural income received or deemed to be received during the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the agricultural income received or deemed to be received in the previous year. Every person who was a partner of such firm or member of such association at the time of such discontinuance shall be jointly and severally liable to assessment on such agricultural income and for the amount payable as tax, and all the provisions of the Act shall, so far as may be, apply accordingly.

(2) Any person discontinuing any such business shall give to the Superintendent of the Taxes or Agricultural Income-tax Officer notice of such discontinuance within fifteen days thereof, and where any person fails to give the notice required by this sub-section, the Superintendent of Taxes or Agricultural Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of agricultural income-tax subsequently assessed on him in respect of any agricultural income of the firm or association of individuals up to the date of the discontinuance of its business.

**20B. Assessment in case of transfer of property.** (1) Where a person liable to pay tax under this Act (hereinafter in this section referred to as the predecessor) has been succeeded by another person (hereinafter in this section referred to as the successor) who continues agricultural operations —

- (a) the predecessor shall be assessed in respect of the agricultural income of the previous year in which the succession took place up to the date of succession;
  - (b) the successor shall be assessed in respect of the agricultural income of the previous year after the date of succession.
- (2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the agricultural income-tax for the previous year up to the date of succession and for the years preceding that year shall be made on the successor in the like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.
- (3) Where any sum, payable under this section in respect of the agricultural income of the previous year in which the succession took place up to the date of succession or for the previous year preceding that year assessed on the predecessor, cannot be recovered from him, the Agricultural Income-tax Officer, shall, after making such enquiries as he might deem fit, record a finding to effect and the sum payable by predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid :

Provided that the successor shall not be made so liable to pay sum without giving him an opportunity of being heard.

**20C. [Deleted by Assam Act XX of 1994 w.e.f. 1-9-1995, effective from assessment year 1996-97 ].**

Prior to omission Section 20C as inserted by Assam Act No. 1984, w.e.f. 1-4 - 1984(effective from assessment year 1984-85), and as amended by the Assam Act No. VI of 1989, w.e.f. 1-4 -1989(effective from assessment year 1989-90), and as amended by Assam Act No. XXIII of 1989, w.e.f. 28-12-1989(effective from assessment year 1990-91), read as under :



## 20C. Interest payable by the assessee

- (1) *Where on making an assessment of tax under any provision of this Act for any assessment year it is found that the tax paid by or on behalf of assessee in respect of the said assessment year on or before the 31<sup>st</sup> day of December of the said assessment year falls short of the amount of tax as finally assessed in respect of the said assessment year, he shall be liable, notwithstanding anything contained in any law for the time being in force to pay simple interest on the amount of shortfall at the rate of twelve per centum per annum from the 1<sup>st</sup> Day of January of the said assessment year upto the date of assessment-*

*Provided that if the amount of tax paid in respect of the relevant assessment year amounts to or exceeds seventy five per centum of the amount of tax as finally assessed, no interest under this sub-section shall be payable from the date next following the date on which the tax -amount to or exceeds seventy five per centum of the tax as finally assessed.*

- (2) *Where an assessee does not pay the amount of tax demanded from him after an assessment made under any provisions 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 1<sup>st</sup> day of the month next following the said date upto the date of full payment at the rate of sixteen per centum per annum 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.*

- (3) *Where the amount of tax paid on or before the 31<sup>st</sup> Day of March, 1984 by or on behalf of any assessee under this Act in respect of any assessment year falling during the period from 1<sup>st</sup> April, 1967 to 31<sup>st</sup> March, 1984 falls short of the amount of tax due from him in respect of such assessment year, whether or not such tax has been assessed, the assessee shall be liable to pay simple interest on the amount of shortfall at the rate of twelve per centum per annum until the tax is paid in full:*

*Provided that if the amount of tax paid in respect of the relevant assessment year on or before the 31<sup>st</sup> day of March, 1984 amounts to or exceeds seventy five per centum of the amount of tax as finally assessed, no interest under this sub-section shall be payable:*

*Provided further that no interest under this sub-section shall be payable from the date next following the date on which the tax paid, if any, amounts to or exceeds seventy five per centum of the tax as finally assessed. (Both the provisos were inserted by Assam Act XXIII of 1989)*

*Explanation. - In this sub-section "amount of tax due" means the amount of tax as finally assessed whether the assessment is made on or before the 31<sup>st</sup> day of March 1984 or after that date.*

- (4) *Where an assessee pays any part of the tax after the commencement of interest under sections (1), (2) or (3) interest shall be payable upto the date of part payment on the entire amount as specified in the said subsections and thereafter on the balance or such amount.*
- (5) *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.*

- (6) *The provisions of this Act relating to payment and recovery of tax shall so far as may be apply to payment of interest under this Section as if such interest were tax under this Act.*

*Provided that where any order is passed under sub-section (3) of section 36 of this Act in respect of any dues, any interest relatable to the same dues and accrued under this section upto the date of such order and any further interest accruing after such date shall be recovered in the course of proceedings initiated in accordance with the said sub-section(3) in respect of the said dues and for that purpose no order under sub-section (5) of this section or notice of demand under this Act shall be necessary in respect of such interest.*

#### **20D. Assessment in case of variation of Central assessment (1)**

Where in any case in consequence of any order relating to computation of income made under the Income Tax Act, 1961, by any authority constituted under that Act the income of an assessee as assessed under that Act in respect of any period is revised leading to enhancement or, as the case may be, reduction of the agricultural income of the assessee in respect of the period, the assessee shall, as specified in sub-section (2) and (3), submit a return of his agricultural income or as the case may be, a revised return of his agricultural income in respect of the period to the Superintendent of Taxes or Agricultural Income-tax Officer disclosing therein his agricultural income as enhanced or reduced as aforesaid.

(2) The return or revised return under sub-section (1) shall be submitted in a case, in which the income has been or is revised under the Income Tax Act, 1961, on or before the 31<sup>st</sup> December, 1989 not later than 31<sup>st</sup> March, 1990, and in a other case, within ninety days of such revision.

(3) All the provisions of this Act, except to the extent specified in this section, shall, so far as may be, apply to a return or a revised return submitted under this section as if such return or revised return were submitted under section 19.

(4) The rate of tax applicable to the agricultural income disclosed in the return or revised return submitted under this section shall be the same as that applicable to the period to which the agricultural income relates.

(5) Where in any case the agricultural income of an assessee has been or is varied as specified in sub-section (1), the Superintendent of Taxes or Agricultural Income-tax Officer may, at any time, serve a notice on the assessee requiring him to submit a return or revised return as required under the subsection (1), by such date as may be specified in a notice served on the assessee in this behalf and the assessee shall accordingly submit a return or revised return and the provisions of this Act shall apply as if the notice served under this sub-section were a notice under sub-section (2) of section 19.

(6) An assessee shall be liable to pay simple interest at the rate of two per centum for each English calendar month, from the first day of the month next following the expiry of the period specified in sub-section (2), on the amount by which the tax paid on the return or revised return submitted under this section falls short of the amount of tax as finally assessed in respect of that portion of the agricultural income which had not been returned by the assessee under section 19. Interest as aforesaid shall be payable till the

amount as finally assessed is paid by the assessee and to that extent the provisions of sections 35C, 35D and 35E shall not apply.

**Amendments:** Section 20D has been inserted w.e.f. 28-12-1989 (effective from assessment year 1990-91) by Assam Act No. XXIII of 1989.

In sub-section (6) of Section 20D, the words "two percentum for each English calendar months" have been substituted for the words "sixteen percentum per annum" w.e.f. 1-9-1995 (effective from assessment year 1996-97) by Assam Act No. XX of 1994.

By the same Act the word, letter and figures "Section 20C" have been substituted by "Section 35C, 35D and 35E".

In sub-section (2), in the last line. the words "sixty days" have been substituted by the words "ninety days" by the Assam Act No. III of 2000, w.e.f. 17-5-2000 (effective from assessment year 2001-2002)

**21. Cancellation of assessment in certain cases and fresh assessment thereof.** Where an assessee, or in case of a company the Principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided satisfies the Superintendent of Taxes or Agricultural Income-tax Officer that he was prevented by the sufficient cause from making the return required by section 19 or he did not receive the notice issued under sub-section (2) of section 19 or sub-section (2) of section 20 or that he had not a reasonable opportunity to comply or was prevented by sufficient cause complying with the terms of the last mentioned notices, the Superintendent of Taxes or Agricultural Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 20.

**22. Penalty for concealment of income.** (1) If the Superintendent of Taxes or Agricultural Income-tax Officer or the Assistant Commissioner of Taxes or the Deputy Commissioner of Taxes or the Commissioner of Taxes in the course of any proceeding under this Act is satisfied that an assessee: —

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish under sub-section (1) or sub-section (2) of section 19 or has without reasonable cause failed to furnish it within the time and in the manner required in the provisions made under the above-mentioned sub-section, or

(b) has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income and thereby returned it below its real amount,

he may direct that the assessee shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of agricultural income-tax payable by him a sum not exceeding that amount and in the case referred to in clause (b) in addition to any tax paid by him, a sum not exceeding the amount of the agricultural income-tax which would

have been avoided if the income so returned by him had been accepted as the correct income:

Provided that —

- (a) no penalty for failure to furnish the return of his total agricultural income shall be imposed on an assessee whose total agricultural income is less than rupees five thousand unless he has been served with a notice under sub-section (2) of section 19;
- (b) where a person has failed to comply with a notice under sub-section (2) of section 19 or under section 30 and proves that he has no income liable to tax, no penalty shall be imposed under this sub-section;
- (c) no penalty shall be imposed under this sub-section upon any person assessable as the agent of any person not resident in Assam for failure to furnish the return required under section 19 unless a notice under sub-section (2) of that section has been served on him;
- (d) no order under this section shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard:

Provided further that no prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

- (2) If the Commissioner of Taxes or the Deputy Commissioner of Taxes or the Assistant Commissioner of Taxes makes an order under sub-section (1), he shall forthwith send a copy of the same to the Superintendent of Taxes or Agricultural Income-tax Officer in whose jurisdiction the assessee concerned resides.

**23. Notice of demand.** Where any agricultural income-tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Superintendent of Taxes or Agricultural Income-tax officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the so payable.

See: Rule 15 & 30

**24. Appeal against assessment under this Act.** (1) Any person aggrieved by an order passed under this Act by any authority appointed under section 18 other than the Commissioner or the Joint Commissioner of Taxes, not being an order passed under this section may appeal to the Deputy Commissioner of Taxes (Appeals) against such order within thirty days from the date of service of such order in the prescribed manner:

See: Rule 16, 17 & 19

Provided that the authority before whom the appeal is filed may admit the appeal after the expiration of thirty days if he is satisfied that for reasons beyond the control of the appellant or for any other sufficient causes it could not be filed within the time:

Provided further that no appeal under this section against the assessment of any tax,

penalty or interest shall be entertained by the appellate authority unless he is satisfied that the amount of tax, penalty or interest assessed, if not otherwise directed by him, has been paid:

Provided further that in any case or class of cases the Commissioner may, by order in writing, direct that the appeal under this section shall lie to such Deputy Commissioner of Taxes (Appeals) or such other officer of equivalent rank as may be specified in such order.

- (2) Every appeal under this section shall be presented in the prescribed form and shall be verified in the prescribed manner.
- (3) The appellate authority shall fix a date and place for hearing of the appeal, and may, from time to time, adjourn the hearing and make such further enquiry as he thinks fit.
- (4) In disposing of the appeal under sub-section (1) against an order of assessment or penalty, the appellate authority may —
  - (a) Confirm, reduce, enhance or annul the assessment;
  - (b) Set aside the assessment and direct a fresh assessment after such enquiry as may be ordered; or
  - (c) Confirm, reduce or annul the order of penalty.

**Amendments:** The words "Joint Commissioner of Taxes" and "Deputy Commissioner of Taxes (Appeals)" have been substituted in place of the words "Deputy Commissioner of Taxes" and "Assistant Commissioner of Taxes (Appeals)" respectively by Assam Act No. IX of 1993 w.e.f. 14-5-1993 (effective from assessment year 1994-95).

**25. Appeal against order of refusal of refund. [*Deleted by Assam Act XXVI of 1972*].**

**26. Appeal to the Board of Revenue.** (1) Any assessee objecting to an order passed in appeal under section 24 or passed in revision under sub-section (1) of section 27 may appeal to the Board within sixty days of the date on which such order is communicated to him.

(2) The Board may admit an appeal after the expiration of the sixty days referred to in sub-section (1) if it is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

(3) An appeal to the Board shall be in such form and shall be verified and presented in such manner as may be laid down by the Board and shall be accompanied by a fee of twenty five rupees.

(4) The Board may, after giving the assessee an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

**27. Revision by Commissioner.** (1) The Commissioner may call for and examine the record of any proceedings under this Act, if he consider that any order passed therein by any authority appointed under section 18 other than himself is erroneous in so far as it is prejudicial to the interest of revenue, and 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 circumstance of the case justify, including an order enhancing or modifying the assessment or canceling the assessment and directing a fresh assessment.

- (2) In the case of any order other than an order to which sub-section (1) applies, passed under this Act by any authority appointed under section 18 other than himself the Commissioner may of his own motion, and in the case of an order passed under section 24, subject to such rules as may be prescribed, on a petition by an assessee for revision, call for the records of any proceedings under this Act in which any such order has been passed and make such enquiry to be made, and subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner may dispense with the enquiry required to be made under this sub-section, if he, for reasons to be recorded in writing, considers such enquiry to be unnecessary.

- (3) In the case of a petition for revision under sub-section (2) by an assessee, the petition must be made within ninety days from the date on which the order in question was communicated to him or the date on which he otherwise comes to know of it, whichever is earlier: See: Rule 18 &19.

Provided that the Commissioner may admit the petition after the expiration of the period of ninety days, if he is satisfied that for reasons beyond the control of the petitioner or for any other sufficient cause, it could not be filed within the time.

*Explanation.* - An order by the Commissioner of Taxes declining to interfere shall for the purpose of this section, be deemed not to be an order prejudicial to the assessee.

- (4) The Commissioner shall not revise any order under this section in the following cases:
- (a) on petition under sub-section (2) where an appeal against the order lies under section 26 and the assessee has not waived his right of such appeal, or
  - (b) where the order is pending on appeal under section 26.

**28. Reference** (1) The assessee or the Commissioner may, within sixty days from the date of service of any order under section 26, by petition in writing, require the Board to refer to the High Court any question of law arising out of such order of the Board or the Board may make such reference out of its own motion. Where a petition is made by an assessee, it shall be accompanied by a fee of one hundred rupees.

- (2) Within sixty days of the receipt of the petition under sub-section (1), the Board shall, subject to the provisions in subsection (3), draw up, after such hearing and enquiry as may be considered necessary, a statement of the case and refer it with its opinion thereon to the High Court.

- (3) The Board may reject the application under sub-section and refuse to state the case on the ground that it is time-barred or otherwise incompetent, or that no question of law arises and the applicant may, within thirty days of such refusal withdraw the application and if he does so, the fee paid shall be refunded.
- (4) Where the application under sub-section (1) is rejected on the ground that no question of law arises and where no action is taken by the applicant under sub-section (3), he may, within ninety days from the date of such rejection, apply to the High Court against the order rejecting the application and if, upon receipt of such an application, the High Court is not satisfied with the correctness of the decision, it may require the Board to state the case and refer it and, on receipt of any such requisition, the Board shall state and refer the case accordingly.
- (5) Where the application under sub-section (1) is rejected on the ground that it is time-barred and where no action is taken by the applicant under sub-section (3), he may, within ninety days of the date of such rejection, apply to the High Court against the order rejecting the application and if, upon receipt of such an application, the High Court is not satisfied with the correctness of the decision, it may require the Board to treat the application under sub-section (1) as made within time.
- (6) Where the High Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the questions of law raised thereby, it may refer the case back to the Board to make such additions thereto or such alterations therein as may be directed and the Board shall thereupon comply with the directions and submit the case accordingly.
- (7) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Board a copy of such judgment under the seal of the Court and signature of the Registrar, and the Board shall, on receipt of the copy of the judgment, order disposal of the case accordingly.
- (8) Where a reference is made on the application of an assessee, the cost shall be in the discretion of the High Court.
- (9) Notwithstanding that a reference has been made under this section to the High Court, payment of tax shall not be stayed pending disposal of such reference; but where the amount of tax is reduced, the excess shall be refunded in accordance with the provisions of this Act.
- (10) Section 5 of the Indian Limitation Act, 1963 (Act XXXVI of 1963) shall apply to an application to the High Court under this section.

**29. Appeal against any judgment of the High Court.** (i) An appeal shall lie to the Supreme Court of India from any judgment of the High Court delivered in a

reference made under foregoing section in any case which the High Court certifies to be fit one for appeal to the Supreme Court of India.

- (ii) The provisions of the Code of Civil Procedure relating to the appeals to the Supreme Court of India shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in cases of appeals from decree of High Court:

Provided that nothing in this sub-section will be deemed to affect the provisions of sub-section (6) or sub-section (8) of the foregoing section:

Provided further that the High Court may on a petition made for the execution of the order of the Supreme Court of India in respect of any costs awarded thereby transmit the order for execution to any Courts subordinate to the High Court.

- (iii) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of the Supreme Court of India, in the manner provided in sub-section (6) and (8) of the foregoing section in the case of a judgment of the High Court.

**30. Income escaping assessment.** If for any reason any agricultural income chargeable to agricultural income-tax has escaped assessment for any assessment year, or has been assessed at too low a rate or has been the subject of undue relief under this Act, the Superintendent of Taxes or Agricultural Income-tax Officer may at any time within eight years of the end of that assessment year serve on the person liable to pay agricultural income-tax on such agricultural income, or in the case of 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 19, and may proceed to assess or reassess such income, 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 the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment as the case may be:

Provided further that in computing the period of eight years mentioned in this section the period during which the Superintendent of Taxes or the Agricultural Income-tax Officer was restrained or prevented from issuing the notice under this section by an order or injunction of any court or authority shall be excluded.

**Amendments:** The second proviso has been substituted w.e.f. 18-4-1984 by Assam Act No. X of 1984.

The words "assessment year" have been substituted for words "financial year" w.e.f. 1-4-1989 (effective from assessment year 1989-90) by Assam Act No. VI of 1989.

**31. Rectification of mistakes.** (1) The authority which passed an order on appeal or revision may, at any time within three years from the date of such order, and the Superintendent of Taxes or Agricultural Income-tax Officer may, at any time within three years from the date of any assessment order passed by him, of his own motion, rectify any



mistake apparent from the record of the appeal or assessment, as the case may be, and shall within the like period rectify any such mistake as has been brought to his notice by an assessee :

Provided that no such rectification shall be made having the effect of enhancing the assessment or reducing the refund unless the appellate or revisional authority or the Superintendent of Taxes or Agricultural Income-tax Officer as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

- (2) When any such rectification has the effect of reducing the assessment, the Superintendent of Taxes or Agricultural Income-tax Officer shall make any refund which may be due to such assessee.
- (3) Where any such rectification has the effect of enhancing the assessment or reducing the refund, the Superintendent of Taxes or Agricultural Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 23 and the provisions of this Act shall apply accordingly.

See: Rule 15

**32. Tax and interest to be calculated to the nearest multiple of rupees ten** - In the determination of the amount of agricultural income tax, interest or a refund payable under this Act, if the amount is not a multiple of rupees ten, it shall be rounded off to the nearest multiple of ten rupees and, while calculating to achieve this purpose, if the total tax, interest or refund, as the case may be, contains a part of rupees ten which is amounting to rupees five or more, it shall be rounded off to the next higher multiple of rupees ten and, if such part is less than rupees five it shall be ignored.

**Amendments:** Section 32 has been fully substituted by the Assam Act XIII of 1999 w.e.f. 1-4-1999 (effective from assessment year 1999-2000) published in the Assam Gazette of 1st June, 1999. Prior to its substitution, the section read as under:

*32. Tax to be calculated to the nearest anna (Sic). - In the determination of the amount of a refund payable under this Act, if the amount is not a multiple of five naye paise, it shall be rounded off to the next higher multiple of five naye paise.*

**33. Power to take evidence on oath.** (1) The Commissioner of Taxes, the Deputy Commissioner of Taxes, the Assistant Commissioner of Taxes and the Superintendent of Taxes or Agricultural Income-tax Officer, shall, for the purpose of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, (V of 1908) when trying a suit in respect of the following matters namely: -

- (a) enforcing the attendance of any person and examining him on oath or affirmation;

- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses;

and any such proceeding before such Commissioner, Deputy Commissioner, Assistant Commissioner or Income-tax Officer under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of section 193 and 228 of the Indian Penal Code (XLV of 1860).

- (2) If any person assessed to agricultural income-tax in respect of agricultural income mentioned in sub-clause (1) of clause (a) of section 2 produces before the Superintendent of Taxes or Agricultural Income-tax Officer for the purpose of calculating his agricultural income any rent roll or other similar papers showing the amount of rent received by him, he shall not be entitled to recover or to institute a suit to recover rent due to him for any tenure or holding included in such return at a rate higher than the rate mentioned in such return as payable for such return or holding, unless the rent shown in such return has, since the date of the return been lawfully enhanced.
- (3) Any person who has produced a rent roll referred to in sub-section (2) may, within one year of producing such roll, apply to the Superintendent of Taxes or Agricultural Income-tax Officer to make any correction therein, and the Superintendent of Taxes or Agricultural Income-tax Officer may, if he is satisfied that such correction should be made, pass an order correcting such rent roll.
- (4) Where the Superintendent of Taxes or Agricultural Income-tax Officer passes any order under sub-section (3), he may assess under section 30 any income escaping assessment by reason of the original incorrectness of any entry corrected.

**34. Power to call for information.** The Assistant Commissioner of Taxes or the Superintendent of Taxes or Agricultural Income-tax Officer may, for the purposes of this Act —

- (1) require any firm or Hindu undivided or joint family to furnish him with a return of the names of members of firm or the name of the manager or the brothers or sons brothers of the family, as the case may be, and of addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian or agent to furnish him with a return of the names of the persons for or to whom he is trustee, guardian or agent and of their addresses.

**34A. Disclosure of information by Public Servant.** (1) All particulars contained in any statement made, return furnished, or account or documents produced in accordance with this Act, or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act other than proceedings before a Criminal

Court, or in any record of any proceedings under this Act, shall, save as provided in sub-section (3), be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any public servant to produce before it any such statement, return, accounts, documents or record or any part thereof, or to give evidence before it in respect thereof.

- (2) If, save as provided in sub-section (3), a public servant discloses any of the particulars referred to in sub-section (1) he shall be punishable with imprisonment for a term which may extend to six months, and shall also be liable to fine:

Provided that it shall be a defence for the accused to prove that such disclosure was made before this Act came into force.

- (3) Nothing in this section shall apply to the disclosure of any of the particulars referred to in sub-section (1) for the purpose —
- (a) of a prosecution under the Indian Penal Code, 1860, or the Prevention of Corruption Act, 1947 in respect of any such statement, return, accounts, document or evidence;
  - (b) of a prosecution under this Act;
  - (c) of assessment to an officer of the Central Government as may be necessary for the purpose of enabling the Central Government to levy or realise any income-tax imposed by it;
  - (d) of assessment to any officer of the State Government as may be necessary for the purpose of enabling such Officer to levy or realise any tax imposed by the State Government ;or
  - (e) of audit of receipt or refunds under this Act by any officer appointed by the Controller and Auditor General of India for such purpose.

**Amendments:** In sub-section (3), clause (e) has been inserted w.e.f. 18-4-984 by Assam Act No. X of 1984.

## 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]**

## CHAPTER VI

### REFUND

**39. Refund.** (1) The Superintendent of Taxes or Agricultural Income tax Officer shall, in the prescribed manner, refund to an assessee any sum paid by such assessee in excess of the sum due from him under this Act, either by cash payment or at the option of the assessee by set-off against the sum due from him in respect of any other assessment year.

See: Rule 24 to 26 & 28

- (2) If for reasons of delay a refund due to an assessee is not made within ninety days of such refund being due, the State Government shall pay to such assessee simple interest at the rate of twelve percent per annum on the amount refundable.
- (3) Refund under this Act shall be deemed to be due —
- (a) in cases where the tax assessed has been reduced on appeal or revision, etc., from the date the order of the appellate or revisional authority comes to the knowledge of the assessing authority;
  - (b) in other cases, on the date an application for refund is made by the party claiming the refund or the date on which assessment is made, whichever is later.

**Amendments :** The words "twelve percent per annum" have been substituted in place of "six percent per annum" w.e.f. 1-4-1999 (effective from assessment Year 19-2000) by Assam Act No. XIII of 1999.

**Amendment:** In the principal Act, in section 39, in sub-section (3), in clause (b), the words and punctuation mark "or the date on which assessment is made, whichever is later" has been inserted vide notification no.LGL.61/2009/20 Dtd. 4-01-2010, published in the Assam Gazette Extraordinary No.3 Dtd.4-01-2010.

**39A. Remission.** The State Government, for reasons to be recorded in writing, may remit the whole or part of the amount of the tax, interest or payable in respect of any year by any assessee who has suffered heavy loss due to any calamity.

#### Amendments

Originally this section was numbered as section 39B. By Assam Act No. XIII of 1999 w.e.f. 1-4 -1999 (effective from assessment year 1999-2000) Section 39A was deleted and this section was renumbered as 39A.

Section 39A, prior to its omission, stood as under:

*'39A. Grant of rebate. - The Government may grant a rebate of one percentum the tax subject to such conditions, as may be prescribed'.*

## CHAPTER VII

### OFFENCES AND PENALTIES

**40. False statement in declaration.** If any person makes a statement in verification mentioned in section 19, 24, 26 or 27 which is false and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code (XLV of 1860).

**41. Failure to furnish return or to supply information.** If any person falls, without reasonable cause or excuse, to furnish in due time any of the returns mentioned in section 19 or section 34, he shall be punishable with fine which may extend to five rupees for every day during which the default continues.

**42. Prosecution to be at the instance of the Assistant Commissioner.** (1) A person shall not be proceeded against for an offence under section 40 or 41 except at the instance of the deputy Commissioner of Taxes, or when there is no Deputy Commissioner of Taxes the Assistant Commissioner of Taxes empowered by the Commissioner of Taxes, in this behalf.

- (2) Before instituting proceedings against any person under sub section (1) the Deputy Commissioner of Taxes, or when there is no Deputy Commissioner of Taxes, the Assistant commissioner of Taxes empowered by the Commissioner Taxes in this behalf, shall call upon such person to show cause why proceeding should not be instituted against
- (3) The Deputy Commissioner of Taxes, or when there is no Deputy Commissioner of Taxes, the Assistant Commissioner of Taxes empowered by the Commissioner of Taxes in this behalf, may stay any such proceedings or compound any offence.

**CHAPTER VIII**  
**MISCELLANEOUS**

**43. Place of assessment.** (1) An assessee shall, subject to any orders passed under sub-section (2), be assessed by the Superintendent of Taxes or Agricultural Income-tax Officer of the area in which is situated the land from which the greater part of the agricultural come, in respect of which he is assessed, is derived.

(2) (a) An assessee may, on receipt of the first notice served on him under sub-section (2) of section 19, apply Superintendent of Taxes or Agricultural Income-tax officer by whom such notice is served to be assessee his usual place of residence or at the place where accounts relating to his agricultural income are kept, if either of such places is situated in the State of Assam and such Superintendent of Taxes or Agricultural Income tax Officer may pass an order that the assessee shall be assessed at the place specified in the application, the place being situated in the State of Assam, or refer matter to the Deputy Commissioner of Taxes, or where there is no Deputy Commissioner of Taxes, the Assistant Commissioner of Taxes empowered by the Commissioner of Taxes, in this behalf, whose decision shall be final.

(b) Where an order is passed under clause (a) of sub-section (2), the assessee shall not be entitled to make any further application to change his place of assessment :

Provided that the Superintendent of Taxes or cultural Income-tax Officer may allow the assessee to be assessed at any other place upon conditions as thinks fit.

(3) Notwithstanding anything contained in this section, every Superintendent of Taxes or Agricultural Income-tax Officer shall have all the powers conferred by or under this Act on the Superintendent of Taxes or Agricultural Income-tax Officer in respect of any agricultural income derived from land, situated within the area to which he is appointed.

**44. Bar of suits in Civil Courts.** No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of Government for anything in good faith done or intended to be done under this Act.

**45. Computation of period of limitation.** In computing the period of limitation prescribed for any appeal under this Act, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

**46. Appearance by authorised representative.** Any assessee, who is entitled or

required to attend before any income-tax authority in connection with any proceeding under this Act, may except when required under section 33 to attend personally for examination on oath or affirmation attend either in person or by any person duly authorised by him in writing in this behalf.

**47. Receipts to be given.** A receipt shall be given for any money paid or recovered under this Act.

**47A. Tax clearance certificate.** Every assessee engaged in the cultivation, manufacture and sale of tea shall obtain a tax clearance certificate from the concerned assessing officer who shall certify that the assessee has either paid or has made satisfactory provision for all his existing liabilities or has no liability to pay tax under this Act and such certificate shall be produced by the owner or person in charge of the goods vehicle before the officer in charge of the checkpost set up under the provisions of the Assam General Sales Tax Act, 1993, while carrying tea across the checkpost.

**48. Indemnity.** Every person deducting, retaining or paying any tax in pursuance of this Act in respect of any income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

**49. Power of taxing authorities to call for papers or documents.** -Nothing in this Act shall be deemed to authorise any of the taxing authorities mentioned in section 18 to call for any papers or documents for the purpose of ascertaining agricultural income or for any other purpose under this Act, except the papers noted below:

- (1) papers showing the amount of rent which accrued due in the previous year;
- (2) papers showing the actual receipt of agricultural income by an assessee in the previous year;
- (3) ledgers, account books and vouchers showing the actual expenditure incurred for which a deduction or exemption is claimed under this Act:

Provided that for the purposes of ascertaining agriculture income in regard to tea, the aforesaid taxing authorities may call for any papers produced or liable to be produced before the taxing authorities administering the Income-tax Act 1961 (43 to 1961).

**49 A. Delegation of powers.** The Commissioner of Taxes may delegate by notification in the Official Gazette, any of his powers under section 27 to any authority not below the rank of Joint Commissioner of Taxes.

**50. Power to make rules.** (1) The State Government may, subject to previous publication, make rules for carrying out the purposes of this Act, and such rules may be made for the whole of the State or such part or parts thereof as may be specified:

Provided that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, if any, it may make any rules without such previous publication:

Provided further that any rule under this Act may be made so as to have the retrospective effect.

**Amendment:** *In the principal Act, in section 50, the provisos has been inserted vide Notification no. LGL.61/2009/31 Dated 7<sup>th</sup> September 2010 published in the Assam Gazette Extraordinary No. 61 Dated 7<sup>th</sup> September 2010.*

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may —

- (a) prescribe the manner in which the net income from land referred to in sub-section (1) of section 8 shall be calculated;
- (b) prescribe the powers and duties of the authorities appointed under sub-section (2) of section 18, the relation of such authorities to each other and the conditions of service of such authorities;
- (c) prescribe the form and the manner in which the return under, subsection (1) of section 19 shall be submitted and verified and the particulars to be set forth in such return;
- (d) prescribe the form and manner in which the return under the sub-section (2) of section 19 shall be submitted and verified and the particulars to be set forth in such return;
- (e) prescribe the form of the notice of demand mentioned in section 23;
- (f) prescribe the form in which appeals under sect: shall be presented and the manner in which they shall be verified;
- (g) prescribe the fees for reference, revision, appeal petitions, supply of certified copies of the orders and matters;
- (h) prescribe the form of the notice of demand mentioned in sub-section (3) of section 31;
- (i) prescribe the method by which the assessment of agricultural income as determined under section 7 or section 8 shall be

made in the case of an assessee who does not reside in the State of Assam, or of an as who ordinarily resides in the State of Assam, and is temporarily absent therefrom;

- (j) prescribe the manner in which the tax shall be payable where the assessment is made on the agricultural income of a Hindu undivided or joint family and a partition of the property of such family has been effected: after the date of such assessment;
  - (k) prescribe the manner in which the tax payable by assessee who has died since the date of the assessment made on him shall be payable;
  - (l) provide for the circumstances in which refunds of the tax paid under this Act shall be made and prescribe manner in which such refunds shall be made; and
  - (m) provide for any other matter which by this Act has to be or may be prescribed.
- (3) The State Government shall cause every rule made under this Act and every notification issued under this Act to be laid, as soon as may be, after it is published before the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions in which it is so laid or the sessions immediately following, and if the State Legislature agrees in making any modification in the rule or notification or that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

**Amendment:** *In the principal Act, in section 50, after sub-section (2) a new sub-section (3) has been inserted vide Notification no. LGL.61/2009/31 Dated 7<sup>th</sup> September 2010 published in the Assam Gazette Extraordinary No. 61 Dated 7<sup>th</sup> September 2010.*

**51. Power to remove difficulties.** If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, do anything not inconsistent with such provisions which appear it to be necessary or expedient for the purpose of removing the difficulty.

**52. Saving.** Notwithstanding anything contained in this Act, the provisions of the earlier laws with rules and notifications in respect of submission of return, levy of of interest and payment of tax and interest relating to the earlier

financial years upto the end of the financial year 1994-95 shall be deemed to be in force as if this Act had not been passed.