

## **Kerala Agricultural Income Tax Act, 1991**

**15 of 1991**

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### **Kerala Agricultural Income Tax Act, 1991**

#### **15 of 1991**

An Act to provide for the levy of tax on Agricultural Income in the State of KERALA. Preamble.- WHEREAS it is expedient to provide for the levy of tax on Agricultural Income in the State of Kerala; Be it enacted in the Forty-second Year of the Republic of India as follows: -

#### **CHAPTER 1 PRELIMINARY**

##### **1. Short Title, Extent And Commencement :-**

- (1) This Act may be called the Kerala Agricultural Income Tax Act, 1991.
- (2) It extends to the whole of the State of Kerala.
- (3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

##### **2. Definitions :-**

In this Act unless the context otherwise requires,

- (1) "agricultural income" means-

- (a) any rent or revenue derived from land Which is used for agricultural purposes;
  - (b) 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);
  - (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on: Provided that-
    - (i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and
    - (ii) the land is either assessed to land revenue or is subject to a local rate assessed and collected by officers of the Government as such or, where the land is not so assessed to land revenue or subject to a local rate it is not situated-
      - (A) in any area, which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area Committee, town area Committee, town Committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or
      - (B) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (A), as may be specified by the Central Government under the proviso to sub-clause (c) of clause (1) of Section 2 of the Income Tax Act, 1961 (Central Act 43 of 1961);
- (2) "Agricultural Income tax" means the tax payable under this Act;
- (3) "Agricultural Income tax Inspector" means a person appointed to be an Agricultural Income tax Inspector under section 24; (4)

"Agricultural Income tax Officer" means a person empowered as Agricultural Income tax Officer under section 24;

(5) "Deputy Commissioner (Appeals)" means a person appointed to be a Deputy Commissioner (Appeals) of Agricultural Income tax under section 24;

(6) "Appellate Tribunal" means the Appellate Tribunal appointed under section 73;

(7) "assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes:

(i) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person; or of the amount of refund due to him or to such other person;

(ii) every person who owns or possesses any land in which any crop is grown, the agricultural income of which is liable to tax under the provisions of this Act either on his own account or on account of others;

(iii) every person who is deemed to be an assessee under any provision of this Act;

(iv) every person who is deemed to be an assessee in default under any provision of this Act;

(8) "assessment" includes reassessment;

(9) "assessment year" means the period of twelve months commencing on the 1st day of April every year;

(10) "Board of Revenue" means the Board of Revenue constituted under the Kerala Board of Revenue Act, 1957 (7 of 1957);

(11) "Collector" means the Collector or other officer appointed by the Government by name or by virtue of his office to exercise the powers and perform the functions of a Collector under the Kerala Revenue Recovery Act, 1968;

(12) "Commissioner" means the person appointed to be the Commissioner of Agricultural Income tax under Section 24 and includes any other officer authorised by the Government to exercise the powers and perform the functions of the Commissioner under this Act,

(13) "Company" means a domestic company or a foreign company;

(14) "Domestic company" means a company formed and registered under the Companies Act, 1956 (Central Act 1 of 1956) and includes a company formed and registered under any law relating to companies formerly in force in any part of India and having its registered office in India, and any Corporation or Board formed by

or under Central or any State enactment;

(15) "Deputy Commissioner" means a person appointed to be a Deputy Commissioner of Agricultural Income tax under Section 24;

(16) "Firm", "Partner" and "Partnership" have the same meanings respective assigned to them in the Indian Partnership Act, 1932 (Central Act IX of 1932), but the expression "Partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership;

(17) "Foreign Company" means a foreign company within the meaning of Section 591 of the Companies Act, 1956 (Central Act 1 of 1956) and includes any foreign association whether incorporated or not, which the Government may, by general or special order, declare to be a foreign company for the purposes of the Act;

(18) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Agricultural Income tax under Section 24;

(19) "Legal representative" has the meaning assigned to it in clause (11) of Section 2 of the Code of Civil Procedure, 1908 (Central Act V of 1908);

(20) "Person" means any individual or association of individuals owning, possessing or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner, possessor, trustee, receiver, common manager, administrator or executor or in any capacity and includes a firm or a company, an association of individuals, whether incorporated or not, and any institution capable of holding property;

(21) "prescribed" means prescribed by rules made under this Act;

(22) "previous year" means the financial year immediately preceding the assessment year;

Provided that in the case of a person who newly derives agricultural income during the financial year, the previous year shall be the date from which the agricultural income is newly received and ending with the 31st day of March following:

Provided further that the previous year in relation to the assessment year commencing on the 1st day of April, 1991 shall be the period which begins with the date immediately following the last day of the previous year relevant to the assessment year commencing on the 1st day of April, 1990 and ending with the 31st day of March, 1991.

Provided also that in the case of an assessee coming under the second proviso where such period exceeds twelve months, the tax shall be calculated on the total agricultural income at the average

rate of tax applicable to the total agricultural income for the twelve months ending on the 31st day of March 1991, Provided also that when the previous year exceeds a period of twelve months or less than twelve months the prorata depreciation shall be allowed for such period.

(23) "Principal Officer," used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals means:-

(a) the secretary, treasurer, manager, agent or officer of the local authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Agricultural Income Tax Officer has served notice of his intention of treating him as the principal officer thereof;(23a) "Settlement Commission" means the Settlement Commission appointed under section 74A;

(24) "tax" means Agricultural Income Tax payable under this Act;

(25) "tenants-in-common" means two or more persons owning or managing property jointly, having therein equal or un-equal shares either by the same or different titles or by interstate succession;

(26) "total agricultural income" means the aggregate of all agricultural income mentioned in section 4 and computed in accordance with the provisions of this Act;

## **CHAPTER 2 CHARGE OF AGRICULTURAL INCOME TAX**

### **3. Charge Of Agricultural Income Tax :-**

(1) Tax at the rate or rates specified in the Schedule to this Act 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 no tax is payable by any person other than a company or a firm where the total extent of landed properties, the agricultural income from which is assessable at his hands under the provisions of this Act do not exceed five hectares.

### **4. Total Agricultural Income :-**

(1) Subject to the provisions of this Act, the total agricultural income of the previous year of any person comprises of all agricultural income derived from land situated within the State and received by him within or outside the State, but does not include, -



(a) any agricultural income derived from land situated outside the State.

(b) any agricultural income derived by cultivation of paddy, tapioca, plantain, ginger, ragi, pulses, sesamum, vegetable, sweet potato, tubers, sugarcane, jack, mango, pineapple, orchid, or other flowers, vanilla, turmeric and guava,

(c) share income received by a partner from any firm on which tax has been paid by the firm.

(2) The following income shall be deemed to be agricultural income received in the previous year, namely: -

(i) any amount received in the previous year from the Indian Coffee Board in respect of Coffee delivered in any year for sale in pool auction, excluding any amount on which tax was levied in any previous year;

(ii) where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or liability incurred by the assessee; and where the assessee has obtained either in cash or in any other manner any amount in respect of such loss, expenditure or some benefit in respect of such liability during the previous year the amount obtained by him or the value of benefit accrued to him;

(iii) any amount received in the previous year in respect of bad debts written off in any Previous year regarding which deduction under clause (j) of section 5 has been allowed.

### **CHAPTER 3 COMPUTATION OF AGRICULTURAL INCOME**

#### **5. Computation Of Agricultural Income :-**

The agricultural income of a person shall be computed after making the following deductions, namely: -

(a) (i) any sum paid in the previous year on account of land revenue or any tax in lieu thereof due to the Government;

(ii) local rates and cess and municipal taxes in respect of the land from which the agriculture income is derived;

(b) any rent paid in the previous year in respect of the land from which the agricultural income is derived;

(c) any expense incurred in the previous year on the maintenance of any irrigation or protective work constructed for the benefit of the land from which the agricultural income is derived.

Explanation: -"Maintenance" includes repairs and all such work, as may be necessary from year to year for repairing any damage or destruction caused to protective dykes and embankments by flood or other natural causes;

- (d) any expenses incurred in the previous year on repairs in respect of any capital asset which was purchased or constructed for the benefit of the land from which agricultural income is derived;
- (e) any interest paid in the previous year on any amount borrowed and actually spent on any capital expenditure incurred for the benefit of the land from which the agricultural income is derived;
- (f) any interest paid in the previous year on any debt, whether secured or not incurred for the purposes of acquiring the land from which the agricultural income is derived;
- (g) any interest paid in the previous year in respect of agricultural loans taken and expended on the land from which agricultural income is derived;
- (h) any interest paid on any amount borrowed and actually spent for the purpose of reclaiming, improving or cultivating the property from which agricultural income is derived;
- (i) any sum paid to an employee as bonus or commission for services rendered for deriving agricultural income where such sum would not have been payable to him as profit or dividend, if it had not been paid as bonus or commission: Provided that the deduction in respect of bonus paid to an employee employed in factory or other establishment to which the provisions of the Payment of Bonus Act, 1965 (Central Act 21 of 1965), apply, shall not exceed the amount of bonus payable under that Act: Provided further that the amount of bonus (not being bonus referred to in the preceding proviso) or commission is reasonable with reference to:-
  - (i) the pay of the employee and the conditions of his service;
  - (ii) the profits for the previous year in question; and
  - (iii) the general practice prevalent in similar cases ;
- (j) the amount of any debt or part thereof, which is proved to have become a bad debt in the previous year, subject to the following conditions, namely:-
  - (1) no such deduction shall be allowed unless such debt or part thereof-
    - (i) has been taken into account in computing the agricultural income of the assessee of that previous year; or of an earlier previous year; and
    - (ii) has been written off as irrecoverable in the accounts of the assessee for that previous year;
  - (2) any such debt or part thereof may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year not falling beyond a period of four years immediately preceding the previous year, but the Agricultural income tax

Officer, had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year:

Provided that any amount received in respect of bad debts written off in any year shall be deemed to be agricultural income of the year in which it is received and shall be liable to tax;

(k) any sum paid during the previous year to an employee as gratuity in accordance with the provision of the payment of Gratuity Act, 1972 (Central Act 39 of 1972) less such amount if any claimed in any previous year towards provision for gratuity in respect of such employee;

(l) any expenditure not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of deriving the agricultural income;

(m) such other deductions including replantations allowance, subject to such limits, conditions or restrictions as may be prescribed generally or in particular cases;

(n) in the case of agricultural income derived from land referred to in sub-clause (a) of clause (1) of Section 2-

(i) any expenses incurred in the previous year in the collection of agricultural income;

(ii) any expenses incurred in the previous year on account of repairs in respect of any capital asset used in connection with the collection of rent due in respect of the land from which the agricultural Income is derived;

(o) in the case of agricultural income referred to in sub-clause (b) of clause (1) of Section 2-

(i) the expenses other than capital expenditure, incurred in the previous year for cultivating the crop from which the agricultural income is derived and for transporting such crop to market including the, maintenance of agricultural implements and cattle required for such cultivation and transport or both;

(ii) any tax, cess or rate paid on the cultivation or sale of the crop from which such agricultural income is derived;

(iii) the cost incurred in the previous year in the purchase or replacement cattle or implements, which are necessary for cultivation, to such extent, as may be prescribed, less the amount realised by sale of the cattle or implements replaced or their estimated value;

(iv) any sum paid in the previous year in order to effect:-

(1) an insurance against loss or damage of crops or property from which the agricultural income is derived or an insurance against loss or damage in respect of building machinery, plant and furniture

necessary for the purpose of deriving agricultural income;

(2) emergency risk insurance, workmens compensation insurance, money in transit insurance, case in safe insurance, consequential loss of profit insurance or personal accidents insurance for the purpose of deriving agricultural income;

(v) any expenses incurred in the previous year on the maintenance of any capital asset if such maintenance is required for the purpose of deriving the agricultural income:

Provided that no deduction shall be made under this Section if it has already been made in the assessment under the income Tax Act, 1961 (Central Act 43 of 1961);

(p) Nothing contained in this Section shall be deemed to entitle a person deriving agricultural income to deduction of any expenditure laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income is derived during the previous year.

Explanation I. - For the purpose of this section paid means actually paid or incurred according to the method of accounting, on the basis of which agricultural income is computed under this section;

Explanation II. - In the case of any deduction towards gratuity or bonus, the deduction shall be allowed in the year in which actual payment is made to the employee or to any fund recognised in this behalf by the Government irrespective of the method of accounting employed less any deduction already allowed in the previous year or years in respect of the employee. 7Gratuity and bonus paid before the submission of return will be allowed as deduction in the previous year to which the return relates.

## **6. Amounts Not Deductible :-**

Notwithstanding anything contained in Section 5, the following amounts shall not be deducted in computing the agricultural income-

(a) any sum paid on account of any rate or tax levied on the agricultural income;

(b) any sum by way of interest, salary, bonus, commission or remuneration paid by the firm to any of its partners;

(c) in the case of any private limited company, any expenditure incurred which results directly or indirectly in the provisions of any remuneration, or benefit or amenity or perquisite to an employee, if in the opinion of the Agricultural Income Tax Officer any expenditure or allowance is excessive or unreasonable, having regard to the legitimate needs of the company for deriving

agricultural Income and the benefit derived by or accruing to it therefrom;

(d) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person and the Agricultural Income Tax Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the services or facilities for which the payment is made, so much of the expenditure as is considered by him to be excessive or unreasonable.

## **7. Depreciation And Investment Allowance :-**

(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used by him for the purpose of deriving the agricultural income the following deductions shall subject to the conditions hereinafter provided be allowed: -

(i) such percentage on the written down value of the building, machinery, plant or furniture, as may, in any case or class of cases be prescribed;

(ii) where the building has been newly erected or the machinery or plant has been newly installed, a further sum subject to such conditions as may be prescribed:

Provided that if the building erected or machinery or plant installed, was not put to use in the year of erection or installation, the further deduction under this clause shall be allowed in the year in which such assets were first put to use:

Provided further that the above deductions shall be allowed only if the prescribed particulars have been furnished and the aggregate of all such allowances shall, in no case exceed the original cost to the assessee, of the buildings, machinery, plant or furniture; as the case may be. Explanation: -I. "Plant" includes vehicles and scientific apparatus.

II. "Written down value" means-

(i) in the case of assets acquired in the previous year, the actual cost to the assessee;

(ii) in the case of assets acquired as replacement of the old one, the value realised on the sale of the old asset shall be deducted from the value of the asset acquired; and

(iii) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciations actually allowed to him under this Act or under the Agricultural Income Tax Act, 1950.

III. Machinery, plant or furniture obtained by the assessee under

hire purchase agreement shall be deemed to be assets owned by the assessee.

(2) For assets acquired under the hire purchase system, the depreciation including the initial depreciation provided under subsection (1) shall in no case exceed the installments paid to the seller under the hire purchase system.

(3) In the case of assets partly used for agricultural purposes and partly for non-agricultural purposes, the Agricultural Income Tax Officer may allow depreciation in proportion to the use of the asset for agricultural purposes, as he may determine.

(4) No deduction under this section shall be made in respect of any asset if any depreciation on the asset is claimed and allowed under the Income Tax Act, 1961 (Central Act 43 of 1961).

(5) In respect of a machinery or plant specified by the Government by notification in the Gazette which is owned by the assessee and is wholly used by him for the purpose of deriving agricultural income there shall be allowed a deduction, in respect of, the previous year, in which the machinery or plant is first put to use, a sum by way of investment allowance equal to ten per cent of the actual cost to the assessee of the machinery or plant:

Provided that- (a) the machinery or plant is a new machinery or plant acquired by the assessee;

(b) the particulars specified in the notification by the Government have been duly furnished by the assessee: Provided further that no deduction shall be allowed under this sub-section in respect of-

(a) any machinery or plant installed in any office premises or accommodation including any accommodation in the nature of a Guest House;

(b) any office appliances or road transport vehicles: Provided also that if the machinery or plant in respect of which investment allowance is made under this sub-section is sold or otherwise transferred by the assessee to any person at any time before the expiry of five years from the end of the previous year in which it was first put to use whether during the continuation of agricultural operation or after the cessation thereof, the investment allowance made in respect of such machinery or plant shall be treated as the income of the assessee for the previous year in which such machinery or plant is sold or otherwise transferred.

## **8. Income Forming Part Of The Total Agricultural Income On Which No Tax Is Payable :-**

Tax shall not be payable by an assessee who is a member Of an

association of persons or a body of individuals on that portion of the amount which he is entitled to receive from the association or body of individuals on which tax has already been paid by the association or body of individuals.

## **9. Rebate And Deduction Allowed :-**

(1) In the case of an assessee being an individual, association of persons, body of individuals or firm, while computing the amount of agricultural income tax on the total agricultural income chargeable for an assessment year, there shall be allowed as rebate from the amount of agricultural income tax (as computed before allowing deductions under this section) twenty per cent of the following subscription or contribution namely: -

(i) any sum paid in the previous year by the assessee out of his agricultural income towards life Insurance Premia or National Savings Certificate or National Savings Scheme or any other fund or scheme approved by the Government in this behalf and on such conditions as may be prescribed-

(a) to effect or to keep in force an insurance, on the life of the assessee or on the life of the spouse or any child of the assessee or deposited in the name of these persons where the assessee is an individual;

(b) to effect or keep in force a contract for a deferred annuity on the life of the assessee or on the life of the spouse or any child of the assessee or deposited in the name of any of these persons where the assessee is an individual;

(c) to effect or keep in force an insurance on the life of any partner or deposited in the name of any partner of any firm or member of any association of persons where the assessee is a firm or association of Persons. Provided that the total rebate under this sub-section shall be limited to ten thousand rupees:

Provided further that nothing contained in this sub-section shall be deemed to entitle a person who is assessed to income tax under the Income Tax Act, 1961 (Central Act 43 of 1961) to claim any deduction in respect of any sum referred in this sub-section if such claim is an admissible rebate or deduction under the provisions of that Act.

(2) In computing the total agricultural income of a person there shall be deducted from his agricultural income any sum not exceeding one sixth of the total agricultural, income of the assessee twenty thousand rupees whichever is less, paid by him in the

previous year out of his agricultural income as donation to a trust, institution or a fund established for charitable purposes and notified by the Government in this behalf in the Gazette.

(3) In computing the total agricultural income of a person there shall be deducted from his agricultural income any sum not exceeding 20 percent of the total agriculture income of such assessee deposited by him in the previous year out of his agricultural income in the Fund established under the Investment Deposit Scheme intended to rejuvenate and modernise plantations notified by the Government in this behalf subject to the conditions that,

(i) the replantation or infilling allowance admissible for the year and subsequent years under the rules shall be set off against such amount deposited under the scheme until it is fully so set off,

(ii) withdrawals from the deposit shall for investment in landed property in accordance with the scheme in this behalf, and

(iii) if any withdrawals from the deposit is not utilised for the purpose for which it is sanctioned it shall be treated as agricultural income of the year of the withdrawal and assessed accordingly.

Explanation. - Where the deposit under the sub-section is made on or before the due date for filing of return for the year to which the deduction relates, the deposit shall be deemed to have been made during the previous year.

(4) In computing the total Agriculture income of a company engaged in plantation business, which has invested any amount in the equity of a company registered under the Companies Act, 1956 (Central Act 1 of 1956) which establishes new industrial undertakings within the state out of its Agriculture Income in the previous year, there shall be deduced a sum not exceeding fifty per cent of the amount so invested, which shall not exceed the total Agriculture income in the previous year of that Company, computed without deduction provided under this sub-section or rupees one crore whichever is less, provided-

(i) such investment is not in plantation industry or agricultural activities ancillary there to which is directly a down stream industry of the produce of the plantation;

(ii) the amount invested is fully utilised within the State within a period of three years from the date of investment or before the commencement of commercial production of such industrial undertaking, whichever is earlier; and

(iii) there is no transfer of investment within a period of five years of such investment.



Explanation. - For the purpose of this sub-section, "new industrial undertaking" means an undertaking formed to carry on the business of manufacture of goods but shall not include such industries notified by the Government, from time to time, and shall continue to be so until the expiry of a period of five years from the year in which a deduction under this sub-section is first claimed or the commencement of commercial production, whichever is earlier.

(5) For the removal of doubt it is hereby clarified that no deduction under sub-section (4) shall be made where the new industrial undertaking is formed by splitting up, or reconstruction of an industrial undertaking already in existence, or by transfer of any machinery, plant or other assets already used for any purpose in the State.

(6) If the investment in respect of which deduction is made under subsection (4) is not utilised within the state as provided therein or is sold or transferred within a period of five years from the date of such investment, the deduction made in respect thereof shall be deemed to be the agriculture income derived by the company during the year in the period of three years from the date of investment is expired or, as the case may be, during the year in which the state of transfer takes place and agriculture income shall be computed accordingly.

#### **10. Assessment Of Income Derived From Lands Partly Within The State And Partly Without The State :-**

Where the agricultural income is derived from lands situated partly within the State and partly without the State, agricultural income tax shall be levied under this Act-

(i) where the portion of such income attributable to the lands situated within the State can be determined from the accounts maintained by the assessee, on the portion so determined;

(ii) where the portion of the income so attributable cannot be determined under clause (i), on such portion as may be determined by the Agricultural Income Tax Officer in the prescribed manner.

#### **11. Omitted :-**

#### **12. Carrying Forward Of Loss :-**

Where any person sustains a loss as a result of computation of agricultural income any year, the loss shall be carried forward to the following year and set off against the agricultural income of that year and if it cannot be wholly 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 eight years.

#### **CHAPTER 4 COMPOSITION OF AGRICULTURAL INCOME TAX**

##### **13. Composition Of Agricultural Income Tax :-**

(1) Notwithstanding, anything contained in this Act, any person who holds landed property within the State extending to not more than five hundred hectares and deriving agricultural income may apply to the Agricultural Income Tax Officer for permission to compound the agricultural income tax payable by him and to pay in lieu thereof a lump sum at the rates specified in the Table herein under on the planted area: -

Name of Crops	First five Hectares	On the next three Hectares Rate per Hectare	On the next 5 Hectares (above 8 Hectares not exceeding 13 Hectares) Rate per Hectare	On the next 5 Hectares (above 13 Hectares not exceeding 18 Hectares) Rate per Hectare	On the remaining extent (Upto 500 Hectares Rate per Hectare
(1)	(2)	(3)	(4)	(5)	(6)
Cardamom C Zone, Cashew, Clove, Cinchona, Nutmeg, Cinnamon and all other crops not specifically included in this Table (other than Tea & Coffee)	Nil	300	450	800	1400
Pepper	Nil	400	600	1000	1750
Coconut, Rubber, Cocoa	Nil	500	1000	1700	2500
Cardamom B Zone	Nil	550	1000	2000	2800
Cardamom A Zone	Nil	750	1200	2700	3500
Arecanut	Nil	750	1200	2700	3500
Tea	Nil	350	500	900	1500
Coffee	Nil	700	1000	1800	3000

Explanation: -

(i) Cardamom A Zone means Village of Kattapana Anavilasam, Anakkara, Ayyappancoil, Chakkupallom, and Vandanmedu of Udumbanchola Taluk, Villages of Elappara, Vagamon, Upputhara, Peerumade, Mlappara, Periyar, Manjumala, Kumili of Peermade Taluk and Nelliampathi Village of Chittur Taluk where cardamom is grown;

(ii) Cardamom B Zone means the areas in the Villages of Santhanpara, Rajakkad,

Bison Valley, Upputhode, Kalkoonthal, Parathode and Kanithippara of Udumbanchola Taluk and Mananthody, Sultan Bathery and Vythiri Taluks where cardamom is grown;

(iii) Cardamom C Zone means the areas other than the areas in A Zone and B Zone where cardamom is grown. Provided that no tax under this section shall be payable on any landed property exclusively cultivated with the crops mentioned in clause (b) of sub-section (1) of section 4 and such Property shall not be taken into account for the purpose of this section: Provided also that when the tax payable under this section exceeds eighty-five per cent of the agricultural income derived during the previous year, the tax payable shall be limited to eighty five per cent of the agricultural income derived during that previous year: Provided also that no tax shall be payable on the replanted area till the plants in this area start yielding.

(2) When, there is any change in the extent of land during the previous year the maximum extent of land held for not less than one hundred and eighty days during the previous year shall be deemed to be the extent of land held during the previous year for the purposes of levy of tax under this section.

(3) Every application under sub-section (1) shall be submitted in such form, in such manner and within such time as may be prescribed.

(4) The Agricultural Income Tax Officer may, after satisfying himself that the particulars specified in the application are correct, by order in writing, grant the permission.

(5) The permission granted to any person under sub-section (4) shall commence from the financial year for which such permission was granted. The permission once granted shall continue in force for a period of three years or until cancelled by the Agricultural Income Tax Officer on the ground that the person is not eligible for composition in accordance with the provisions of this section whichever is earlier.

(6) When any person who has been permitted to pay under subsection (1) re-opts to pay tax in accordance with Section 3 notwithstanding anything contained in any other provisions of this Act, shall be assessed as if it were a new assessment and shall not be eligible to carry forward any loss incurred in any of the previous years or any depreciation.

(7) Any trust or institution created for charitable or religious purposes and registered as such in the manner provided in Section 16 may opt to pay tax in accordance with the provisions of this section, irrespective of the extent of holdings and for the extent above five hundred hectares the rate shown in column (6) of the table shall apply.

(8) The levy of tax under this section on the fraction of a hectare shall be made proportionately and the tax payable shall be rounded to the nearest ten rupees or multiple of ten rupees.

(9) The provisions of this section shall not apply to any company formed on or after the 1st day of April, 1999 by splitting up of a company holding extent more than five hundred hectares of land used for agriculture purposes.

(10) Notwithstanding anything contained in the Kerala Plantation Tax Act, 1960 (Act 17 of 1960), any person who is permitted to pay tax in accordance with the provisions of this section shall be exempted from payment of plantation tax under the provisions of the said Act during the period of such permission.

Explanation: - (1) In the case of landed properties cultivated with more than one crop, the extent for the purpose of this section, shall be determined on the basis of the principal crop planted and in case more than one crop occupies the position of the principal crop or where the principal crop cannot be easily determined the extent shall be determined on the basis of the crop having higher incidence of tax, as if that crop occupies the whole area.

(2) When the landed property is cultivated with crops mentioned in clause (b) of sub-section (1) of section 4, along with other crops, such landed properties shall be deemed to be planted with such other crops.

(3) When any person is having cultivation in more than one crop and not coming under Explanation (1) shall opt for the exemption specified in the proviso to Sub-section (1) on any one of the crops mentioned therein and tax shall be levied in accordance with that sub-section, by applying the lowest slab for crops having

lower incidence of tax and higher slabs for crops having higher incidence of tax.

#### **14. Composition In Respect Of Escaped Extent Of Land :-**

Subject to such rules as may be made in this behalf, if for any reason, any extent of land in respect of which composition is permissible under Section 13, has escaped composition or the composition has been if permitted at too low a rate or for a lesser extent, the provision of Section 41 shall apply as if it were an escape of agricultural income under the Act: Provided that the tax payable on such escapement shall be the rate which would have been charged if the extent of land had not been compounded or compounded at too low a rate or for a lesser extent when the maximum limit of extent provided in sub-section (1) of Section 13 is not exceeded.

#### **15. Relief From Double Taxation :-**

(1) Any person who is a member of an association of persons or body, of individuals is not liable to pay tax on the share of agricultural income which he received as a member of such association of persons or body of individuals on which tax was levied and paid by such association of persons or body of individuals.

(2) If any person is a member of more than one association persons or body of individuals having landed property or is deriving agricultural income, all such income received by any such person shall be included in his total agricultural income and the tax payable on such total agricultural income shall be calculated in accordance with the provisions of this Act after deducting the share of tax payable by him, as member, out of the tax levied on the agricultural income of such associations of persons or body of individuals and the balance tax, alone, if any, shall be levied from such person.

#### **16. Charitable Trusts And Institutions :-**

(1) Subject to the provisions of this Act the total agricultural income of any charitable trust does not include,

(a) any agricultural income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in the State; and, where any such income is accumulated or set apart for application to such purposes in the State, to the extent to which the income so

accumulated or set apart is not in excess of twenty-five per cent of the agricultural income from such property;

(b) any agricultural Income derived from property held under trust in part only for such purposes, to the extent to which such income is applied to such purposes in the State; and, where any such income is finally set apart for application to such purpose in the State, to the extent to which the income so set apart is not in excess of twenty-five percent of the agricultural income from such property.

Explanation: -For the purposes of clauses (a) and (b), if in the previous year, the agricultural income applied to charitable or religious purposes in the State falls short of seventy-five percent of the agricultural income derived during that year from property held under trust or; as the case may be, held under trust in part by any amount-

(i) for the reason that the whole or any part of the agricultural income has not been received during that year, or

(ii) for any other reason, then-

(a) in the case referred to in clause (i) so much of the agricultural income applied to such purposes in the State during the previous year in which the agricultural income is received or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in clause (ii) so much of the agricultural income applied to such purposes in the State during the previous year immediately following the previous year in which the agricultural income was derived as does not exceed the said amount, may, at the option of the person in receipt of the agricultural income [such option to be exercised in writing before the expiry of the time allowed under sub-section (1) or sub-section (2) of Section 35 whether fixed originally or on extension for furnishing the return of agricultural income], be deemed to be agricultural income applied to such purposes during the previous year in which the agricultural income was derived; and the agricultural income so deemed to have been applied shall not be taken into account in calculating the amount of agricultural income applied to such purposes, in the case referred to in clause (i), during the previous year in which the agricultural income is received or during the previous year immediately following, as the case may be, and, in the case referred to in clause (ii), during the previous year immediately following the previous year in which the agricultural income was derived.

(2) Where any agricultural income in respect of which an option is exercised under the Explanation to sub-section (1) is not applied to charitable or religious purposes in the State during the period referred to in clause (a) or, as the case may be in clause (b) of the said Explanation, then such income shall be deemed to be the income of the person in receipt thereof: -

(a) in the case referred to in clause (i) of the said Explanation, of the previous year immediately following the previous year in which the income was received, or

(b) in the case referred to in clause (ii) of the said Explanation, of the previous year immediately following the previous year in which the income was derived.

(3) Where seventy-five per cent of the agricultural income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in the State during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in the State, such income so accumulated or set apart shall not be included in the total agricultural income of the previous year of the person in receipt of the income provided the following conditions are complied with, namely:-

(a) such person specifies, by notice in writing given to the Agricultural Income tax Officer in the prescribed manner, the purpose for which the agricultural income is being accumulated or set apart and the period for which the agricultural income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is. -

(i) invested in any Government security as defined in , clause (2) of Section 2 of the Public Debt Act, 1944 (Central Act 18 of 1944), or in any other security which may be approved by the State Government in this behalf, or

(ii) deposited in any account with the Post Office Savings Bank including deposits made under the Post Office (Time Deposits) Rules, 1970 or a scheduled bank or a cooperative society engaged in carrying on the business of banking (including the Kerala State co-operative Agricultural and Rural Development Bank), or

(iii) deposited in an account with the Kerala Financial Corporation established under the State Financial Corporations Act, 1951 (Central Act 63 of 1951), Explanation:-For the purposes of sub-clause (ii), "Scheduled bank" means the State Bank of India constituted under the State India Act, 1955, a subsidiary bank as

defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 or any other bank, being a bank included in the second schedule to the Reserve Bank of India Act, 1934.

(4) Any Agricultural income referred to in sub-section (3) which,

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested in any security referred to in subclause (i) or deposited in any account referred to in sub-clause (ii) or sub-clause (iii) of clause (b) of that sub-section, or

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in sub-clause (a) of that sub-section or in the year immediately following the expiry thereof, shall be deemed to be the agricultural income of such person of the previous year in which it is so applied or cease, to be so accumulated or set apart or ceases to remain so invested or deposited, or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(5) Notwithstanding anything contained in sub-section (4) where, due to circumstances beyond the control of the person in receipt of the agricultural income, any such income invested or deposited in accordance with the provisions of clause (b) of sub-section (3) cannot be applied for the purpose for which it was accumulated or set apart, the Agricultural Income tax Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in the State as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub section (4) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the Agricultural Income tax Officer under clause (a) of sub-section (3).

(6) Nothing contained in clause (a) or clause (b) of sub-section (1) shall operate so as to exclude from the total agricultural income of the previous year of the person in receipt thereof-

(a) any part of the agricultural income from the property held under trust for private religious purposes which does not ensure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable

institution, any agricultural income thereof, if the trust or institution is created or established for the benefit of any particular religious community or caste;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution any agricultural income thereof-

(i) if under the terms of the trust or the rules governing the institution any part of such income ensure; or

(ii) if any part of such income or any property of the trust or institution is during the previous year, used or applied, directly or indirectly for the benefit of any person referred to in sub-section (8).

(7) Without prejudice to the generality of the provisions of clause (c) of sub-section (6), the income or the property of the trust or institution or any part of such income or property of the trust or institution shall for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in subsection (8),-

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (8) for any period during the previous year without either adequate security or adequate Interest or both;

(b) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (8) out of the resources of the trust or institution, for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(c) if a substantial portion of the income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (8);

(d) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year in any concern in which any person referred to in sub-section (8) has a substantial interest.

(8) The persons referred to in sub-section (7) are the following namely: -

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution;

(c) any trustee of the trust or manager (by whatever it, name called) of the institution;

(d) any relative of any such author, founder, person or member as



aforesaid;

(e) any concern in which any of the person referred to in clauses (a), (b), (c) and (d) has a substantial interest.

(9) For the purposes of this section, -

(a) "Trust" means a trust created for charitable purposes and includes any other legal obligations and "relative", in relation to an individual means-

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) any lineal ascendant or descendant of the individual;

(v) any lineal ascendant or descendant of the spouse of the individual;

(vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);

(vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

(b) a trust or institution created or established for the benefit of Schedule castes, Backward Classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (6);

(c) "Charitable purposes" include relief of the poor, education, medical relief and the advancement of any other object of public utility;

(d) a person shall be deemed to have a substantial interest in a concern-

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty percent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and part by one or more of the other persons referred to in sub-section (8).

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (8) are entitled in the aggregate, at any time during the previous year to not less than twenty per cent of the profits of such concern.

(10) Any trust or institution created for charitable or religious purposes may make an application in the prescribed form and in the prescribed manner to the Deputy Commissioner of Agricultural

Income Tax within six months from the date of commencement of this Act or from the date of creation of the trust or institution, whichever is later, along with a copy of the instrument creating the trust or the bye-law of the institution as the case may be, for registration:

Provided that the Deputy Commissioner may admit an application for registration presented after the above date if he is satisfied that there was sufficient reason for not presenting an application in time.

(11) The Deputy Commissioner may, on receipt of the application if he is satisfied that the trust or the institution is created for religious or charitable purposes and not for avoiding or reducing the tax payable under this Act, may grant registration to such trust or institution:

Provided that before passing an order rejecting an application for registration the applicant shall be given an opportunity of being heard.

(12) If the Deputy Commissioner is satisfied that any trust or institution registered under this section, is not utilising the agricultural income in accordance with the provisions in the instrument or deed creating the trust or institution or otherwise tries to avoid or reduce the tax payable under this Act he may cancel the registration after giving the trust or institution a responsible opportunity of being heard.

(13) A trust or institution which is not registered in the manner provided in sub-section (10) above or the registration of which has been cancelled under this section shall be liable to tax on the total agricultural income and the provisions of this Chapter shall not apply to such trust or institution.

### **17. Power To Make Reduction In Rate Etc :-**

The Government may, by notification in the Gazette, make an exemption, reduction in rate, or other modification in respect of agricultural income tax, in favour of any class of agricultural income or in regard to the whole or any part of the agricultural income of any class of persons or any, institution created for research or for advanced learning in agriculture. Notwithstanding anything contained in this Act, the Government may, in cases where they are satisfied that owners or cultivators of land have consolidated their holdings for the purposes of beneficial enjoyment or for development of agriculture, allow such reduction in the rate of agricultural income tax payable, as may be prescribed in that

behalf.

## **CHAPTER 5** INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL AGRICULTURAL INCOME

### **18. Transfer Of Agricultural Income Where There Is No Transfer Of Assets :-**

All agricultural income arising to any person by virtue of a transfer, whether revocable or not, and whether effected before or after the commencement of this Act, shall where there is no transfer of the assets from which the agricultural income is derived be chargeable to tax, as the agricultural income of the transferor and shall be included in his total agricultural income.

### **19. Revocable Transfer Of Assets :-**

All agricultural income arising to any person by virtue of a revocable transfer of assets shall be chargeable to tax as the income of the transferor and shall be included in his total agricultural income.

### **20. Transfer Irrevocable For A Specified Period :-**

The provisions of section 19 shall not apply to any agricultural income arising to any person by virtue of a transfer by means of a trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee, provided that the transferor derives no direct or indirect benefit of such agricultural income in either case.

### **21. "Transfer" And "Revocable Transfer" Defined :-**

For the purposes of sections 18, 19, and 20 and of this section, -

(a) a transfer shall be deemed to be revocable if,-

(i) it contains any provision for the retransfer directly or indirectly of the whole or any part of the agricultural income or assets to the transferor; or

(ii) it, in any, way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the agricultural income or assets.(b) "transfer" includes any settlement, trust, covenant, agreement or arrangement.

### **22. Income Of Individual To Include Income Of Spouse, Minor Child Etc :-**

In computing the total agricultural income of any individual there shall be included all such agricultural income, as arises directly or indirectly; -

- (i) to the spouse of such Individual from the membership of the spouse in a firm carrying on agricultural operations in which such individual is a partner;
- (ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner;
- (iii) to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart;
- (iv) to a minor child, not being a married daughter of such individual from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration; and
- (v) to any person from assets transferred otherwise than for adequate consideration to the person by such individual, to the extent to which the agricultural income from such assets is for, the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both.

Explanation I: -For the purpose of clause (i) the individual, in computing whose agricultural income, the agricultural income referred to in that clause is to be included, shall be the husband or wife whose total agricultural income (excluding the agricultural income referred to in that clause) is greater.

Explanation II: -For the purpose of all clause (ii) where both the parents are members of the firm in which the minor child is a partner the agricultural income of the minor child from the partnership shall be included in the agricultural income of that parent whose total agricultural income (excluding the agricultural income referred to in that clause) is greater.

Explanation III: - Where any such agricultural income is once included in the agricultural income of either spouse or parent, any such agricultural income arising in any succeeding year shall not be included in the agricultural income of the other spouse or parent unless the Agricultural Income tax Officer is satisfied, after giving that spouse or parent, an opportunity of being heard that it is necessary so to do.

Explanation IV: -For the purpose of this sub-section adequate consideration means adequate monetary consideration.

### **23. Liability Of Person In Respect Of Agricultural Income Included In The Agricultural Income Of Another Person :-**

Where by reason of the provisions contained in this chapter, the agricultural income from any asset or from membership in a firm of a person other than the assessee is included in the total agricultural income of the assessee, the person or the firm shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be liable, on the service of notice of demand by the Agricultural income Tax Officer In this behalf, to pay that portion of the tax levied on the assessee which is attributable to the agricultural income so included, and the provisions of Chapter IX shall, so far as may be, apply accordingly: Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the agricultural income from the assets so included.

## **CHAPTER 6 AGRICULTURAL INCOME TAX AUTHORITIES- APPOINTMENT AND CONTROL**

### **24. Agricultural Income Tax Authorities :-**

(1) There shall be the following classes of Agricultural Income tax Authorities for the purposes of this Act, namely: -

- (a) The Board of Revenue,
- (b) The Commissioner of Agricultural Income tax,
- (c) Deputy Commissioners of Agricultural Income tax, (d) Deputy Commissioner (Appeals) of Agricultural Income tax,
- (e) Inspecting Assistant Commissioners of Agricultural Income tax,
- (f) Agricultural Income tax Officers, and
- (g) Agricultural Income tax Inspectors.

(2) Authorities specified in sub-section (1) shall be appointed by the Government or by any authority authorised by the Government in this behalf and such authorities shall exercise and perform throughout the State or in such areas, such powers and functions as the Government may, by notification in the Gazette, specify.

(3) The Government may, by notification in the Gazette, empower any officers other than the authorities specified in sub-section (1) to exercise such powers and perform such functions and duties under this Act in respect of such classes of persons or classes of income and in such areas, as may be specified in the notification.

(4) All the powers vested with an Agricultural Income tax Officer under this Act are also exercisable by any Inspecting Assistant Commissioner, Deputy Commissioner or Commissioner and any such act or proceedings by any of the superior authorities to the

agricultural income tax Officer shall not be questioned on the ground that the powers are exercisable only by the Agricultural Income tax Officer having jurisdiction over the area.

## **25. Instructions To Subordinate Authorities :-**

(1) The Board of Revenue or the Commissioner may from time to time, issue such orders, instructions and directions to the other Agriculture Income tax Authorities, as it he may deem fit, for the administration of the Act, and such authorities and all other persons employed in the execution of the Act shall observe and follow such orders, instructions and directions of the Board of Revenue, or the Commissioner as the case may be:

Provided that no such orders, instructions or directions shall, be issued so as to interfere with the discretion of the Deputy Commissioner (Appeals) or the Deputy Commissioner in the exercise of their appellate functions. (2) Subject to the provisions contained in sub-section (1) every Agricultural Income tax Authority employed in the execution of this Act shall observe and follow such instruction as may be issued to him for his guidance by the Board of Revenue or by any superior officer within whose jurisdiction he performs his functions.

## **26. Jurisdiction Of Agricultural Income Tax Officers :-**

(1) Subject to the provisions in sub-section (2) and to any orders passed under sub-section (3), the agricultural income of a person shall be assessed by the Agricultural Income tax Officer of the area in which is situated the greater part of the land from which the agricultural income is derived.

(2) Where an assessee has made a return under sub-section (1) of section 35 to the Agricultural Income tax Officer having jurisdiction over the assessee's place of residence or the place where any of his land is situated or where his accounts are maintained, he shall be deemed to have elected such place as his place of assessment and it shall be accepted by the officer concerned unless such officer passes an order that the assessment shall be made in any other place for reasons to be recorded in writing.

(3) (a) An assessee who has not made a return under section 35, may, before the expiry of the time allowed for the submission of the return, apply to the Agricultural Income tax Officer of the area in which the greater part of the land from which the agricultural income is derived, to be assessed at his usual place of residence or

at the place where the accounts relating to his agricultural income are kept, if either of such places, is situated in the State, and the Agricultural Income tax Officer shall refer the matter to the Commissioner whose decision thereon shall be final.

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

Provided that the Commissioner may allow the assessee to be assessed at any other place on such conditions as he may think fit.

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

(5) Where in respect of any proceedings under this Act, an agricultural income tax authority ceases to exercise jurisdiction, and is succeeded by another agricultural income tax authority, the agricultural income tax authority so succeeding shall continue the proceedings from the stage at which the proceeding was left by his predecessor:

Provided that the assessee is entitled to be heard before any order of assessment is passed against him.

(6) Any levy of tax on the agricultural income of any person by any Agricultural Income tax Officer shall not be invalid for the reason that such Agricultural Income tax Officer has no jurisdiction over the area from which the agricultural income is derived unless such person is able to show that the agricultural income was already assessed under this Act by any other Agricultural Income tax Officer.

(7) Where any Agricultural Income tax Officer has assessed any firm or Association of persons, he shall have power to assess the partner or member, of such firm or Association of the persons as the case may be, irrespective of the territorial jurisdiction to which they are subject.

## **27. Powers For Discovery, Production Of Evidence Etc :-**

(1) The Agricultural Income tax Officer, the Deputy Commissioner (Appeals), the Inspecting Assistant Commissioner, the Deputy Commissioner, the Commissioner and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Central Act V of

1908) when trying the suit in respect of the following matters, namely:-

- (a) discovery and inspection,
- (b) enforcing the attendance of any person including any officer of a banking company and examining him on oath,
- (c) compelling the production of books of accounts and other documents,
- (d) issuing commission.

(2) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period, as it thinks fit, any books of accounts or other documents produced before it in any proceeding under this Act: Provided that such authority shall not impound any books of accounts or other documents without recording its reasons for so doing:

Provided further that the Agricultural Income tax Officer shall not retain in his custody any such books of accounts for a period exceeding one hundred and eighty days and with the approval of the next superior authority, this period may be extended upto one month after the assessment for the year, to which such books of accounts or documents relate:

Provided further that the person from whom such accounts or documents are impounded is entitled to an attested copy of such accounts or documents on application.

## **28. Power To Order Production Of Accounts And Powers Of Entry, Inspection, Search, Seizure Etc :-**

(1) Any officer not below the rank of an Agricultural Income tax Officer may, for the purposes of this Act, by notice, require any assessee other than a person to whom the method of assessment under section 13 applies or any other person, who, in the opinion of such officer, is liable to pay tax under this Act-

- (a) to produce or cause to be produced before him any accounts registers, records or other documents; or
- (b) to furnish or cause to be furnish any other information, which such officer considers to be relevant for the purpose of any proceedings such requisition.

(2) Any Agricultural Income tax Inspector duly authorised by his superior officer in this behalf or any officer not below the rank of an Agricultural Income tax Officer may at any reasonable time, -

- (a) enter any building or any land or any vessel or vehicle used by



any assessee or any other person who, in the opinion of such officer, is liable to pay tax under this Act; and

(b) inspect any accounts, registers, records or other documents, any land, standing crop or agricultural produce which such officer considers to be relevant for the purpose of any proceedings under this Act.

(3) If any officer not below the rank of an Agricultural, Income tax Officer has reason to believe that an assessee or any other person is trying to evade payment of any tax under this Act, he may, for reasons to be recorded, enter and search any place where the assessee or such other person is keeping or is reasonably believed to be keeping, any accounts, registers, records or other documents relating to his agricultural income:

Provided that no residential accommodation shall be entered into or searched.

Explanation:-For the purposes of this sub-section "Place" includes any godown, building, vessel, vehicle, box or receptacle.

(4) All searches under this section shall, so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The Officer making the inspection or search may seize such accounts, registers, records or other documents as he considers necessary and on such seizure, shall grant the assessee or such other person a receipt of the things seized.

(6) The accounts, registers, records or other documents seized under sub section(5) shall not be retained by the officer seizing them beyond a period of one hundred and eighty days from the date of that seizure except with the permission of the next higher authority, unless they are required for any prosecution under this Act:

Provided that the next higher authority shall not give permission to retain such accounts, registers, records or other documents beyond a period of thirty days from the completion of the assessment to which such accounts, records or documents relate:

Provided further that the person from whose premises the accounts or other records are seized shall be entitled to an attested copy of the accounts or documents seized, on application.

(7) The powers conferred by sub-sections (3) and (5) shall include;  
(a) the power to break open any box or receptacle or place or the door of any premises, in which any accounts, registers, records or other documents of the assessee or such other person are, or are reasonably believed to be kept: Provided that the power to break

open the door shall be, exercised only after the owner or any other person in occupation of, the premises fails or refuses to open the door on being called upon to do so;

(b) the power to seal any box or receptacle, godown or building where any accounts, registers, records or other documents are or are reasonably believed to be kept if the owner or any other person in occupation leaves the premises or refuses to open the box or receptacle, godown or building or is not available, and to break open such box, receptacle, godown or building on the authority of an authorisation in writing by the Commissioner.

(8) Without prejudice to the powers conferred by the foregoing provisions of this section, any agricultural income tax authority or any person authorised by him in writing in that behalf may inspect, and if necessary take copies or cause copies to be taken of any register of the members, debenture holders or mortgages of any company or of any entry in such register.

### **29. Power To Call For Information :-**

The Agricultural Income tax Officer, the inspecting Assistant Commissioner or the Deputy Commissioner (Appeals) may for the purpose of this Act, -

- (i) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;
- (ii) 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 of whom he is a trustee, guardian or agent and of their addresses;
- (iii) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statement of accounts and affairs verified in the manner specified by the Agricultural Income tax Officer, the Inspecting Assistant Commissioner or the Deputy Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Agricultural Income tax Officer, the Inspecting Assistant Commissioner or the Deputy Commissioner (Appeals) will be useful for, or relevant to, any proceeding under this Act.

### **30. Power Of Survey :-**

(1) Notwithstanding anything contained in any other provision of this Act, an Agricultural Income tax Inspector, Agricultural Income tax Officer or Inspecting Assistant Commissioner may enter any

land in which cultivation is carried on, or any place where agricultural produce is processed or stored and require the owner or the person in possession of the land or the persons in charge of the place where agricultural produce is processed or stored, to afford him necessary facility to inspect the land or such place with a view to ascertaining-

- (i) the extent of the land under cultivation;
- (ii) the probable yield from the cultivation;
- (iii) the probable expenses that may be incurred for the purpose of cultivation;
- (iv) the quantity of agricultural produce processed or stored in such place; and
- (v) any other details relevant in computing the agricultural income of the person owning or holding the property.

(2) An Agricultural Income tax authority acting under this section may;

- (i) if he so deems it necessary, place marks of identification on the books of accounts or other documents inspected by him and make or cause to be made extracts or copies therefrom;
- (ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him;
- (iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.

(3) If a person who is required by the Agricultural Income tax Authority to afford any facility under this section either refuses or evades to do so, such authority shall have all the powers under section 28 for enforcing compliance with the requirements of this section.

### **31. Proceeding Before The Agricultural Income Tax Authorities To Be Judicial Proceedings :-**

Any proceeding under this Act before an Agricultural Income tax Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code, 1860 (Central Act XLV of 1860).

### **32. Disclosure Of Information :-**

(1) (a) The Board of Revenue, or any other Agricultural Income tax Authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to,-

- (i) any officer, authority or body, performing any functions under any law relating to the imposition of any tax, or

(ii) such officer, authority or body performing functions under any other law as the Government may, if in its opinion, it is necessary so to do, in the public interest specify by notification in the Gazette in this behalf, any such information relating to any assessee in respect of any assessment made under this Act as may in the opinion of the Board of Revenue or other Agricultural Income tax Authority specified by it in this behalf, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Commissioner in the prescribed form for any information relating to any, assess in respect of any assessment made under this Act, the Commissioner may if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment only and his decision in this behalf shall be final and shall not be called in question in any Court of law.

(2) Notwithstanding anything contained in sub-section (1) the Government may, having regard to the practices and usages, customary or any other relevant factors, by order notified in the Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee or except to such authorities as may be specified in the order.

### **33. Maintenance Of Accounts By Certain Persons :-**

Every person liable to pay tax under this Act other than a person to whom the method of assessment under section 13 applies, shall keep and maintain such books of accounts and other documents as may be prescribed, as may enable the Agricultural Income tax Officer to compute his total agricultural income in accordance with the provisions of this Act.

### **34. Audit Of Accounts Of Certain Persons :-**

(1) Every person who holds landed properties extending to more than sixty hectares during the previous year, shall get his accounts of such previous year or years audited by an accountant and obtain the report of such audit in the prescribed forms duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets

the accounts audited in such manner and obtains the report of the audit and a further report in the form prescribed in accordance with this section.

Explanation: -For the purpose of this section "accountant" shall have the same meaning as in the explanation to sub-section (2) of section 288 of the Income tax Act, 1961.

(2) The audited statement of accounts and the report referred to in sub-section (1) above shall be furnished along with the return of agricultural income.

## **CHAPTER 7 PROCEDURE FOR ASSESSMENT**

### **35. Return Of Agricultural Income :-**

(1) Every person, other than a Company or a person who has to get his accounts audited in accordance with section 34 who is liable to pay tax under this Act and every person to whom a permanent account number is allotted under section 36, till his permanent account number is withdrawn, shall, furnish to the Agricultural Income tax Officer so as to reach him before the 1st July, in the case of a person who has to get his accounts audited in accordance with section 34 on or before 31st October and in the case of a company on or before 31st December of the assessment year, a return in the prescribed form and verified in the prescribed manner, setting forth his total agricultural income or the total agricultural income of any other person or total extent of the landed properties in his name or in the name of such other persons, in respect of which he is assessable to tax under this Act during the previous year.

(2) In the case of any person who, in the opinion of the Agricultural Income tax Officer, is assessable to tax under this Act, whether on his total agricultural income or on the total agricultural income of any person during the previous year, the Agricultural Income tax Officer, may, before the end of the relevant assessment year, issue a notice to such person and serve the same upon him requiring him to furnish within 30 days from the date of service of the notice, a return of his agricultural income or of the agricultural income of such other person or total extent of properties in his name or in the name 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:

Provided that on an application made by such person, the Agricultural Income tax Officer may, in his discretion, extend the

date for furnishing the return under sub-section (1) or sub-section (2) if such person has paid the advance tax during the previous year on the due dates prescribed under section 37.

(3) The return under this section shall be in the prescribed form and shall be signed and verified, -

(i) 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 on his behalf and where the individual is mentally incapacitated from attending to his affairs or where the individual is a minor, by his guardian or by any other person competent to act on his behalf;

(ii) in the case of a company or local authority by the principal officer thereof;

(iii) in the case of a firm, by any partner thereof not being a minor;

(iv) in the case of any other association, by any member of the association or the principal officer thereof; and

(v) in the case of any other person, by that person or by some person competent to act on his behalf;

(4) The Agricultural Income tax Officer may serve on any person who has made a return under sub-section (1) or upon ,whom a notice has been served under sub-section (2), a notice requiring him, on a date to be specified therein, to produce or cause to be produced, such accounts or documents as the officer may require: Provided that the officer shall not require the production of any accounts relating to a period more than five years prior to the previous year in the case of an assessee who has furnished a return in accordance with sub- section (1).

### **36. Permanent Account Numbers :-**

(1) Every person if his total agricultural income or the total agricultural income of any other person in respect of which he is assessable under this Act during any previous year exceeded the amount which is not chargeable to tax under this Act and every person liable to pay tax in accordance with the provisions of section 13 if he has not been allowed a permanent account number shall, within such time and in such manner, as may be prescribed, apply to the Agricultural Income Tax Officer for the allotment of a permanent account number and he shall allot an account number to the applicant within such time as may be prescribed.

(2) The Agricultural Income Tax Officer may also allot to any other person by whom tax is payable, a permanent account number.

(3) Where a permanent account number has been allotted to any person under this Act, he shall-

(a) quote such number in all his returns to or correspondence with any Agricultural Income Tax Authority;

(b) quote such number In all chalans for the payment of any sum due under this Act;

(c) quote such number in all documents pertaining to such transactions as may be prescribed by the Commissioner in the interest of the revenue and entered into by him;

(d) intimate the Agricultural Income Tax Officer any change in this address.

(4) When any person to whom a permanent account number has been allotted under this section disposes of the landed, properties or otherwise becomes not liable to pay tax under this Act, such person may apply to the Agricultural Income Tax Officer to withdraw the permanent account number allotted to him.

(5) The Agricultural Income Tax Officer may, on receipt of an application under sub-section (4) or on his own motion after conducting such enquiries as he may deem necessary, by order withdraw the permanent account number allotted to such person from a date to be specified in the order.

### **37. Self Assessment And Payment Of Advance Tax :-**

(1) Every person liable to furnish a return under section 35 or section 41 other than an assessee coming under S.13, shall pay tax for previous year on or before the end of February of the previous year or within three months from the commencement of this Act whichever is later, on the estimated total agricultural income which shall not be less than eighty per cent of the total agricultural income as per return.

(2) Every person liable to pay tax under section 13 shall pay the tax for the previous year calculated on the extent of landed properties held in accordance with section 13, before the end of February of the previous year.

(3) Every person liable to furnish a return under section 35 or section 41, before furnishing the return, shall pay the tax due on the total agricultural income derived during the previous year, after deducting the advance tax already paid by him in accordance with sub-section (1) or sub-section (2) as the case may be.

(4) Any person who fails to pay tax in accordance with this section or in pursuance of a demand notice issued under, section 45 shall

pay simple interest at the rate of twelve percent per annum for every month of delay or part thereof, on the unpaid balance tax: Provided that the Commissioner may reduce or waive the interest payable by any person, if he is satisfied there was sufficient reason for the non-payment of tax in time.

(5) If any person fails to pay the tax or any part thereof in accordance with the provisions of sub-section (1) or sub-section (2) or fails to pay the tax in accordance with sub-section (3) before the due date fixed for filing the return, the assessing authority may direct that a sum equal to two percent of such tax or part thereof, as the case may be, shall be recovered from him by way of penalty for every month during which the default continues:

Provided that before levying any such penalty, the person shall be given a reasonable opportunity of being heard: Provided further that the Commissioner may reduce or waive the penalty, if he is satisfied that there was sufficient reason for the delay in payment of the tax.

**37A.** Reduction Of Interest In Certain Cases :-

(1) Notwithstanding anything contained in this act or any judgment, decree or order of any Court or Tribunal, an assessee other than a company not being a small scale industrial unit who is in appear to pay tax due under this act for the period ending on the 31st day of March, 1997 shall be entitled to a reduction of sixty per cent of the amount of interest accrued on such tax under sub-section (4) of section 37;

Provided that the entire arrears of tax with the reduction interest under the sub-section (2) shall be paid on or before 31st day of January 2000:

Provided further that the maximum interest payable after allowing the reduction shall be limited to one hundred per cent of the amount of tax outstanding on the 1st day of April 1999. Provided also that where an assessee has paid the principle amount of tax or other amount due under this act prior to the 1st day of April, 1999 in pursuance of any order issued under this act by the Government or any authority, the interest payable by such assessee under this section shall be forty per cent of the interest outstanding as on the 1st day of April, 1999.

(2) An assessee who opts for payment of the arrears under this section shall make an application to the Agriculture Income Tax Officer in writing on or before the 31st day of December, 1999.

(3) On receipt of the application, the Agriculture Income Tax Officer



shall intimate the quantum of tax due under this act and interest payable under sub-section (4) of section 37 as on the 1st day of April 1999, and the amount of interest payable after allowing the reduction of interest under this section.

(4) Where any appeal or revision is pending against any order or proceeding any given rise to any demand and an assessee has opted to avail himself of the benefit under this section in respect of such demand, such appeal or revision may be continued as if the assessee had not opted for the benefit under this section.

(5) Where the amount of tax is reduced in appeal or revision, the tax and the interest thereon paid in excess shall be refund to the assessee within three months from the date of receipt of the order in such appeal or revision of the assessing authority.

### **38. Enquiry Before Assessment :-**

(1) For the purpose of making an assessment under this Act the Agricultural Income Tax Officer may serve on any person who has furnished a return under Section 35 or to whom a notice has been issued under sub-section(2) of Section 35 (whether a return has been furnished or not) a notice requiring him on a date to be specified therein,-

(i) to produce, or cause to be produced, such accounts or documents as the Agricultural Income Tax Officer may require, or

(ii) to furnish in writing information on such points or matters as the Agricultural income Tax Officer may require.

(2) For the purpose of obtaining full information in respect of the agricultural income of any person, the Agricultural Income Tax Officer may make such enquiry as he considers necessary.

(3) The Agricultural Income Tax Officer may make such enquiry as he considers necessary or may inspect or cause to be inspected by any of the authorities under the Act, the holdings of a person with or without notice for the purpose of obtaining full information in respect of the agricultural income, expenses or loss of the person.

(4) The assessee shall be given an opportunity of being heard in respect of any information gathered on the basis of any such enquiry of inspection and proposed to be utilised for the purposes of the assessment.

(5) Where any inspection is made by any authority under the provisions of this Act, the person whose holdings are inspected is entitled to a copy of the inspection report.

### **39. Assessment Of Agricultural Income :-**

(1) If the Agricultural Income tax Officer is satisfied that a return furnished under section 35 by an assessee is correct and complete, he shall by order in writing, make an assessment and determine the sum payable by the assessee on the basis of such return.

(2) If the Agricultural Income tax Officer considers it necessary or expedient to verify the correctness and completeness of the return by requiring the presence of the assessee or the production of evidence in this behalf, he shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Agricultural Income tax Officer or to produce or to cause to be produced, any evidence the assessee may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2) or as soon as may be, the Agricultural Income tax Officer, after considering the evidence as the assessee may produce and such other evidence as the Agricultural Income tax Officer may require on specified points, and after taking into account all relevant information which he has gathered, shall, by an order in writing make an assessment of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment.

(4) If any person fails to furnish the return as required by section 35 or fails to comply with the notice issued under sub-section (4) of section 35 or having furnished a return fails to comply with all the terms of a notice issued under sub-section (2), the Agricultural Income tax Officer after taking into account all relevant information which the Agricultural Income tax Officer has gathered, shall make the assessment to the best of his judgement and determine the sum payable by the assessee on the basis of such assessment.

(5) No assessment under this section other than an assessment under sub-section (1) shall be made without giving the assessee a reasonable opportunity of being heard.

(6) Any assessment other than those pending on the date of commencement of this Act shall be completed within a period of two years from the date of filing of the returns. Provided that in the case of assessment of agricultural income derived from rubber, coffee and manufactured tea, if the assessment under the Income Tax, Act, 1961 (Central Act 43 of 1961), is not completed when the Agricultural Income Tax Officer proceeds to complete the assessment, he may provisionally accept the agricultural income as

per the return filed by him and revise such assessment in accordance with the order of the Income Tax Authority and the limitation fixed under any of the provisions of this Act shall not apply to such revision of assessment:

Provided further that a person who is in receipt of agricultural income from manufactured tea fails to submit copy of the assessment order or appellate or revisional order under the Income Tax Act, 1961 (Central Act 43 of 1961), within thirty days of its receipt by him, he shall be liable to pay interest as provided under sub-section (4) and penalty as provided under sub-section (5) of Section 37 on the balance of tax payable in accordance with the order of the Income Tax Authority on the expiry of ninety days from the date on which he received such order.

Explanation.- The time limit of two year mentioned in sub-section (6) shall apply only in the case of assessee who has filed return and it shall run from the date of receipt of the return by the Agricultural Income Tax Officer. In the case of those who are liable to submit return under sub-section (1) of section 35, but has failed to furnish such return, the time limit prescribed under section 41 shall apply.

#### **40. Method Of Accounting :-**

(1) Agricultural Income chargeable to tax shall be computed in accordance with the method of accounting regularly employed by the assessee: Provided that in any case where the accounts are correct and complete to the satisfaction of the Agricultural Income tax Officer. but the method employed is such that, in the opinion of the Agricultural Income tax Officer the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Agricultural Income tax Officer may determine.

(2) Where the Agricultural Income tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, Agricultural income tax Officer may make an assessment in the manner provided in sub-section (3) or sub-section (4) of section 39.

#### **41. Income Escaping Assessment :-**

(1) If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income tax Officer may

at any time within ten years of the end of that year and subject to the provision of sub-section (2), serve on the person liable to pay the tax. a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 35 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 the Agricultural Income tax Officer shall not issue notice under this sub-section unless he had recorded his reasons for doing so.

(2) No notice shall be issued under sub-section (1) after the expiry of six years from the end of the relevant financial year unless the Commissioner is satisfied on the reasons recorded by the Agricultural Income tax Officer that it is a fit case for issue of such notice.

(3) Notwithstanding anything contained in sub-section (1), a notice under that sub-section may be issued at any time for the purpose of making an assessment or re-assessment or recomputation in consequence of, or to give effect to any finding or direction contained in, an order passed by any authority in any proceeding under this Act by way of appeal or revision or an order or decision of any court.

Explanation I: - Where by an order referred to in sub-section (3), any agricultural income is excluded from the total agricultural income of the assessee for an assessment year then, an assessment of such agricultural income for another assessment year shall, for the purpose of the said sub-section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in such order.

Explanation II: - Where by an order referred to in sub-section (3), the agricultural income is excluded from the total agricultural income of one person and held to be the agricultural income of the another person or persons then, an assessment of such agricultural income of such another person or persons shall, for the purpose of this subsection be deemed to be one made in consequence of or to give effect to any finding or direction contained in such order.

(4) In computing the period of limitation for the purpose of this section, any period during which the assessment proceeding is stayed by an order or injunction of any court or other authority shall be excluded.

## **42. Rectification Of Mistakes :-**

(1) An assessing authority or an appellate or revisional authority (including the Appellate Tribunal) may of its own motion or on application by the assessee at any time within four years from the date of any order passed by it, rectify any mistake apparent from the record:

Provided that no such rectification shall be made having the effect of enhancing an assessment or reducing a refund unless such authority has given notice to the assessee of its intention so to do and has allowed him a reasonable opportunity of being heard.

(2) In the event of the error in the order sought to be rectified under sub- section (1) being an arithmetical error, the authority who passed the order may rectify the error even though the order sought to be rectified has been made the subject matter of an appeal or revision.

## **43. Procedure When Identical Question Of Law Is Pending Before High Court Or Supreme Court :-**

(1) Notwithstanding anything contained in this Act, where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Agricultural Income tax Officer, or any appellate authority (such case being hereafter in this section referred to as the relevant case) is identical with a question of law arising in his case for another assessment year which is pending before the High Court in revision or in appeal (such case being hereafter in this section referred to as the other case), he may furnish to the Agricultural Income tax Officer or the appellate authority, as the case may be, a declaration in the prescribed form and verified in the prescribed manner, that if the Agricultural Income tax Officer or the appellate authority, as the case may be, agrees to apply to the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case in appeal before any appellate authority or for a revision before any authority or before the High Court or in appeal before the Supreme Court.

(2) Where a declaration under sub-section (1) is furnished to any appellate authority, the appellate authority shall call for a report from the Agricultural Income tax Officer on the correctness of the claim made by the assessee and, where the Agricultural Income tax Officer makes a request to the appellate authority to give him an

opportunity of being heard in the matter the appellate authority shall allow him such opportunity.

(3) The Agricultural Income tax Officer or the appellate authority, as the case may be, may, by order in writing,

(i) admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or

(ii) reject the claim if he or it is not so satisfied.

(4) Where a claim is admitted under sub-section (3),-

(a) the Agricultural Income tax Officer or, as the case may be, the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and

(b) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal before any appellate authority or for a revision before the High Court or in appeal before the Supreme Court.

(5) When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Agricultural Income tax Officer or the appellate authority, as the case may be, shall, if necessary, amend the order referred to in clause (a) of sub-section (4) conformably to such decision.

(6) An order under sub-section (5) shall be final and shall not be called in question in any proceedings by way of appeal, or revision under this Act.

(7) Whereas any question of law decided by the High Court is applied by the Agricultural Income Tax Officer or the appellate authority to decide any case before him and that decision is overruled by the High Court or by the Supreme Court, the Agricultural Income tax Officer or the appellate authority as the case may be may review the case in accordance with the later decision and the period of limitation prescribed under any of the provisions of the Act shall not apply to such review. Explanation: -in this section-

(a) "Appellate Authority" means the Deputy Commissioner (Appeals) or the Appellate Tribunal;

(b) "Case", in relation to an assessee, means any proceeding under this Act for the assessment of the total agricultural income of the assessee or for the imposition of any penalty on him.

#### **44. Limitation Not To Apply To Certain Cases :-**

(1) Where in respect of any completed assessment of a partner in a

firm it is found,

(a) on the assessment or re-assessment of the firm, or

(b) on any reduction or enhancement made in the agricultural income of the firm in terms of any proceedings under this Act, that the share of the partner in the agricultural income of firm has not been included in the assessment of the partner or if included is not correct, the Agricultural Income tax Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be, and the provisions of Section 42 shall, so far as may be, apply thereto, the period of four years specified in that section being reckoned from the date of the final order passed in the case of the firm.

(2) Where in respect of any completed assessment of a member of an association of persons or of a body of individuals it is found-

(a) on the assessment or re-assessment of the association or body of individuals, or

(b) on any reduction or enhancement made in the agricultural income of the association or body of individuals in terms of any proceedings under the Act, that the share of the member in the agricultural income of the association or body of individuals as the case may be, has not been included in the assessment of the member or, if included, is not correct, the Agricultural Income tax Officer may amend the order of assessment of the member with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be and the provisions of section 42 shall, so far as may apply thereto, the period of four years specified in that section being reckoned from the date of the final order passed in the case of the association, or body of individuals as the case may be.

#### **45. Notice Of Demand :-**

(1) When any tax, penalty, or any other sum is payable in consequence of any order passed under this Act or in pursuance of a return filed, the Agricultural Income tax Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable together with a copy of such order.

(2) Where a notice of demand specified in sub-section (1) is served, the amount due therein shall, together with the interest accrued under sub-section (4) of section 37, subject to the claims of Government in respect of basic tax payable under the provisions

of the Kerala Land Tax Act, 1961 (Act 13 of 1961), be a first charge on the properties of the assessee liable to pay such amount and where such amount or part thereof relates to the properties transferred by the assessee, also on such properties.

#### **46. Changes In Demand Consequent To Appeal, Revision Or Other Proceedings :-**

(1) Where any notice of demand under this Act is served upon an assessee and any appeal or other proceeding is filed or taken in respect of such demand then-

(a) where the demand is enhanced in such appeal or other proceedings, the Agricultural Income tax Officer shall serve upon the assessee another notice of demand also in respect of the amount by which such demand is enhanced; and any proceedings in relation to such demand, as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice of demand be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such demand is reduced in such appeal or other proceeding,-

(i) it shall not be necessary for the Agricultural Income tax Officer to serve upon the assessee a fresh notice of demand;

(ii) the Agricultural Income tax Officer shall give intimation of the fact of such reduction to the assessee, and where a certificate has been issued or all application or requisition has been made to any officer or authority for the recovery of such demand, also to such officer or authority;

(iii) any proceedings initiated on the basis of the notice; or notices of demand served upon the assessee before the disposal of such appeal or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceeding stood immediately before such disposal;

(c) no proceedings in relation to such demand (including the imposition of penalty) shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal or other proceeding:

Provided that if such demand has been reduced as a result of any final order and the penalty imposed on the assessee for default in payment thereof exceeds the amount so reduced, the excess shall not be recovered and if it has already been recovered, it shall be



refunded to the assessee in accordance with the provisions of this Act:

Provided further that where any demand is reduced in such appeal or other proceeding and the assessee is entitled to any refund thereof, such refund shall be made in accordance with the provisions of this Act.

(2) No fresh notice of demand shall be necessary in any case where the amount of demand is not varied as a result of any order passed in any appeal or other proceeding under this Act.

(3) Where as a result of any final order, the amount of tax, with respect to the default in the payment of which-

(a) interest was levied has been annulled, the interest levied shall be cancelled and the amount of interest, if any, paid shall be refunded;

(b) interest was levied has been reduced, the interest levied, shall be proportionately reduced and the interest, if any, found as paid in excess consequent on such reduction, shall be refunded.

## **CHAPTER 8 LIABILITY IN SPECIAL CASES**

### **47. Power To Assess Individual Members Of Certain Associations And Companies :-**

(1) Where the Agricultural Income tax Officer is satisfied that any association of individuals or a company is under the control of one member or share holder thereof and that such association or company has been formed or is being used for the purpose, of evading or reducing the liability to tax of any member or share holder thereof, he may, with the previous approval of the Commissioner, pass an order stating that the sum payable as tax by the association or company shall not be determined and there upon the share of each member or share holder in the agricultural income of the association or company shall be included in his total agricultural income for the purpose of his assessment thereon.

Explanation: - A member of an association or company who owns the whole or the major portion of the capital of the association or company shall not by reason only of that fact, be deemed to control the association or company.

(2) The Commissioner shall not give his approval to an order proposed to be passed by the Agricultural Income tax Officer under sub-section (1), unless he has given the association or company concerned an opportunity of being heard.

(3) Where any member of an association of individuals or the share

holder of a company makes default in the payment of tax on his share of income which has been included in his total agricultural income under the provisions of sub-section (1), such tax may be recovered from the assets of the association or company, as the case may be.

(4) where tax is recoverable from a company or association under this section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable and such company or association shall be deemed to be the assessee in, respect of such sum, for the purposes of Chapter IX.

#### **48. Legal Representatives :-**

(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased i would have been liable to pay under this Act if he had not died, in the like manner and to the same extent as the deceased.(2) For the purpose of making an assessment (including an assessment, re-assessment or recomputation under chapter VII) , of the agricultural income of the deceased and for the purpose of levying any sum at the hands of the legal representative in accordance with the provisions of sub-section (1) (a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly,

(3) The legal representative of the deceased shall for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative, if, while his liability for tax remains undercharged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged. disposed of or parted with in respect of these assets.

(5) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) be limited to the extent to which the assets of the deceased is capable of meeting the

liability.

#### **49. Representative Assessee :-**

- (1) For the purposes of this Act, representative assessee means, -
- (i) in respect of the agricultural income of a non-resident, the agent of the non-resident, including a person who is treated as an agent under section 51;
  - (ii) in respect of the agricultural income of a minor lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot;
  - (iii) in respect of agricultural income which the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages the property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator General, Official Trustee, receiver or manager;
  - (iv) in respect of agricultural income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or not, receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.
- (2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

#### **50. Liability Of Representative Assessee :-**

- (1) Every representative assessee, as regards the agricultural income in respect which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the agricultural income were income received by or accruing to or in favour of him and shall be liable to assessment in his own name in respect of that agricultural income, but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.
- (2) Where any person is, in respect of any agricultural income, assessable in the capacity of a representative assessee, he shall not, in respect of that agricultural income, be assessed under any other provision of this Act.

#### **51. Who May Be Regarded As An Agent Of A Non- Resident**

:-

(1) For the purpose of this Act. Agent in relation to a non-resident, includes any person in the State,-

(a) who is employed by or on behalf of the non-resident or

(b) who has any business connection with the non-resident; or

(c) from or through whom the non -resident is in receipt of any agricultural income whether directly or indirectly; or

(d) who is the trustee of the non-resident.(2) No person shall be treated as the agent of a non- resident, unless he has been given an opportunity of being heard by the Agricultural Income Tax Officer as to his liability to be treated as such.

### **52. Direct Assessment Or Recovery Not Barred :-**

Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf, or for whose benefit, agricultural income referred to therein is receivable, or the recovery from such person of the tax payable in respect of such agricultural income.

### **53. Remedies Against Property In Cases Of Representative Assessee :-**

The. Agricultural Income Tax officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, whether the demand is raised against the representative assessee or against the beneficiary direct

### **54. Succession To Business :-**

Where a person carrying on any business in the course of which agricultural income is received, has been succeeded in such capacity by another person, such person and such other person, shall each be assessed in respect of his actual share of the agricultural income of the previous year: Provided that when the persons succeeded in the business cannot be found, the assessment of the agricultural income of the year in which the succession took place upto the date of succession, and for the years preceding that year shall be made on the person succeeding him, in like manner and to the same extent, as it would have been made on the person succeeded or when the tax in respect of the assessment made for such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and

recoverable from the person succeeding and such person shall be entitled to recover from the person succeeded the, amount of any tax so paid.

#### **55. Assessment When Title To The Property Is Disputed :-**

(1) When title to any property from which agricultural income is derived or liable pay tax under this Act is under dispute, whether any suit to decide the issue is pending in any court or not, the agricultural income from such property is assessable on the person who holds the property or who derives the income therefrom including any Administrator or official receiver.

(2) In computing the agricultural income for the purposes of subsection (1) the aggregate of agricultural income of either, party to the suit or who claim the title to the property whichever is higher, shall be included in it tax shall be calculated on this aggregate agricultural income and after deducting the tax already demanded from the person whose agricultural income was so included, the balance tax shall be assessed on the person who holds the property or derives agricultural income therefrom.

(3) Any person who holds any property in dispute and derives agricultural income therefrom including any administrator or official receiver shall pay the tax due under the Act in accordance with the provisions of this Act and shall be recoverable from him without prejudice to any other mode of recovery as if it were a tax imposed on him.

(4) The Agricultural Income tax Officer may review any order passed under this section, when the dispute over the property, is finally settled and re-determine the tax within four years from the, date of such final settlement in accordance with the provisions of this Act.

(5) If as a result of any order passed under sub-section (4) above, any amount is found due, it shall be demanded from the person in whose favour the final settlement of the dispute is made and shall together with any amount of tax due to be recovered from him or from the properties in accordance with the provisions of this Act.

#### **56. Assessment In Cases Of Departure From The State :-**

(1) Where it appears to the Agricultural Income Tax Officer that any person intend to alienate his rights, title and interest in any land in the State and that such person may leave the State during the financial year or shortly after its expiry and that he has no

present intention of returning, the Agricultural Income tax Officer may proceed to assess him on his agricultural income for the period from the expiry of the last previous year for which he has been assessed to the probable date of his departure from the State. For such completed previous year included in the period, an assessment shall be made on the total agricultural income of such person at the rate at which it would have been charged had such income been fully assessed, and for the period from the expiry of the last date of such previous year to the probable date of departure, the Agricultural Income Tax Officer shall estimate the total agricultural income of such person and accordingly make an assessment on it: Provided that nothing herein contained shall authorise the Agricultural Income tax Officer to assess any agricultural income, which has escaped assessment or has been assessed at too Iowa rate in respect of which he is barred from issuing notice under section 41.

(2) For the purpose of making an assessment under sub-section (1), the Agricultural Income Tax Officer may serve a notice upon such person requiring him to furnish within such time not being less than four days as may be specified in the notice. a return in the same form and verified in the same manner as a return under sub-section (2) of section 35 setting forth, along with such other particulars as may be provided for in the notice his agricultural income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated agricultural income for the period from the expiry, of the last such completed previous year to the probable date of his departure, and provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under subsection (2) of section 35.

**56A.** Assessee To Furnish Details Of Acquisition And Disposal Of Landed Property :- Every person liable to pay tax and every person to whom a permanent account number has been allotted under this act, shall intimate in writing to the assessing authority the details of any landed property acquired or disposal of by him, within two months of such acquisition or disposal, as the case may be.

### **57. Assessments Of Persons Transferring Property :-**

(1) Where a person in receipt of agricultural income from any land in the State is found to have transferred his interest in such land to another person, the transferor and the transferee shall each be

assessed in respect of his actual share, if any, of such agricultural income.

(2) When the transferor cannot be found, the assessment of such agricultural income of the previous year in which the transfer took place up to the date of the transfer and for the years preceding that year shall be made on the transferee in like manner and to the same amount, as it would have been made on the transfer or or when the tax in respect of the assessment made before or after the transfer for any or all of such year assessed on the transfer or cannot be recovered from him, it shall be payable by and recoverable from the transferee, and the transferee shall be entitled to recover from the transferor the amount of any tax so paid.

(3) An assessee transferring his interest in any land in the State to another person shall give to the Agricultural Income-tax Officer a notice of such transfer within fifteen days thereof.

Explanation: -The provisions in this section shall apply to any subsequent transfer of the property and the terms transferor and transferee shall mean every subsequent transferor and transferee, until the tax payable under this Act is fully paid or recovered.

## **58. Assessment In Case Of Discontinued Business Of Company Firm Or Association :-**

(1) Where Agricultural Income is received by a company, firm or Association of persons, and the business through which such income is received is discontinued in any year, an assessment may be made in that year on the basis of the agricultural income 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 in the previous year.

(2) Any person discontinuing any such business shall give to the Agricultural Income tax Officer, notice of such discontinuance within thirty days thereof.

(3) where any such business is discontinued in any year any sum received after the discontinuance shall be deemed to be the agricultural income of the recipient and chargeable to tax accordingly in the year of receipt, as if such sum would have been included in the agricultural income of the person who carried on the business, had such sum been received before such discontinuance.

(4) Where an assessment is to be made under sub-section (1) the

Agricultural Income-tax Officer may, serve on the person whose agricultural income is to be assessed or in the case of a firm or any person who was a member of such firm at the time of the discontinuance or, in the case of a company, on the principal Officer thereof notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 35 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.

**59. Firm, Association, Etc., Dissolved Or Business Discontinued :-**

(1) Where agricultural income is received by a firm or association of persons and the business of such firm or association of persons is discontinued or such firm or association of persons is dissolved the Agricultural Income Tax Officer shall make an assessment of the agricultural income of the firm or association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing provisions, if the Agricultural Income tax Officer in the course of any proceeding under this Act in respect of any such firm or association of persons referred to therein is satisfied that the firm or association of persons was guilty of any of the acts specified in Chapter XII he may impose a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm or member of the association of persons and the legal representative of any such person who is deceased shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in subsection (3) from the stage at which the proceedings stood at the time of such discontinuance, or dissolution and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Any transfer of property by any person, partner or member to



the firm or association of persons and vice versa, shall be registered under the Registration Act, 1908 (Central Act 16 of 1908).

## **60. Company In Liquidation :-**

(1) Every person-

(a) who is a liquidator of any company which is being wound up, whether under the orders of court or otherwise, or

(b) who has been appointed the receiver of any assets of company (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such, to the Agricultural Income tax Officer who is entitled to assess the agricultural income of the company.

(2) The Agricultural Income tax Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator, the amount which, in the opinion of the Agricultural Income tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter, to become payable by the company.

(3) The liquidator,-

(a) shall not without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Agricultural Income tax Officer under sub-section (2), and;

(b) on being so notified, shall set apart an amount equal to the amount notified and, until he so sets apart such amount, shall not part with any of the assets of the company or the properties in his hands.

(4) If the liquidator fails to give notice in accordance with sub-section (1) or fails to set apart the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

## **61. Liability Of Directors Of Private Company In Liquidation**

**:-**

Where any tax due from a private company in respect of any income of any previous year during which such company was a private company cannot be recovered, then every person who was a director of the private company at any time during the relevant previous years shall be jointly and severally liable for the payment of such tax, unless, he proves that the non-recovery is not due to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

## **CHAPTER 9 COLLECTION AND RECOVERY OF TAX AND PENALTIES**

### **62. Payment Of Tax, Penalty Etc :-**

(1) Any amount specified as payable under this Act other than interest accrued, shall be paid as specified in the notice of demand under section 45, which shall not be less than thirty days from the date of the order for such payment.

(2) If the amount is not paid within the time specified, the assessee shall be deemed to be in default: Provided that an assessee shall not be deemed to be in default if he has complied with any order or direction of the appellate or revisional authority regarding the payment of tax when an appeal or revision is pending before such authority.

(3) Where, during the pendency of any proceedings under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode Of transfer whatsoever, of any of his assets, in favour of any other person, with the intention of evading payment of tax or other sum such charge or transfer shall be void as against any claim in respect, of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding.

Provided that a transferee in good faith and for valuable consideration is entitled to compensation for the loss or damage or both from the transferor: Provided further that the burden of proving that the transfer was in good faith IS on the transferee.

### **63. Penalty Payable When Tax In Default :-**

(1) When an assessee is in default in making payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub- section (4) of section 37 be liable, by

way of penalty, to pay such amount as the Agricultural Income Tax Officer may direct, and in the case of a continuing default such further amount or amounts as the Agricultural Income Tax Officer, may, from time to time direct so however, that the total amount of penalty does not exceed the amount of tax in arrears: Provided that before levying any such penalty the assessee shall be given a reasonable opportunity of being heard.

Explanation: -For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to any penalty under this subsection merely for the reasons that before the levy of such penalty, he has paid the tax or the Agricultural Income Tax Officer has initiated any proceedings for the recovery of the amount.

#### **64. Certificate To Collector :-**

(1) The Agricultural Income Tax Officer may forward to the Collector a certificate under his signature, specifying the amount of arrears due from an assessee and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector in this behalf, he shall, for the purpose of recovering the said amount, have the powers which under the Code of Civil Procedure (Central Act V of 1908), a Civil Court has, for the purpose of the recovery on an amount due under a decree.

(2) The Agricultural Income Tax Officer may issue a certificate under sub-section (1) notwithstanding that the proceedings, for recovery of the arrears by any other mode have been taken

#### **65. Other Modes Of Recovery :-**

(1) The Agricultural Income Tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Agricultural Income tax Officer, either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the .C money, as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money, when it is equal to or less than that amount.

(2) A notice under this section may be issued to any person who holds or subsequently hold any money for or on account of the

assessee, jointly with any other person and for the purposes of this section, the shares of the joint holders in such account shall be presumed to be equal until the contrary is proved.

(3) A copy of the notice shall be forwarded to the assessee at his last address known to the Agricultural Income tax Officer, and in the case of a joint account to all the joint account holders at their last addresses known to Agricultural Income tax Officer.

(4) Save as otherwise provided in this section, every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy of any entry, endorsement or the like, being made before payment is made notwithstanding any rule, practice, or requirement to the contrary.

(5) Any claim respecting any property in relation to which a notice under this section has been issued, arising after the date" of notice, shall be void as against any demand contained in the notice.

(6) Where a person to whom a notice under this section is sent, objects to it by a statement on oath that the sum demanded or any part thereof, is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Agricultural Income tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less and be liable for prosecution.

(7) The Agricultural Income tax Officer may, at any time amend or revoke any notice issued under this section or extend the time for making any payment in pursuance of such notice,

(8) The Agricultural Income tax Officer shall grant a receipt for any amount paid in compliance with a notice issued under this section and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(9) Any person discharging any liability to the assessee after receipt of a notice under this section shall be personally liable to the Agricultural Income tax Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(10) If the person to whom a notice under this section is sent, fails to make payment in pursuance thereof, to the Agricultural Income

tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount, as if it were arrears of tax due from him and the notice shall have the same effect as, an attachment of a debt under the Kerala Revenue Recovery Act, 1968 (Act 15 of 1968).

(11) The Agricultural Income tax Officer may apply to the Court in whose custody there is money belonging to the assessee for payment to him for the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge such dues.

#### **66. Recovery Of Penalties :-**

Any penalty or interest due under the provisions of this Act shall be recoverable in the manner provided in this Chapter for the recovery of tax.

#### **67. Recovery By Suit Or Under Other Law Not Affected :-**

The several modes of recovery specified in this Chapter shall not affect in any way, -

- (a) any other law for the time being in force relating to the recovery of debts due to the Government; or
- (b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee; and it shall be lawful for the Agricultural Income tax Officer or the Government, as the case may be, to have recourse to any law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

**67A.** Tax Payable To Be The First Charge On The Property :-  
Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest or any other amount if any, payable by an assessee or any other person under this Act, shall be the first charge on the property of the assessee, or such person.

### **CHAPTER 10 REFUNDS**

#### **68. Refunds :-**

(1) If any person satisfies the Agricultural Income tax Officer that the amount of tax paid by him for any, assessment year exceeds the amount with which he is properly chargeable under this Act for

that year, he shall be entitled to a 1 refund of the excess amount so paid.

(2) Where, as a result of any order passed in appeal or other proceedings under this Act, refund of any amount becomes due to the assessee, the Agricultural Income tax Officer shall, except as otherwise provided in this Act refund the amount to the assessee without his having made any claim in that behalf.

(3) If any advance tax paid by any person in accordance with section 37 is found in excess of the amount properly chargeable under this Act for the year, he shall be entitled to a refund of the excess amount so paid.

(4) If any refund due under this section is not paid within, three months from the date of receipt of the order by which the claim for refund has arisen simple interest at 15 per cent per annum is to be paid to the assessee on such amount from the date of expiry of the said three months.

#### **69. Person Entitled To Claim Refund In Certain Special Cases :-**

(1) Where agricultural income of one person is included under any provision of this Act in the agricultural income of any other person, such other person shall be entitled to a refund under this chapter in respect of such income.

(2) Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refunds for the benefit of such person or his estate.

#### **70. Power To Withhold Refund In Certain Cases :-**

Where an order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act, is pending and the Agricultural Income tax Officer is of opinion that the grant of the refund is likely to adversely affect the revenue, the Agricultural Income Tax Officer may, with the previous approval of such higher authority as may be prescribed withhold the refund till such time as such higher authority may determine.

#### **71. Set Off Of Refunds Against Sum Remaining Payable :-**

Where under any of the provisions of this Act, a refund is found to be due to any person, the Agricultural Income tax Officer, the

Appellate Assistant Commissioner, the Inspecting Assistant Commissioner, the Deputy Commissioner or the Commissioner, as the case may be may in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the tax, penalty or interest if any remaining payable under this Act by the person to whom the refund is due.

## **CHAPTER 11 APPEALS AND REVISIONS**

### **72. Appeal Against Orders Passed By The Agricultural Income Tax Officer :-**

(1) Any assessee aggrieved by any order passed by the Agricultural Income tax Officer may appeal to the Deputy Commissioner (Appeals) against such order.

(2) Any assessee aggrieved by any order passed by the Inspecting Assistant Commissioner may appeal to the Deputy Commissioner against such order.

(2A) Notwithstanding anything contained in sub-section (1) or subsection (2) any assessee aggrieved by an order passed by the Agricultural Income Tax Officer or Inspecting Assistant Commissioner may file an appeal before the Appellate Tribunal where such order involves only a question of law which has been settled by a decision of the High Court or the Supreme Court.

(3) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of two hundred rupees.

(4) The appeal shall be presented within a period of thirty days from the date of service of the order sought to be appealed against:

Provided that the Appellate Assistant Commissioner or the Deputy Commissioner, as the case may be, may admit an appeal after the expiration of the said period, if he is satisfied that the appellant had sufficient cause for not presenting it within that period.(5) No appeal under this section shall be admitted unless at the time of presenting the appeal, the assessee has paid the tax due on the agricultural income admitted by him.

(6) The Deputy Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the Agricultural Income tax Officer or the Inspecting Assistant Commissioner as the case may be against whose order the appeal is preferred.

(7) The appellant or the Agricultural Income tax Officer or the

Inspecting Assistant Commissioner as the case may be, shall have the right to be heard either in person or by an authorised representative.

(8) The Deputy Commissioner (Appeals) shall have the power to adjourn the hearing of the, appeal from time to time.

(9) The Deputy Commissioner (Appeals) disposing of any appeal may make such further inquiry as he thinks fit, or may direct the Agricultural Income tax Officer or Inspecting Assistant Commissioner as the case may be, to make further inquiry and report the result of the same to the Appellate Assistant Commissioner or Deputy Commissioner as the case may be.

(10) The Deputy Commissioner (Appeals) may at the time of hearing of an appeal, allow the appellant to raise any ground of appeal, not specified in the grounds of appeal, if the Appellate Assistant Commissioner or Deputy Commissioner is satisfied that the omission of the ground in the form of appeal was not wilful.

(11) The order of the Deputy Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(12) On the disposal of the appeal, the Deputy Commissioner (Appeals) shall communicate the order passed by him to the assessee and to such other officers of the department, as the Board of Revenue may direct.

(13) In disposing of an appeal, the Deputy Commissioner (Appeals) shall have the following powers: -

(a) In an appeal an order of assessment he may.

(i) confirm, reduce, enhance or annul the assessment; or

(ii) set aside the assessment or refer the case back to the Agricultural Income tax Officer or the inspecting Assistant Commissioner as the case may be, for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner or the Deputy Commissioner as the case may be and the Agricultural Income tax Officer or inspecting Assistant Commissioner as the case may be shall, there upon proceed to make a fresh assessment and determine, wherever necessary, the amount of tax payable on the basis of such fresh assessment; or

(iii) pass such other order as he may think fit.

(b) In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it as either to enhance or to reduce the penalty.

(c) In an appeal against any other order he may pass such orders as he thinks fit.



(14) The Deputy Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant is given a reasonable opportunity of showing cause against such enhancement or reduction.

(15) Where as a result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of any of these is ordered to be made, the Deputy Commissioner (Appeals) may authorise the Agricultural Income tax Officer or the Inspecting Assistant Commissioner as the case may be, to amend accordingly any assessment made on any partner of the firm or any member of the association.

(16) Notwithstanding that an appeal has been preferred under subsection (1), the tax or other amount shall be paid in accordance with the order, against which the appeal has been preferred: Provided that the Deputy Commissioner (Appeals) may in his discretion, give, such directions as he thinks fit, in regard to the payment of tax, before the disposal of the appeal.

### **73. The Appellate Tribunal :-**

(1) The Government may appoint an Appellate Tribunal consisting of a Chairman and as many members as may be necessary to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) The Chairman shall be a person who is, or has been or is qualified to be appointed as a Judicial Officer not below the rank of a District Judge and the other members shall possess such qualifications as may be prescribed.

(3) Any vacancy in the office of a member of the Appellate , Tribunal shall be filled by the Government.

(4) (a) Subject to the provisions of sub-sections (5), (6), (7) and (8) the functions of the Appellate Tribunal may be performed:

(i) by a Bench consisting of the Chairman and any other member or members of the Tribunal constituted by the Chairman; or

(ii) by a Bench consisting of two or more members other than the Chairman, constituted by the Chairman.

(b) The Chairman or any other member of the Appellate Tribunal nominated by him may, sitting single, dispose of any case which pertains to an assessee, whose total agricultural income as computed by the Agricultural Income tax Officer does not exceed fifty thousand rupees and all cases of assessment under section 13.

(5) If any case which comes up before a Bench consisting of a

single member or a Bench consisting more than one member of which the Chairman is not a member, involves a question of law, the Bench may in its discretion or where the total agricultural income assessed exceeds rupees one lakh the Bench shall, reserve such case for decision by a Bench to be constituted under sub-section (4) of which the Chairman shall be a member.

(6) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, but if the members are equally divided, they shall state the point or points on which they differ, and such point or points shall be heard,

-(i) where the Chairman is not a member of that Bench either by the Chairman, or by the Chairman and any other member or members as the Chairman may direct; and

(ii) when the Chairman is a member of that Bench, by any other member or members to whom the case is referred by the Chairman and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard.

(7) Any member who has previously dealt with any case coming up before the Appellate Tribunal in any other capacity or is personally interested in any case coming up before the Appellate Tribunal, shall be disqualified to hear that case.

(8) Where any member or members of the Appellate Tribunal is are disqualified under sub-section (7) to hear any case coming up before the Tribunal, the case shall be referred to another Bench for decision.

(9) The Appellate Tribunal shall, with the previous sanction of the Government, make regulations consistent with the provisions of this Act and the rules made there under, for regulating its procedure and the disposal of business.

(10) The regulations made under sub-section (9) shall be published in the Gazette.

#### **74. Appeals To The Appellate Tribunal :-**

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order.

(a) an order passed by the Deputy Commissioner (Appeals), under section 72;

(b) an order Imposing a penalty by an Inspecting Assistant Commissioner, or Deputy Commissioner.

(c) any order referred to in sub-section (2A) of section 72.

- (2) Any Officer empowered by the Government in this behalf may if he objects to any order, passed under section 72, appeal to the Appellate Tribunal against such order,
- (3) Every appeal under sub-section (1) and sub-section (2) shall be filed within a period of sixty days from the date on which the order sought to be appealed against is served to the, assessee or to the Inspecting Assistant Commissioner or Deputy Commissioner as the case may be.
- (4) The Officer empowered by the Government under sub-section (2) or the assessee as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party, may notwithstanding that he may not have appealed against such order, within thirty days of the receipt of the notice, file a, memorandum of cross objections, verified in the prescribed manner against any part of the order of the Appellate Assistant Commissioner or Deputy Commissioner and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1) or sub-section (2).
- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross objections after the expiry of period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross objections referred to in sub-section (4), be accompanied by a fee of five hundred rupees.
- (7) In respect of appeals presented before it the Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, -
- (a) in the case of an order of assessment-
- (i) confirm, reduce, enhance or annul the assessment; or
- (ii) set aside the assessment and refer the case back to Agricultural Income Tax Officer or the Inspecting Assistant Commissioner as the case may be, for making a fresh assessment in accordance with the directions given by the Appellate Tribunal and after making such further enquiry as may be necessary, the Agricultural Income tax Officer or the Inspecting Assistant Commissioner as the case may be, shall, thereupon proceed to make a fresh assessment and

determine, where necessary, the amount of tax payable on the basis of such fresh assessment; or

(iii) pass such other order as the Appellate Tribunal may think fit;

(b) in the case of an order imposing a penalty confirm or cancel such order or vary it so as either to enhance or to reduce the penalty; or

(c) in the case of any other order, pass such order, as it thinks fit.

Explanation: -The power of enhancement in this sub-section is enhancement of either the agricultural income or tax or penalty over i, and above that fixed as per the orders appealed against and the Appellate Tribunal shall have the power to enhance even if there is no appeal or cross objection by the officer empowered by Government under sub-section (2).

(8) (a) When appeals are presented by the assessee and the Officer empowered by Government under sub-section (2), or cross objections are presented by either of them, against the same order of the Deputy Commissioner (Appeals) both the appeals along with the cross objections, if any, shall be heard together and disposed of by a common order.

(b) When the Appellate Tribunal passes any order in contravention of clause (a) of this sub-section, such order shall not be binding on the party whose appeal or cross objections is pending hearing and the Appellate Tribunal shall on application by either party to the appeal, shall proceed to re-hear the appeal, as if it was not so decided and pass orders in accordance with sub-section (7) and clause (a) of this sub-section.

(9) Where, as a result of an appeal any change is made in the assessment of firm or association of persons or a new assessment of a firm, or association of persons, is ordered to be made, the Appellate Tribunal may authorise the Agricultural Income tax Officer or Inspecting Assistant Commissioner, as the case may be, to amend accordingly any assessment made on any partner of the firm, or any member of the association of persons.

(10) (a) The appellant or the respondent may apply for review of any order passed by the Appellate Tribunal under sub-section (7) or sub-section (8) on the basis of discovery of new and important facts, which after the exercise of due diligence, were not within his knowledge or could not be produced by him when the order was made:

Provided that no such application shall be preferred more than once in respect of the same order;

(b) the application for review shall be made in the prescribed

manner and within one year from the date on which copy of the order to which the application related was communicated to the applicant, and where the application is preferred by the assessee, it shall be accompanied by a fee of one hundred rupees.

(11) Save as provided in Section 78, orders passed by the Appellate Tribunal on appeal shall be final.

(12) On the disposal of an appeal or application the Appellate Tribunal shall communicate the order passed thereon to the appellant or the applicant as the case may be, the respondent, the authority against whose order the appeal was preferred the Inspecting Assistant Commissioner, the Deputy Commissioner and the Commissioner.

(13) Notwithstanding that an appeal has been preferred under subsection (1) the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred: Provided that the Appellate Tribunal may in its discretion give such directions as it thinks fit in regard to the payment of tax before the disposal of the appeal.

Provided further that where the Appellate Tribunal has passed an order of stay in an appeal, it shall dispose of the appeal within a period of one hundred and eighty days from the date of such order: Provided also that if such appeal is not disposed of within a period specified in the second proviso, the stay order shall stand vacated after the expiry of the said period. Explanation. - For the purpose of the second and third provisions an order of stay in an appeal passed prior to the 23<sup>rd</sup> day of July 2001, shall be deemed to have been passed on the 23<sup>rd</sup> day of July 2001.

#### **74A.** Settlement Commission :-

(1) The Government may appoint for a period of one year, a settlement Commission consisting of a chairman and as many other member as they think fit, to perform the functions assigned to the Settlement Commission by or under this Act. The chairman shall be a person who is a Judicial Officer not below the rank of a District Judge and the other members shall possess such qualifications as may be prescribed.

(2) Any vacancy in the office of the members of the Settlement Commission shall be filled by the Government.

(3) The functions of the Settlement Commission may be performed,-

(i) by a bench consisting of the Chairman and any other member;  
or

- (ii) by a bench consisting of the Chairman and two other members;  
or
- (iii) by a bench consisting of two or more members other than the Chairman.
- (4) Any member who has previously dealt with any case coming up before the Commission in any other capacity or is personally interest in any such case shall be disqualified to hear such case.
- (5) The Settlement Commission may, with the previous sanction of the Government, make regulations consistent with the provisions of this Act and the rules made thereunder for regulating its procedure and the disposal of its business.
- (6) The regulations under sub-section (5) shall be published in the Gazette.

**74B.** Filing Of Application For Settlement Of Cases :-

(1) Notwithstanding anything contrary contained in this Act an assessee may at any stage of an appeal or revision pending before any authority under this Act or High Court, make an application in such form and in such manner as may be prescribed, containing a full and true disclosure of his total agriculture income or other amount which had not been disclosed before the Assessing Officer, including the additional amount of tax payable on such income and other particular, as may be prescribed to the settlement commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless, the assessee has furnished the details of his total agriculture income which he is or was required to furnish under any of the provisions of this Act: Provided further that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(4) On receipt of an application under sub-section (1), the Settlement Commission shall call for a report from the Deputy Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstance of the case or complexity of investigation therein, the Settlement Commission may, by order, allow the application to be proceeded

with or reject the application: Provided that an application shall not be rejected under this subsection unless an opportunity has been given to the applicant of being heard.

Provided further that the Deputy Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission, and if the Deputy Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

(5) A copy of every order under sub-section (4) shall be sent to the applicant and to the Deputy Commissioner.

(6) Subject to the provisions of sub-section (7), the assessee shall, within thirty five days of the receipt of a copy of the order under subsection (4) allowing the application to be proceed with, pay the additional amount of tax or other amount payable on the total agriculture income disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

(8) Where an application is allowed to be proceeded with under subsection (4), the Settlement Commission may call for the relevant reports from the Deputy Commissioner and after examination of such records, if the Settlement Commission of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Deputy Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matter covered by the application and any other matter relating to the case.

(9) After examination of the records and the report of the Deputy Commissioner received under sub-section (4) or (8) and giving an opportunity to the applicant and the Deputy Commissioner to be heard, either in person or through a representative duly authorised in this behalf and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provision of this Act, pass such order as it think fit, on the matter covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Deputy Commissioner under subsection (4) or subsection (8). Provided that the Settlement Commission shall pass such order within a period of one hundred and eighty days from the date of allowing the application.

(10) Every order passed under sub-section (9) shall provide from the terms of of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matter to make the

settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(11) Where any tax payable in pursuance of an order under subsection (9) is not paid by the assessee within thirty five days of the receipt of a copy of the order by him, the assessee shall be liable to pay interest at the rate of one per cent of each month or part thereof for the first three months after the date specified for its payment; and at the rate of two per cent of each month or part thereof, subsequent to the first three months aforesaid, on the amount remaining unpaid from the date of expiry of the period of thirty five days.

(12) Where a settlement become void as provided under subsection (10), the proceedings with respect to the matter covered by the settlement shall be deemed to have been revived from the state at which the application was allowed to be proceeded with by the Settlement Commission and the authority concerned may, notwithstanding anything contained in any other provisions of this Act, complete such proceedings at any time before the expiry of two years from the end of the final year in which the settlement become void.

(13) If the matter is settled under the provisions of this section, the Deputy Commissioner shall intimate the fact of such settlement to the authority specified to the sub-section (1) or the High Court as the case may be.

## **75. Powers Of Revision Of The Deputy Commissioner Suo Motu :-**

(1) The Deputy Commissioner may, of his own motion, call for and examine the records relating to any order passed or proceeding recorded under this Act, by any Officer or authority subordinate to him, other than a Deputy Commissioner (Appeals) which in his opinion is prejudicial to revenue and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

(2) The Deputy Commissioner shall not pass any order under subsection (1) if-

(a) the order has been made the subject of an appeal to the Deputy Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court; or



(b) more than four years have expired after the passing of the order referred to therein:

Provided that in computing the period of limitation for the purpose of sub-section (2), any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded.

(3) Notwithstanding anything contained in sub-section (2), the Deputy Commissioner may pass an order under sub-section (1) on any point which has not been raised for consideration or decided in an appeal or revision referred to in clause (a) of sub-section (2) before the expiry of a period of one year from the date of the order, in such appeal or revision or before the expiry of a period of four: years referred to in clause (b) of sub-section (2) whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person is given a reasonable opportunity of being heard.

## **76. Powers Of Revision Of The Commissioner Suo Motu :-**

(1) The Commissioner may of his own motion, call for and examine the records relating to any order passed or proceeding recorded under this Act which in his opinion is prejudicial to revenue, by any officer or authority subordinate to him including a Deputy Commissioner (Appeals), and make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit.

(2) The Commissioner shall not pass any order under sub-section (1) if-

(a) the time for filing appeal against that order has not expired;

(b) the order has been made the subject of an appeal to the Deputy Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have elapsed after the passing of the order referred to therein:

Provided that in computing the period of limitation for the purpose of sub-section (2), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

(3) Notwithstanding anything contained in sub-section (2), the Commissioner may pass an order under sub-section (1) on any point which has not been raised for consideration or decided in an

appeal or revision before the Appellate Tribunal or the High Court before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of the period of four years referred to in clause (c) of sub-section (2) whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person is given a reasonable opportunity of being heard.

### **77. Powers Of Revision By Commissioner On Application :-**

(1) Any person objecting to an order passed by the Deputy Commissioner under Section 16 or Section 75 may, within a period of thirty days from the date on which a copy of the order was communicated to him, in the manner prescribed file an application for revision of such order to the Commissioner: Provided that the Commissioner may admit an application filed after the expiry of the said period, if he is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(2) The application under sub-section (1) shall be in the prescribed form and verified in the prescribed manner and shall be accompanied by a fee of five hundred rupees.

(3) On admitting an application for revision, the Commissioner may call for and examine the records of the order against which the application has been filed and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act, pass such order therein, as he thinks fit: Provided that no order under this section adversely affecting the applicant shall be passed unless such person has been given a reasonable opportunity of being heard.

### **78. Revision By The High Court :-**

(1) (a) Any officer empowered by the Government in this behalf or any other person who objects to an order passed by the Appellate Tribunal under sub-section (7) or sub-section (10) of section 74 or under section 79, may within ninety days from the date on which a copy of such order is served on him in the manner prescribed prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law.

(b) Any person who objects to an order passed by the Commissioner under sections 76, 77 or 79 may, within ninety days from the date on which a copy of such order is communicated to him prefer a petition to the High Court on the ground that the

Commissioner has either erroneously decided or failed to decide any question of law: Provided that the High Court may admit a petition preferred after the period of ninety days referred to in clauses (a) and (b) if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner, and where it is preferred by a person other than an officer empowered by the Government under sub-section (1), shall be accompanied by a fee of two hundred rupees.

(3) If the High Court, on perusing the petition, considers that there is no sufficient ground for interfering may dismiss the petition summarily:

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.

(4) (a) If the High Court does not dismiss the petition summarily, it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question of law raised or pass such order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter under clause (a) with its opinion on the question of law raised the Appellate Tribunal shall amend the order passed in conformity with such opinion.

(5) Before passing an order under sub-section (4), the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal and direct to return the petition with a finding on any specific question or issue.

(6) Notwithstanding that a petition has been preferred under subsection (1), the tax shall be paid in accordance with the order against which the revision has been preferred: Provided that the High Court may in its discretion give such direction as it thinks fit in regard to the payment of the tax before the disposal of the petition if the petitioner furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(7) If as a result of the revision any change becomes necessary in any assessment or penalty, the High Court may direct the agricultural income-tax authority to amend the assessment or penalty order accordingly and on such amendment being made, any amount over paid by any person shall be refunded to him, or the further amount of tax or penalty due from him shall be

collected in accordance with the provisions of this Act, as the case may be.

(8) The cost of a revision under sub-section (1) shall be at the discretion of the High Court.

(9) Every revision preferred to the High Court under section 78 shall be heard by a bench of not less than two judges and in respect of such revision the provision of section 98 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall so far as may apply.

**78A.** Fees For Interlocutory Application :- Every interlocutory applications prescribed by the Government and filed before the authorities under this Act, specified below, other than those filed by officers empowered by Government, shall be accompanied by following fees, namely: -

- (a) Before the Deputy Commissioner (Appeals) One hundred rupees
- (b) Before the Deputy Commissioner One hundred rupees
- (c) Before the Commissioner or Appellate Tribunal Two hundred and fifty rupees

## **CHAPTER 12** PENALTIES

### **79.** Penalty For Failure To Furnish Return, Comply With Notice, Concealment Of Agricultural Income Etc :-

(1) If the Agricultural Income tax Officer, the Inspecting Assistant Commissioner, the Deputy Commissioner (Appeals), the Deputy Commissioner, the Commissioner or the Appellate Tribunal, in the course of any proceedings: under this Act, is satisfied that any person-

(a) has without reasonable cause failed to furnish the return which he was required to furnish under sub-section (1) of section 35 or by notice given under sub-section (2) of section 35 or subsection (1) of section 41, within the time allowed for it under the above sections or under the proviso to sub-section (2) of section 35 and in the manner provided under section 35 or under any rules made thereunder; or

(b) has without reasonable cause, failed to comply with a notice under sub-section (1) of section 38 or sub-section (2) of section 39, or a summons to appear in person or to produce any accounts or documents or a notice to produce any accounts or documents under section 27; or

(c) has concealed the particulars of his agricultural income or extent or furnished inaccurate particulars of such income or extent; or  
(d) failed to give notice as required by sub-section (2) of section 58 on the discontinuance of business by any company firm or association of persons; or

(e) willfully contravened any of the provisions of this Act for which no express provision for penalty or punishment is provided this Act; such authority may direct that such person shall pay, by way of penalty, in addition to the amount of tax, if any, payable by him a sum not exceeding that amount, where it is practicable to quantify the amount of tax and in other cases a sum of money not exceeding rupees five thousand.

(2) Notwithstanding anything contained in this section-

(a) where a person who has failed to comply with a notice under sub-section (2) of section 35 sub-section (1) of section 41, proves that he has no income liable to tax, the penalty under sub-section (1), shall not exceed one hundred rupees;

(b) no penalty shall be imposed under sub-section (1) upon any person assessable to tax as the agent of a non-resident for failure to furnish the return under sub-section (1) of section 35.

(3) No order under sub-section (1) shall be made unless the person concerned is given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same act for which a penalty has been imposed under sub-section (1).

(5) If the Deputy Commissioner (Appeals), the Commissioner or the Appellate Tribunal makes an order under sub-section (1) such authority shall forthwith send a copy of the same to the Agricultural Income tax Officer or the Inspecting Assistant Commissioner concerned.

## **CHAPTER 13 OFFENCES AND PROSECUTIONS**

### **80. Contravention Of Section 28 :-**

(1) Whoever causes any; obstruction to the exercise of any of the powers conferred under subsections (2), (3 or (8) of section 28 shall be punishable with simple imprisonment which may extent to six months or with fine.

(2) Whoever wilfully contravenes any provision of this Act for which no express provision for penalty is provided, shall on conviction, be punishable with fine not exceeding rupees two thousand.

### **81. Failure To Furnish Return Or To Supply Information :-**

If a person fails without reasonable cause or excuse:-

- (a) to furnish in due time any of the returns specified in subsection (1) or sub-section (2) of section 35 or sub-section (1) of section 41
- (b) to grant inspection or allow copies to be taken in accordance with the provisions of sections 27, 28 or 30; or
- (c) to produce or cause to be produced on or before the date specified in any notice served on him under sub-section (4) of section 35 such accounts and documents as are referred to in the notice; shall be punishable with fine with a sum not exceeding fifty rupees for every day during which the default continues if it is a continuing offence and in other cases a fine not exceeding rupees two thousand.

### **82. False Statement In Declaration :-**

If a person makes a statement in any verification under this Act or under any rule made there under, or delivers any account of statement which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to six months or with fine.

### **83. Prosecution To Be At The Instance Of The Inspecting Assistant Commissioner :-**

(1) A person shall not be proceeded against for an offence under Section 80 or section 81 or section 82 except at the instance of the Inspecting Assistant Commissioner.

(2) Before instituting proceedings against any person under subsection (1), the Inspecting Assistant Commissioner shall call upon such person to show cause why proceedings should not be instituted against him.

(3) The Inspecting Assistant Commissioner, may, either before or after the institution of proceedings, compound any offence.

### **84. Disclosure Of Particulars By Public Servants :-**

(1) If a public servant furnishes any information or produces any document in contravention of the provisions of sub-section (2) of section 32 he shall be punishable with imprisonment which may extend to six months or with fine.

(2) No prosecution shall be instituted under this section except with the previous sanction of the Government.

### **85. Cognizance Of Offences :-**

No offence under this Chapter shall be tried by a Magistrate below the rank of a Magistrate of the First Class.

### **86. Compounding Of Offences :-**

The Agricultural Income Tax Officer, or the Inspecting Assistant Commissioner or any other officer or authority authorised by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act by way of composition of such offence-

(a) where the offence consist of evasion of any tax payable under this Act, in addition to the tax so payable, a sum of money equal to the tax so payable subject to a minimum of rupees One hundred and maximum of rupees one lakh; and (b) in other cases a sum of money not exceeding rupees five thousand:

Provided that the Commissioner may by order authorise any officer to compound the offence under this section on payment of a reduced amount.

## **CHAPTER 14 SERVICE OF NOTICES**

### **87. Service Of Notice Generally :-**

(1) Any notice required to be served on, or given to any person under this Act or the rules made thereunder, shall be deemed to be duly served or given, if it is served in anyone of the following ways:-

(a) if the notice is addressed to that person and is given or tendered to him; or

(b) where that person cannot be found, if it is affixed on some conspicuous part of his last known place of residence or business or is tendered to any audit member of his family; or

(c) if it is sent by registered post to that person at his last known place of residence or business.

(2) Any such notice or requisition may be addressed: -

(a) in the case of a firm to any partner of the firm;

(b) in the case of a local authority or a company, to the principal officer thereof;

(c) in the case of any other association or body of individuals to the principal officer thereof or any member;

(d) in the case of any other person (not being an individual) to the person who manages or controls its affairs.

### **88. Service Of Notice When Firm Etc., Is Dissolved :-**

Where a firm or other association of persons, is dissolved or

discontinued, notices under this Act in respect of the agricultural income of the firm or association of persons may be served on any person who was a partner (not being a minor), or member of the association as the case may be, immediately before its dissolution or discontinuance.

### **89. Service Of Notice In The Case Of Discontinued Business**

**:-**

Where an assessment is to be made under the provisions of Chapter VIII, the Agricultural Income Tax Officer may serve on the person whose agricultural income is to be assessed or in the case of a firm, an association of persons, or any person who was a partner of such firm, member of association, at the time of its discontinuance, 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 subsection (2) of section 35 and the provisions of this Act, shall so far as may be apply accordingly, as if the notice were a notice issued under that section.

## **CHAPTER 15 MISCELLANEOUS**

### **90. Appearance By Authorised Representative :-**

(1) Any assessee who is entitled or required to attend before any agricultural income tax authority or the Appellate Tribunal in connection with any proceeding under this Act, otherwise than when required under section 27 to attend personally for examination on oath or affirmation, may attend either in person or by any person duly authorised by him in writing in this behalf, being a relative or a person regularly employed by the assessee or a legal practitioner or any accountant or an Income Tax Practitioner or Sales Tax Practitioner and not being disqualified on the ground of misconduct by or under any law or under any order, of any competent authority.

(2) In this section.

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealing;

(ii) "Accountant means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act XXXVIII of 1949) and includes a member of an association of accountants recognised in this behalf by the Government.

(iii) "Income tax Practitioner" means any person who was an



"Income Tax Practitioner" within the meaning of clause (iv) of sub-section (2) of section 61 of the Agricultural Income tax Act, 1950 (Act XXII of 1950) and was actually practicing as such.

(iv) "Sales tax Practitioner" means any person registered as a Sales tax Practitioner under the provisions of the Kerala General Sales Tax Act, 1963 (Act XV of 1963).

(v) "Legal Practitioner" means one who is entitled to practice in any Civil Court in India.

(3) Where any person other than a legal practitioner is authorised to attend before the authorities mentioned in sub-section (1), such person shall file the authorisation in such form and it shall be accompanied by such fee as may be prescribed.

### **91. Rounding Off Agricultural Income Tax Etc :-**

(1) The amount of total agricultural income computed in accordance with the fore-going provisions of this Act, shall be rounded off to the nearest ten rupee and, for this purpose and wherever, a rounding of the nearest ten rupees is authorised then, if such part is five rupees or more, it shall be rounded off to the nearest ten or multiples of ten rupees and if such part is less than five rupees, it shall be ignored.

(2) The amount of tax, penalty, fine, interest or any other sum payable and the amount of refund due under the provisions of the Act shall be rounded off to the nearest rupee and for this purpose where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more it shall be rounded off to one rupee and if such part is less than fifty paise, it shall be ignored.

### **91A. Appropriation Of Payment :- .**

(1) Where any tax or any other amount due or demanded under the Act is paid by an assessee or other person, the payment so made shall be appropriated first towards interest accrued on such tax or other amount under sub section (4) of Section 37 on such date of payment and the balance available shall be appropriated towards principal outstanding, notwithstanding any request to the contrary by the assessee or any person making such payment.

(2) Notwithstanding anything contained in sub-section (1) where any assessee or other person has paid any amount towards tax or any other amount prior to coming into force of this section, no recomputation of such payments shall be made under sub-section(1).

**92. Receipt To Be Given :-**

A receipt shall be given for any money paid or recovered under this Act.

**93. Indemnity :-**

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

**94. Bar Of Suits In Civil Courts :-**

(1) No suit shall be brought, in any Civil Court to set aside or modify any assessment order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.

(2) No Civil Court shall grant any injunction or direction or otherwise interfere with any proceedings for assessment to tax under this Act.

**95. Transfer Of Assessment :-**

(1) The Board of Revenue or the Commissioner, may either suo motu or on application for reasons to be recorded in writing in such manner as may be prescribed, transfer any case of assessment pending before any Agricultural Income Tax Officer or Inspecting Assistant Commissioner, to any other Agricultural Income Tax Officer or Inspecting Assistant Commissioner. The order of transfer shall be communicated to the assessee, to every other person affected by the order and to the Agricultural Income Tax Officers or Inspecting Assistant Commissioners concerned.

(2) The Deputy Commissioner may either suo motu or on application, for reasons to be recorded in writing in the manner prescribed, transfer any case of assessment within his jurisdiction ending before any Agricultural Income Tax Officer, or Inspecting , Assistant Commissioner, to any other Agricultural Income Tax Officer or Inspecting Assistant Commissioner. The order of transfer shall be communicated to the assessee, to every other person affected by the order and to the Agricultural Income Tax Officers or Inspecting Assistant Commissioners concerned.

#### **96. Transfer Of Appeal :-**

The Board of Revenue or the Commissioner may, either suo motu or on application, for reasons to be recorded in writing, transfer an appeal pending before the Deputy Commissioner (Appeals) to another Deputy Commissioner (Appeals). The order of transfer shall be communicated to the appellant, to every other person affected by the order to the Agricultural Income Tax Officer or Inspecting Assistant Commissioner, against whose order the appeal was preferred and Deputy Commissioner (Appeals) or Deputy Commissioners concerned.

#### **97. Disposal Of Assessment Or Appeal Irrespective Of Jurisdiction :-**

The authority to whom assessment, or appeal is transferred under section 95, or section 96 as the case may be shall proceed to dispose of it irrespective of the local limits of jurisdiction.

#### **98. Power To Make Rules :-**

(1) The Government may, by notification in the Gazette, make rules prospectively or retrospectively for carrying out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters: -

(a) the ascertainment and determination of any class of agricultural income;

(b) the deductions and exemptions to be made in the computation of agricultural income;

(c) the special deductions and allowances including replantation allowance; and infilling expenses in respect of plantations and other perennial crops, where expenditure has to be incurred for a number of years before Income is derived therefrom;

(d) the percentage on the written down value which may be allowed as depreciation in respect of buildings, machinery, plant or furniture including deduction towards initial depreciation

(e) the form and manner in which any application, claim, return or information may be made or furnished;

(f) the form and manner in which any appeal or cross objection, revision or review may be filed under this Act;

(g) the procedure to be followed on applications for registration of charitable trusts and institutions and for refunds;

(h) any other matter which by this Act is to be or may be

prescribed.

(3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees that the rule should be either modified or annulled, the rule 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 this Act.

## **99. Repeal And Saving :-**

(1) The Agricultural Income Tax Act, 1950 (Act XXII of 1950) is hereby repealed:

Provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder, and subject, thereto, anything done or any action taken, including any appointment, notification, notice, order, rule, form or regulation, certificate, licence or permit in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the date on which such thing was done or action was taken and all arrears of tax and other amounts due at the commencement of this Act may be recovered, as if they had accrued under this Act and any reference in the said Act to an officer, authority, Tribunal or Court shall be construed as reference to the corresponding Officer, authority, Tribunal or Court appointed or constituted under this Act, and if any doubt arises as to who is such corresponding Officer, authority, Tribunal or Court, the decision of the Government thereon shall be final.

(2) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceeding made or preferred to any officer or authority under the said Act, and pending at the commencement of this Act, shall, after such commencement, stand transferred to and be disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act, as if it had been in force on the date on which such application, appeal or revision or other proceeding was made or preferred.

(3) Nothing contained in sub-section (1) shall affect the right to initiate and complete any proceedings pending on the commencement of this Act regarding the assessment, levy, collection and recovery of the tax chargeable under the said Act including that of escaped agricultural income or affect the liability of any person to pay any sum due from him or any existing right of refund under the said Act.

(4) Notwithstanding such repeal of the Agricultural Income Tax Act, 1950 (Act XXII of 1950), any proceedings pending before any Agricultural Income Tax Authority, Appellate Tribunal or High Court at the commencement of this Act, shall be continued and finally decided or determined under the provisions of that Act.

(5) Any arrears of tax or other amount pending and any recovery proceedings initiated or continued shall be continued as if the levy, collection and recovery are made or is continuing under the provisions of this Act and provisions of this Act relating to penalty and interest shall apply to such arrears of tax, or other amount which are in arrears at the commencement of this Act.

#### **100. Power To Remove Difficulties :-**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(2) Every order made under this section shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees that the order should be either modified or annulled, the order 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 this Act.