

OFFICE OF THE PRINCIPAL ACCOUNTANT
GENERAL (AUDIT) KERALA,
THIRUVANANTHAPURAM

STATE REVENUE AUDIT MANUAL

AGRICULTURAL INCOME TAX

Issued by:

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GENERAL (AUDIT) KERALA,
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(i)

PREFACE

This Manual has been prepared for the guidance of personnel entrusted with the audit of receipts and refunds under 'Agricultural Income Tax'.

The revised edition of this manual is based on the provisions of the Kerala Agricultural Income Tax Act, 1991. The audit instructions contained in this manual are supplementary to the general instructions contained in the manuals/circulars issued by the Comptroller and Auditor General of India.

The provisions of this manual are only for the guidance of audit and shall not be quoted as authority in any correspondence outside this office.

SRA (HQ) Section dealing with Agricultural Income Tax receipt audit is responsible for keeping the manual up to date.

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CHAPTER-I

AUDITING STANDARDS

The auditing standards of the International Organisation of Supreme Audit Institutions (INTOSAI) have been suitably adapted with due consideration of the Constitution of India, relevant statutes and rules for the auditing standards for the Supreme Audit Institution of India (SAI).

Auditing standards prescribe the norms of principles and practices, which the Auditors are expected to follow in the conduct of audit.

I.I Basic postulates

The basic postulates for auditing standards are basic assumptions, logical principles and requirements which help in developing auditing standards and serve the auditors in forming their opinions and reports, particularly in cases where no specific standards apply.

- The SAI should comply with INTOSAI Auditing standards in all matters that are deemed material to ensure that the work and products are of high quality having materiality by value and by nature.
- In diverse situations the Auditor must exercise his judgment in determining the auditing procedures necessary in the circumstances to afford a reasonable basis for his opinion and the content of his report.
- Commensurate with increased public consciousness the SAI should be able to safeguard the financial interests of the State promoting public accountability and sound and economical financial management practices.
- Audit assists the legislatures in the exercise of financial control over the executive government. The Executive Government and not Audit is responsible for enforcing economy efficiency in the expenditure of public money. It is, however, the duty of Audit to bring to light wastefulness, failures, system weaknesses, deficiencies and circumstances leading to in fructuous expenditure.

- SAI shall advise the Government for the promulgation of acceptable accounting standards that should result in the fair presentation of the financial position and the results of operations.
- Though it is the responsibility of audited entity to develop adequate internal control systems to protect its resources, the Auditor shall submit proposals and recommendations to the audited entity where controls are found to be inadequate or missing.
- Information about an audit entity acquired in the course of the Auditor's work must not be used for purposes outside the scope of audit and formation of an opinion or in reporting not in accordance with the Auditor's responsibility. It is essential that audit maintain confidentiality regarding audit matters and the information obtained while carrying out audit engagements.
- **SAI should avoid conflict of interest between the auditor and the entity under audit.**

1.2 General standards in Government Auditing

The general auditing standards describe the qualifications of the auditor and the auditing institution.

- The auditor and the audit institutions must be independent. The independence of the Auditor includes independence from the Legislature and the Executive
- The SAI works closely with the legislature, and must observe the laws enacted by the legislature but it is important that the SAI maintains his independence from political influence, in order to preserve an impartial approach to its audit responsibilities .This implies that the SAI not be responsive, nor give the appearance of being responsive, to the wishes of particular political interests. It should not be subject to direction by the legislature in the programming , planning and conduct of audits.
- A degree of cooperation between the SAI and the executive is desirable in some areas. SAI's reports assist the executive by drawing attention to the deficiencies in administration and recommending improvements. The SAI should be ready to advise the executive in such matters as accounting standards and policies and the form of financial statements. The SAI must

ensure that in giving such advice it avoids any explicit or implied commitment that would impair the independent exercise of his audit mandate. Care should be taken to avoid participation in the executive's functions of the kind that would militate against the SAI's independence and objectivity in the discharge of his mandate. There shall be no power of direction by the executive in relation to the SAI's performance of his mandate. The SAI is not be obliged to carry out, modify or refrain from carrying out an audit or suppress or modify audit findings, conclusions and recommendations.

- The SAI must remain independent from audited entities. The audited entity is not in a client relationship with the SAI. There is legal mandate for full and free access for the CAG and his Auditors to all premises and records relevant to audited entities and their operations and provides adequate powers to the CAG to obtain relevant information from persons or entities possessing it. Good relationships with the auditee can help the SAI to obtain information freely and frankly and to conduct discussions in an atmosphere of mutual respect and understanding. The SAI has to discharge his mandate freely and impartially, taking management views into consideration in forming audit opinions, conclusions and recommendations, but owing no responsibility to the management of the audited entity for the scope or nature of the audits undertaken.
- The SAI may cooperate with academic institutions and enter formal relationships with professional bodies, provided the relationships do not inhibit its independence and objectivity, in order to avail of the advice of experienced members of the profession at large.
- The auditor and the SAI must possess the required competence. Since the duties and responsibilities of the SAI are crucial to the concept of public accountability, the SAI must apply to his audits, methodologies and practices of the highest quality including systems based techniques, analytical review methods, statistical sampling, and audit of automated information systems.

- The SAI should pay due care in specifying, gathering and evaluating evidence, and in reporting findings, conclusions and recommendations. The SAI must be, and be seen to be, objective in its audit of entities and public enterprises and should be fair in its evaluations and in its reporting the outcome of audits. **Auditors need to be alert for situations, control weaknesses, inadequacies in record keeping, errors and unusual transactions or results, which could be indicative of fraud, improper, or unlawful expenditure unauthorized operations, waste inefficiency or lack of probity.**
- Information about an audited entity acquired in the course of the auditor's work must not be used for purposes outside the scope of an audit and the formation of an opinion or in reporting in accordance with the auditor's responsibilities. It is essential that the audit department maintain confidentiality regarding audit matters and information arising from its audit task. **However, the SAI should report offences against the law to proper prosecuting authorities.**
- SAI should have an appropriate quality assurance system in place. It should pay particular attention to quality assurance programmes in order to improve audit performance and results. The SAI should establish systems and procedures to:
 - Confirm that internal quality assurance processes have operated satisfactorily;
 - Ensure the quality of the audit report; and
 - Secure improvements and avoid repetition of weaknesses.

The quality of the work done by the audit department can be enhanced by strengthening internal review and by the independent appraisal of its work.

- The SAI should adopt policies and procedures to support the skills and experience available within the SAI and identify those skills which are absent; provide a good distribution of skills to auditing tasks and a sufficient number of persons for the audit; and have proper planning and supervision to achieve its goals at the required level of due care and concern

1.3 Field standards in Government Auditing

The field standards establish the framework for conducting and managing audit work. The purpose of field standards is to establish the criteria or overall framework for the purposeful, systematic and balanced steps or actions that the auditor has to follow.

- The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out in an economic, efficient and effective way and in a timely manner.
- The work of the audit staff at each level and audit phase should be properly supervised during the audit, and a senior member of the audit staff should review documented work
- The auditor, to determine the extent and scope of the audit, should study and evaluate the reliability of internal control.
- In conducting regularity (financial) audits, a test should be made of compliance with applicable laws and regulations to provide reasonable assurance of detecting errors, irregularities, and illegal acts that could have a direct and material effect on the financial statement. The auditor should be aware of the possibility of illegal acts that could have an indirect and material effect on the financial statements or results of regularity audit.
- In conducting performance audits, an assessment should be made of compliance with applicable laws and regulations to satisfy the audit objectives.
- Any indication that an irregularity, illegal act, fraud or error may have occurred which could have a material effect on the audit should cause the auditor to extend procedures to confirm or dispel such suspicions. The regularity audit is an essential aspect of Government auditing.
- Competent, relevant and reasonable evidence should be obtained to support the auditor's judgment and conclusions regarding the organisation, programme, activity or function under audit.

- In regularity (financial) audit and in other types of audit when applicable, auditors should analyse the financial statements to establish whether acceptable accounting standards for financial reporting and disclosures are complied with. Analysis of financial statements should be performed to such a degree that a rational basis is obtained to express an opinion on financial statements.
- The Auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out in an economic, efficient and effective way and in a timely manner. The SAI should give priority to any audit tasks, which must be undertaken by law and assess priorities for discretionary areas within the SAI's mandate. In planning an audit of specific auditees, the auditor should:
 - Identify important aspects of the environment in which the audited entity operates;
 - Develop an understanding of the accountability relationships;
 - Consider the form, content and users of audit opinions, conclusions or reports;
 - Specify the audit objectives and the tests necessary to meet them;
 - Identify key management systems and controls and carry out a preliminary assessment to identify both their strengths and weaknesses;
 - Determine the materiality of matters to be considered;
 - Review the internal audit of the audited entity and its work programme;
 - Assess the extent of reliance that might be placed on other auditors, for example, internal audit;
 - Determine the most efficient and effective audit approach;
 - Provide for a review to determine whether appropriate action has been taken on previously reported audit findings and recommendations; and
 - Provide for appropriate documentation of the audit plan and for the proposed fieldwork.

- Auditors should design the audit to provide reasonable assurance of detecting material misstatements resulting from non compliance with provisions of contracts or grant agreements that have a direct and material effect on the determination of financial statement amounts. If specific information comes to the auditor's attention that provides evidence concerning the existence of possible non-compliance that could have a material indirect effect on the financial statements, auditors should apply audit procedures, specifically directed to ascertaining whether that non-compliance has occurred.
- Supervision is essential to ensure the fulfillment of audit objectives and the maintenance of the quality of audit work. Supervision should be directed both to the substance and to the method of auditing to ensure that:
 - The members of the audit team have a clear and consistent understanding of the audit plan;
 - The audit is carried out in accordance with the auditing standards and practices of the SAI;
 - The audit plan and action steps specified in that plan are followed unless a variation is authorized;
 - Working papers contain evidence adequately supporting all conclusions recommendations and opinions;
 - The auditor achieves the stated audit objectives; and
 - The audit report includes the audit conclusions, recommendations and opinions, as appropriate.
- All audit work should be reviewed by a senior member of the audit staff before the audit opinions or reports are finalized. It should be carried out as each part of the audit progresses. Review brings more than one level of experience and judgment to the audit task and should ensure that;
 - All evaluations and conclusions are soundly based and are supported by competent, relevant and reasonable audit evidence as the foundation for the final audit opinion or report;

- All errors, deficiencies and unusual matters have been properly identified, documented and either satisfactorily resolved or brought to the attention of a more senior SAI officer (s); and
 - Changes and improvements necessary to the conduct of future audits are identified, recorded and taken into account in later audit plans and in staff development activities.
- The auditor, in determining the extent and scope of the audit, should study and evaluate the reliability of internal control. The study and evaluation of internal control should be carried out according to the type of audit undertaken. In the case of regularity (financial) audit, study and evaluation are made mainly on controls that assist in safeguarding assets and resources, and assure the accuracy and completeness of accounting records. In the case of regularity (compliance) audit, study and evaluation are made mainly on controls that assist management in complying with laws and regulations. In the case of performance audit they are made on controls that assist in conducting the business of the audited entity in an economic, efficient and effective manner, ensuring adherence to management policies, and producing timely and reliable financial and management information.
- Competent, relevant and reasonable evidence should be obtained to support the auditor's judgment and conclusions regarding the Organisation, Programme, activity or function under audit. The audit findings, conclusions, and recommendations must be based on evidence. Since auditors seldom have the opportunity of considering all information about the audited entity, it is crucial that the data collection and sampling techniques are carefully chosen. When computer based system data are an important part of the audit and the data reliability is crucial to accomplishing the audit objective, auditors need to satisfy themselves that the data are reliable and relevant. In choosing approaches and procedures, consideration should be given to the quality of evidence, i.e the evidence should be competent, relevant, reasonable and as direct as possible so as to reduce the need for inferences to be made.

- Auditors should adequately document the audit evidence in working papers, including the basis and extent of the planning, work performed and the findings of the audit. Working papers should contain sufficient information to enable an experienced auditor having no previous connection with the audit to ascertain from them the evidence that supports the auditor's significant findings and conclusions. The content and arrangement of the working papers reflect the degree of the auditor's proficiency, experience and knowledge.
- Where SAI is required to report on the execution of budgetary laws, the audit should include:
 - For revenue accounts, ascertaining whether forecasts are those of the initial budget, and whether the audits of taxes, rates and duties recorded and imputed receipts can be carried out by comparison with the annual financial statements of the audited activity;
 - For expenditure accounts, verifying credits to assist budgets, adjustment laws and, for carryovers, the previous year's financial statements.
- Where the SAI is required to report on systems of tax administration or systems for realizing non tax receipts, alongwith a systems study and analysis of realization of revenues/receipts, detection of individual errors in both assessment and collection is essential to highlight audit assertions regarding the system defects and comment on their efficiency to ensure compliance.

1.4 Reporting standards

The audit reporting process begins with submission of an Inspection Report to the Head of any Office or Department which has been audited with a request to submit replies and clarifications/comments on the audit observations. Depending on the veracity and relevance of replies/clarifications received and the materiality of the observations in the Inspection Reports, these are further processed for reporting in the Audit Report submitted by the SAI for being placed in the concerned legislature.

- On the completion of each audit assignment, the Auditor should prepare a written report setting out the audit observations and conclusions in an appropriate form; its content should be easy to understand, free from ambiguity and supported by sufficient, competent and relevant audit evidence and be independent, objective, fair, complete, accurate, constructive and concise.
- With regard to audit of financial statements, the auditor should prepare a report expressing opinion on the fair presentation of the financial position of the audited entity in the financial statement.
- With regard to fraudulent practice or serious financial irregularities detected during audit or examined by audit, a written report should be prepared. This report should indicate the scope of audit, main findings, total amount involved, modus operandi of the fraud or the irregularity, accountability for the same and recommendations for improvement of internal control system, fraud prevention and detection measures to safeguard against recurrence of fraud/serious financial irregularity.
- With regard to Performance Audit/ Value for Money Audit , the report should include a description of the scope and coverage of audit, objective of audit, area of audit, main findings in respect of the efficiency, economy and effectiveness (including impact) aspects of the area (subject matter) which was audited and recommendations suggesting the improvements that are needed.
- With regard to regularity audits, the auditor should prepare a written report which may either be a part of the report on the financial statements of the value for money audit or a separate report on the tests of compliance of applicable laws and regulations. The report should contain a statement on the results of the tests to indicate the nature of assurance i.e positive or negative obtained from the tests.
- The audit report should be

- **Complete:** The report should contain all pertinent information needed to satisfy the audit objectives, and to promote an adequate and correct understanding of the matter reported. It also means including appropriate background information.
- **Accurate:** The evidence presented should be true and the conclusions be correctly portrayed. The conclusions should flow from the evidence. In most cases a single example of a deficiency is not sufficient to support a broad conclusion or a related recommendation. The report should include only information, findings and conclusions that are supported by competent and relevant evidence in the auditor's working papers. Reported evidence should demonstrate the correctness and reasonableness of the matters reported. However, except as necessary, detailed supporting data need not be included in the report.
- **Correct portrayal :** the report shall portray accurately the audit scope and methodology and presenting findings and conclusions in a manner consistent with the scope of audit work.
- **Objective :** The audit report should be fair and not be misleading and should place the audit results in proper perspective. This means presenting the audit results impartially and guarding against the tendency to exaggerate or over emphasis deficient performance. In describing shortcomings in performance, the auditor should present the explanation of the audited entity and stray instances of deviation should not be used to reach broad conclusions. The tone of reports should encourage decision makers to act on the auditor's findings and recommendations. Although findings should be presented clearly and forthrightly, the auditor should keep in mind that one of the objectives is to persuade and this can best be done by avoiding language that generate defensiveness and opposition.

- **Convincing** : The audit result requires to be presented persuasively and the conclusions and recommendations followed logically from the facts presented. The information presented should be sufficient to convince the readers to recognize the validity of the findings and reasonableness of audit conclusions.
 - **Clear**: The report should be easy to read and understand. Use of non-technical language is essential. Wherever technical terms and unfamiliar abbreviations are used, they should be clearly defined. Both logical organisation of the material and precision in stating the facts and in drawing conclusions significantly contribute to clarity and understanding.
 - **Concise** : The report requires to be not longer than necessary to convey the audit opinion and conclusions. Too much of details detracts from the report and conceals the audit opinion and conclusions and confuses the readers.
 - **Constructive**: The report should also include well thought out suggestions, in broad terms, for improvements, rather than how to achieve them. In presenting the suggestions due regard should be paid to the requirements of rules and orders, operational constraints and the prevailing milieu.
 - **Timely** : The audit report should be made available promptly to be of utmost use to all users, particularly to the auditee organizations and/or Government who have to take requisite actions.
- Auditors should report deficiencies in internal control that they consider to be reportable conditions. The following are examples of matters that may be reportable conditions.
- Absence of appropriate segregation of duties consistent with appropriate control objectives;
 - Absence of appropriate reviews and approvals of transactions, accounting entries or systems output;

- Inadequate provisions for the safeguarding of assets;
- Evidence of failure to safeguard assets from loss, damage or misappropriation;
- Evidence that a system fails to provide complete and accurate output consistent with the auditee's control objectives because of the misapplication of control procedures;
- Evidence of intentional override of internal control by those in authority to the detriment of the overall objectives of the system;
- Evidence of failure to perform tasks that are part of internal control, such as reconciliation not prepared or not timely prepared;
- Absence of a sufficient level of control consciousness within the organization;
- Significant deficiencies in the design or operation of internal control that could result in violations of laws and regulations having a direct and material effect on the financial statements; and
- Failure to follow up and correct previously identified deficiencies in internal control.

1.5 The form and content of audit opinion and report

The form and content of all audit opinions and reports are founded on the following general principles:

Title. The opinion or report should be preceded by a suitable title or heading

Signature and date . the opinion or report should be properly signed

Objectives and scope. The opinion or report should include reference to the objectives and scope of the audit. This information establishes the purpose and boundaries of the audit.

Completeness. The opinions should be appended to and published with the financial statements to which they relate, but performance reports may be free standing. The auditor's opinions and reports should be presented as prepared by the auditor.

Addressee. The opinion or report should identify those to whom it is addressed, as required by the circumstances of the audit engagement and local regulations or practice. This is unnecessary where formal procedures exist for its delivery.

Identification of subject matter. The opinion or report should identify the financial statements (in the case of regularity (financial audits) or area (in the case of performance audits) to which it relates. This includes information such as the name of the audited entity, the date and period covered by the financial statements and the subject matter that has been audited.

Legal basis. Audit opinions and reports should identify the legislation or other authority providing for the audit.

Compliance with standards. Audit opinions and reports should indicate the auditing standards or practices followed in conducting the audit, thus providing the reader with an assurance that the audit has been carried out in accordance with generally accepted procedures.

Timeliness. The audit opinion or report should be available promptly to be of greatest use to readers and users, particularly those who have to take necessary action.

Adverse opinion. Where the auditor is unable to form an opinion on the financial statements taken as a whole due to disagreement which is so fundamental that it undermines the position presented to the extent that an opinion which is qualified in certain respects would not be adequate, an adverse opinion is given. The wording of such an opinion makes clear that the financial statements are not fairly stated, specifying clearly and concisely all the matters of disagreement. Again, it is helpful if the financial effect on the financial statements is quantified where relevant and practicable.

Disclaimer of opinion. Where the auditor is unable to arrive at an opinion regarding the financial statements taken as a whole due to an uncertainty or scope restriction that is so fundamental that an opinion, which is qualified in certain respects, would not be adequate, a disclaimer is given. The wording of such a disclaimer makes clear that an opinion cannot be given, specifying clearly and concisely all matters of uncertainty.

Regularity audits often require that reports are made where weaknesses exist in systems of financial control or accounting (as distinct from performance audit aspects). This may occur not only where weaknesses affect the audited entity's own procedures but also where they relate to its control over the activities of others. The

auditor should also report on significant irregularities, whether perceived or potential, on inconsistency of application of regulations or on fraud and corrupt practices. The extent of non-compliance can be related to the number of cases examined or quantified monetarily. Reports on irregularities may be prepared irrespective of a qualification of the auditor's opinion. By their nature they tend to contain significant criticisms, but in order to be constructive they should also address future remedial action by incorporating statements by the audited entity or by the auditor, including conclusions or recommendations.

The performance audit report should state clearly the objectives and scope of the audit. Reports may include criticism (e.g where, in the public interest or on grounds of public accountability, matters of serious waste, extravagance or inefficiency are drawn to attention) or may make no significant criticism but give independent information, advice or assurance as to whether and to what extent economy, efficiency and effectiveness are being or have been achieved.

The auditor is not normally expected to provide an overall opinion on the achievement of economy, efficiency and effectiveness by an audited entity in the same way as the opinion on financial statements. Where the nature of the audit allows this to be done in relation to specific areas of an entity's activities, the auditor should provide a report, which describes the circumstances and arrives at a specific conclusion rather than a standardized statement. Where the audit is confined to consideration of whether sufficient controls exist to secure economy, efficiency or effectiveness, the auditor may provide a more general opinion.

Auditors should recognize that their judgement is being applied to actions resulting from past management decisions. Care should therefore, be exercised in making such judgements, and the report should indicate the nature and extent of information reasonably available (or which ought to have been available) to the audited entity at the time the decisions were taken. By stating clearly the scope objectives and findings of the audit, the report demonstrates to the reader that the auditor is being fair. Fairness also implies the presentation of weakness or critical findings in such a way as to encourage correction and to improve systems and guidance within the audited entity. Accordingly the facts are generally agreed with

the audited entity in order to ensure that they are complete, accurate and fairly presented to the audit report. There may also be a need to include the audited entity's responses to the matters raised, either verbatim or in summary, especially where an auditor presents its own views or recommendations.

Performance reports should not concentrate solely on criticism of the past but should be constructive.

CHAPTER –II

INTRODUCTION AND ORGANISATIONAL SETUP

Audit of receipts under the head Agricultural Income Tax is taken up in accordance with the provisions of section 16 of the Comptroller and Auditor General's DPC Act 1971. This Manual is intended to give a broad picture of Agricultural Income Tax Act, 1991 and Rules from the audit view.

Audit of receipt often involves interpretation of the relevant statutes, rules, notifications and orders on the subject. In interpreting the law, the following points have to be borne in mind. When a particular term is defined in the Act, that definition is to be followed. In the absence of any such definition, definitions if any, in enactments which are parimateria may be followed. If the terms have not been defined in the Act which are parimateria, definitions in the Kerala General Clauses

Act may be taken as guideline. In the absence of definitions in the General Clauses Act also, the dictionary meaning of the term may be taken.

If a particular Section leads to two or more interpretations, interpretation consistent with the other Sections of the Act may be taken. If a Section has doubtful or ambiguous meaning, it must be resolved in favor of the tax payer.

“Taxes on agricultural income” is a state subject and is included in list II of the Seventh Schedule to the constitution as entry No.46 and consequently the “Agricultural Income Tax Act 1950” was enacted by the Kerala Legislature and it came into force on 01.04.1951. In 1986 the Government of Kerala appointed a Committee to simplify the procedure and to restructure the Agricultural Income Tax Law so as to plug loopholes to augment revenue and to remove hardships to the agriculturists. Based on the recommendations of the Committee, the Kerala Agricultural Income Tax Act, 1991 came into force on 01.04.1991 repealing the Agricultural Income Tax Act, 1950.

The Act as it stands on the 1st day of April of any financial year must apply to the assessment of that year. Amendments which come into force after the 1st day of April of that year will not be applicable to the assessment of that year, even if assessment is actually made after the amendments came into force-Karimtharur Tea Estate Vs. State of Kerala AIR 1966 SC 1385: 1966 KLT 488 (1966) to ITR 262.

Departmental set up

The department is headed by the Commissioner of Agricultural Income Tax. There are three Deputy Commissioners with jurisdiction over the whole State with headquarters at Thiruvananthapuram and Ernakulam, entrusted with the work of Audit and Inspection, Intelligence and Law. There are 16 Deputy Commissioners with jurisdiction over prescribed Revenue Districts as per schedule attached to SRO No. 466/91 dt. 31.3.1991. The Deputy Commissioner [Intelligence] has statewide jurisdiction and is assisted in his work by Inspecting Assistant Commissioners [Intelligence] and Inspecting Assistant Commissioner (Audit). The files in each office are checked by an internal audit team working under the jurisdiction of Inspecting Assistant Commissioner (Intelligence). The work turned out by the audit team is reviewed by the Deputy Commissioner (Intelligence) every month.

There are two classes of Assistant Commissioners of Agricultural Income Tax viz. Inspecting Assistant Commissioners of Agricultural Income Tax and Appellate Assistant Commissioner of Agricultural Income Tax having original and appellate jurisdiction respectively. From 1-4-05 the posts of Appellate Assistant Commissioner have been abolished and the work entrusted to Deputy Commissioner(Appeals). The Inspecting Assistant Commissioners are assessing authorities for Agricultural Income exceeding Rupees one lakh. Assessments of income, below this limit are made by the Agricultural Income Tax Officers. All the powers vested in Agricultural Income Tax Officer are also exercisable by any IAC, DC or the Commissioner and any act or proceedings of such superior officers is not questionable on the ground that the powers are exercisable only by the Agricultural Income Tax Officer having jurisdiction over the area.

CHAPTER –III

Basic Concepts

“Agricultural income” means-

- a. rent or revenue derived from the land used for agricultural purposes,
- b. income derived from such land by-
 - (i). Agriculture or
 - (ii) the performance by a cultivator or receiver of rent-in-kind to render the produce fit to be taken to market; or
 - (iii) sale by such person of the produce unprocessed other than the process described at (b) (ii) above
- c. Income from building owned and/or occupied by the cultivator or receiver of rent-in-kind for the operations mentioned at (b) (ii) & (iii) above

[Section 2 (1)]

“Assessee” means a person by whom any tax or any other sum of money is payable under this Act.

[Section 2 (7)].


“Person” means any individual, tenants-in common 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. [Sn.2 (20)].

“Tenants-in-common” means two or more person owning or managing property jointly, having therein equal or unequal shares either by the same or different titles or by intestate succession. [Sn.2 (25)].

“Assessment year” means the period of twelve months commencing on the first day of April ever year [Sn 2(9).]

“Previous year” means the financial year immediately preceding the assessment year (Sn. 2 (22)). That means the financial year during which the income assessable to tax is earned.

“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, excluding-

- a. agricultural income derived from land situated outside the State.
 - b. agricultural income derived by cultivation of paddy, tapioca, plantain, ginger, ragi, pulses, sesamum, vegetables, sweet potato, tubers, sugarcane, jack, mango, pineapple, orchid or other flowers , vanilla, turmeric and guava. 
 - c. Share income received on which tax has been paid.
2. The following income shall be deemed to be agricultural income.
- i. amount received from Coffee Board for coffee delivered in any year for pool auction;
 - ii. amount received in respect of loss, expenditure or liability which had been deducted in any earlier assessment year;
 - iii. amount received in respect of bad debts written off in any previous year.

[Sn.4 (1) & (2) .

Merely because the produce of the plantation was received in earlier years, income derived by the assessee from the sale of that produce in the year of account is not exempt from tax under the Act, in that year. [Rajalinga Raja Vs state of Madras 63 ITR 617 S.C]

The amount received from an insurance company for damage caused by hail storms to the green leaf forming part of the assessee's tea garden was only money paid by the Insurance Company in respect of the growing crops damaged by hail storms and it is, therefore, agricultural income, [Commissioner of Income Tax Vs. B.Guptha Tea Pvt. Ltd. 74 ITR 337].

The income derived by a person by sale of rubber obtained by slaughter tapping of rubber trees which he has purchased for being cut and removed does not fall within the definition of agricultural income. [C.P.A Yoosuf Vs. Income Tax Officer, Kottayam. I.T.R 237-Kerala].

Income derived from slaughter tapping of rubber trees carried out by the owner himself is agricultural income. However, in the case of consideration received by assessee under an agreement for slaughter tapping and removing trees, the amount has to be bifurcated and that part pertaining to latex is liable to tax (Thirumbadi Rubber Co. Vs. Commissioner of Agricultural Income-Tax(1977) 110 I.T.R.639, 1973 KLT 590)

CHAPTER-IV

COMPUTATION OF AGRICULTURAL INCOME TAX

Charge of agricultural Income Tax

Tax at the rate or rates specified in the schedule to the Act shall be charged for each assessment year in accordance and subject to the provisions of the 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 provision of the Act do not exceed five hectares, [Sn.3].

SCHEDULE (With effect from 01.04.1995 to 31.03.2005)

1. In the case of person other than Company, Co-operative Societies

a	Where the total agricultural income does not exceed Rs.40,000	Nil
b.	Where the total agricultural income exceeds Rs.40,000 but does not exceed Rs.50,000	20% of the amount by which the total agricultural income exceeds Rs.40,000
c.	Where total agricultural income exceeds Rs.50,000 but does not exceed Rs.60,000	Rs.2,000 plus 30% of the amount by which the total agricultural income exceeds Rs.50,000
d.	Where the total agricultural income	Rs.5,000 plus 40% of the amount

	exceeds Rs.60,000 but does not exceed Rs.1,00,000	by which the total agricultural income exceeds Rs.60,000
e.	Where the total agricultural income exceed Rs.1,00,000	Rs.21,000 plus 50% of the amount by which the total agricultural income exceeds Rs.1,00,000

I A. In the case of firm: 40% of the total agricultural income.

2. in the case of a domestic Company or a Cooperative Society.

A	Where total agricultural income does not exceed Rs.25,000	45% of the total agricultural income
B	Where total agricultural income is between Rs.25,001 and Rs.1,00,000	50% of the total agricultural income
C	Where total agricultural income is between Rs.1,00,001 and 3,00,000	55% of the total agricultural income
D.	Where total agricultural income is between Rs. 3,00,001 and 10,00,000	60% of the total agricultural income
E.(1)	Where the total agricultural Income exceeds Rs. 10 lakhs (1-4-95 to 31.3.98)	65% of the total agricultural Income
(2)	Where the total agricultural income exceeds 10 lakhs (From 1-4-98 to 31-3-05)	60% of the total agricultural income

3. In the case of a foreign company: 85% of the total agricultural income.

SHCEDULE (With effect from 01.04.2005)

1. In the case of person other than Company, Co-operative Societies

a	Where total agricultural income does not exceed Rs.40,000	Nil
b.	Where total agricultural income exceeds Rs.40,000 but does not exceed Rs.60,000	10% of the amount by which the total agricultural income exceeds Rs.40,000
c.	Where total agricultural income exceeds Rs.60,000 but does not exceed Rs.1,00,000	Rs.2,000 plus 20% of the amount by which the total agricultural income exceeds Rs.60,000
d.	Where the total agricultural income exceed Rs.1,00,000	Rs.10,000 plus 30% of the amount by which the total agricultural income exceeds Rs.1,00,000

2. In the case of firm: 35% of the total agricultural income.
3. In the case of a domestic Company or a Co-operative Society.

a	Where total agricultural income does not exceeds Rs.25,000	35% of the total agricultural income
b.	Total agricultural income between Rs.25,001 and Rs.1,00,000	40% of the total agricultural income
c.	Total agricultural income between Rs.1,00,001 and 3,00,000	45% of the total agricultural income
d.	Where total agricultural income exceeds Rs.3,00,000	50% of the total agricultural income

3. In the case of a foreign company: 80% of the total agricultural income.

2. **Computation of agricultural income**

The agricultural income of a person shall be computed after making the following deductions.

- (a) (i) sum paid on account of land revenue or any tax in lieu thereof-
 - (ii) local rates and cess and Municipal taxes in respect of the land;
- (b) rent paid in respect of the land;
- (c) expenses incurred on the maintenance of any irrigation or protective work constructed for the benefit of the land;
- (d) expenses incurred for repairs of any capital asset purchased or constructed for the benefit of the land;
- (e) interest paid on any amount borrowed and actually spent on any capital expenditure incurred for the benefits of the land; When the unpaid interest is capitalized, it will not amount to payment of interest. Assessee is, therefore, not eligible for exemption under 5(e) & (f)- Sulaiman Rawther Vs. State of Kerala 1996 KLJ (Tax Cases)
- (f) interest paid on any debt, secured or not secured, for the purpose of acquiring the land;
- (g) interest paid on agricultural loans taken and spent on the land;
- (h) interest paid on borrowings actually spent for reclaiming; improving or cultivating the property;

- (i) bonus or commission paid to the employees for the services rendered for deriving the agricultural income provided the amount so paid is reasonable with reference to
 - (i) the pay of the employee and the conditions of his service.
 - (ii) the profit for the previous year; and
 - (iii) the general practices prevalent in similar cases;
- (j) bad debts written off;
- (k) gratuity paid to any employee less the provision made in any earlier previous year towards gratuity of that employee; when there is no provision for regulating and controlling the payment of gratuity then and there alone resort to actuarial basis can be perceived. *Kalpatta Estate Ltd. Vs. State of Kerala 1995-KLJ (Tax Case) 367.*

Explanation II Sn.5 In the case of bonus and Gratuity only actual payments are allowable. Provisions are not admissible irrespective of the method of accounting. Gratuity and bonus paid before the due date for submission of return will be allowed as deduction.

Pension paid to an employee is an allowable deduction. Pension though was paid after retirement, was paid for service consideration and hence such expenditure was made for commercial expediency and as such, it could be said to have been laid out or expended for deriving agricultural income. *Travancore Rubber & Tea Co Ltd. Vs State of Kerala 1999(1) KLT 63.*

Listing fee paid to Stock Exchange is not an allowable expenditure. *Travancore Rubber & Tea Co Ltd. Vs State of Kerala 1999(1) KLT 63.*

- (l) Expenses incurred, not of capital nature or personal expenses, for the purpose of deriving agricultural income from the land; The expenses incurred for alteration of Memorandum of Association of the company is a revenue expenditure and an allowable deduction. *Commissioner of Agriculture ITO Vs. C.M.E. & India Ltd.1994 (1) KIT 727;*

Expenses incurred for filing Sale Tax appeals or revisions in connection with sale tax levied for the sale of agricultural produces and the professional fee paid in

connection therewith are permissible deduction – Commissioner of Agriculture ITO Vs. C.M.E. & India Ltd 1994(1) KLT 727.

Charges paid to the auditors for preparing returns of income are allowable expenditure. Sivakanthappa Vs Commissioner of AIT 1994(1) KLT 217.

Nursery maintained by an assessee is part of capital asset and that proceeds from sale of nursery plants cannot be regarded as agricultural income [135 ITR 536].

(m) Such other deductions, including replantation allowance, subject to prescribed limits, conditions or restrictions.

As per rule 3(i) of Kerala AIT rules 1991, Replantaion allowance limited to actual expenses and not exceeding the percentage of the agricultural income for the crops shown will be allowed in every year –

Rubber	2.5
Coconut	1.5
Arecanut	2.5
Pepper	1.00
Coffee	7.5
Other Perennial Crops other than cardamom	1.5

Under an agreement for slaughter tapping and removing of trees, the amount has to be bifurcated and that part pertaining to latex is liable to tax. [Thiruvambadi Rubber Co Vs Commissioner of AIT (1997) 110 ITR 639].

Income received by cutting and selling of old unyielding rubber trees by the assessee who maintained the rubber estate for deriving income in the shape of latex, was held to be capital receipts and not agricultural income [Commissioner of AIT Kerala Vs Quilon Rubber and Co Ltd 60 ITR 435].

The term agriculture comprise all products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, horra nuts, etc., [Commissioner of Income Tax Vs. Raja Bency Kumar Bahas Roy (1957) 32 ITR 466 Supreme Court]

Income from toddy tapping is income at the hands of the cultivator. A person holding trees alone as per lease deed is not a lessee of the land. He is only a licensee [Commissioner of IT Vs Yagappa Nadar (1927) ILR 50 Madras 923].

Annual payment received in consideration of relinquishment of all rights in agricultural land is neither rent nor revenue derived from agricultural land [Raja Mustafa Alikhan Vs. Commissioner of IT (1945) 13 ITR 98].

Agricultural produce raised in his land by an assessee used for the purpose of his business but not sold in the market or otherwise, would constitute agricultural income [Dooars Tea Co.Ltd. Vs. Commissioner of AIT, W.B (1962) 44 ITR 6- S.C].

Where the person has no expenses for replantation during the previous year deduction not exceeding the percentage shown above will be allowed if the amount is deposited in the Treasury in his account and the amount so deposited shall be fully utilized in the year of withdrawal either for replantation or for new plantation of any crop the income of which is liable to tax.[Rule 3(2)]

In respect of cardamom actual expenses for replantation incurred during the previous year but not exceeding 8.33% of the total area planted with such crop and subject to further ceiling of the expenses as fixed by the Spices Board from time to time will be allowed in any year. When the area planted in any year is more than the percentage mentioned above the expenses incurred in excess shall be permitted to be carried forward to the next five years to be adjusted against the replantation allowances admissible for these years as if the replantation were effected these years.[Rule 3(3)].

- (n) if the agricultural income is any rent or revenue derived from land which is used for agriculture, then any expenses incurred in the collection of agricultural income and any expenses incurred for repair of capital assets used for the collection the rent;
- (o) In the case of income derived from land by agriculture, any process to render the produce fit to be taken to market or by the sale of such unprocessed produce

- (i) the expenses other than capital expenditure incurred for cultivating the crop and for transporting the crop to market including maintenance of agricultural implements and cattle required for such cultivation or transport;
- (ii) tax, cess or rate paid on the cultivation or sale of crop from which income is derived;
- (iii) the cost for the purchase or replacement of such cattle or implements, less the amount realized by the sale of cattle or implements replaced or their estimated value;
- (iv) sum paid for:
 - (1) insurance against loss or damage of crops or property from which the income is derived, building, machinery, plant and furniture necessary for deriving agricultural income;
 - (2) emergency risk insurance, workmen's compensation insurance, money in transit insurance, cash 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 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.
- (p) nothing contained in this Section shall entitle a person to deduction of any expenditure incurred for cultivation, upkeep or maintenance of immature plants from which no agricultural income is derived during the previous year. [Section 5].

Where the agricultural income is derived from lands situated partly within the State and partly outside the State, tax is levied on such portion of income attributable to the land situated within State as determined from the accounts, and if it cannot be determined from the accounts on such portion as may be determined by the Agricultural Income Tax Officer in the prescribed manner. [Sn.10].

Amounts not deductible

The following amounts shall not be deducted in computing agricultural income

- (a) sum paid as rate or tax paid on agricultural income;
- (b) interest, salary, bonus, commission or remuneration paid by the firm to any of its partners;
- (c) any expenditure incurred by private limited company as remuneration, benefit, amenity or perquisite to an employee if the Agricultural Income Tax Officer feels such expenditure is excessive or unreasonable; and
- (d) if the Agricultural Income Tax Officer is of the opinion that payment made to any person-relative of the assessee in the case the assessee is an individual and if the assessee is a Company, firm or association of persons, any Director of the company, partner of the firm, member of the association or any relative of such Director, partner or member- is excessive or unreasonable with regard to the services or facility rendered, so much of the expenditure as is considered by him to be excessive or unreasonable. [Sn. 6].

Depreciation and investment Allowance [Sn.7]

- (1) Depreciation of buildings, machinery, plant or furniture owned and used by the assessee for deriving the agricultural income is allowable as specified in the table under rule 8 (reproduced below) subject to the following conditions:
 - (j) Such percentage on the written down value (W.D.V) of the building, machinery, plant or furniture owned and used by the assessee.

Note: 1. Plant includes vehicles and scientific apparatus [explanation I below Sn.7].

2. W.D.V. means-

- (a) actual cost to the assessee in the case of assets acquired in the previous year;
- (b) assets acquired on replacement- the value of the assets acquired less the value realised on sale of the old asset;
- (c) assets acquired before the previous year- the actual cost to the assessee less all depreciations allowed to him under the Act or AIT Act 1950.

[explanation II below sn.7]

3. Machinery, plant or furniture obtained by the assessee on hire purchase agreement shall be deemed to be assets owned by the assessee.

[explanation III below sn.7]

TABLE

Sl. No.	Details of assets		Depreciation allowable on the written down value
(1)	(2)		(3)
1.		Buildings:	
	(i)	General Rate	5%
	(ii)	Factory buildings (excluding offices, godowns, officers and employees quarters, roads, bridges and other items specifically included in this schedule)	10%
	(iii)	Purely temporary erection such as wooden structures, thatched sheds and huts	¹ [100%]
2.		Pucca Wells and Water Installations	5%
3.		Tube Wells	10%
4.		Tanks for irrigation purposes	5%
5.		Irrigation channels and check dams pucca	10%
6.		Irrigation wells-pucca	5%
7.		Barbecuos- pucca including washing channels	5%
8.		Tanks for coffee curing	5%
9.		Smoke Houses	10%

Machinery and plant

A.	Electrical Machinery (All.N.E.S.A):		
10	a.	Batteries	20%
	b.	Other electrical machinery including electrical generators and motors	20%
	c.	Switch-gear and instrument transformers and other plant and wiring and fittings of electrical light and	20%

		fan installation	
	d.	Underground cable and wires as well as overhead cables and wires	20%
	B.	<i>Spraying Machinery:</i>	
II	(i)	Hose-Pipes, hand sprayer	33.33%
	(ii)	Power Sprayers	15%
	C.	<i>Other Machinery: & Plant:</i>	
12.		Motor car, Motor cycles and Jeeps	20%
13.		Cycles	20%
14.		Lorries	20%
15.		Tractors	20%
16.		Power Tillers	25%
17.		Implements and trailers with water carriers	10%
18.		Oil Engine	10%
19.		Weighing machines and machinery	5%
20.		Workshop tools	7%
21.		Factory made cart with rubber tyre wheels	10%
22.		Country Carts	10%
23.		Bullock-drawn wooden and leather implements and coir-mats	25%
24.		Bullock-drawn iron implements	10%
25.		Steam Engine	5%
26.		General machinery implements, plants and other assets not provided specifically in items (1) to (25)	10%
27.		Small estate tools and aluminium dishes	100%
28.		Energy Saving Devices: Pump sets and generators running on solar energy	30%
		<i>Fencing Material:</i>	
29.		Fencing of barbed wire or plain wire or other substantial material	10%
		<i>Furniture:</i>	
30.		Furniture	10%
31.		Fittings	6%

- (ii) for the newly erected building and the newly installed plant and machinery, a further sum equivalent to ten percent of the value of such building, plant or machinery shall be given deduction in respect of the year in which erection and installation is made and put to use. When the building or machinery is not put to use in the year of erection, the deduction shall be allowed in the year in which it is first put to use.

[Rule 9].

2. For the assets acquired under hire purchase system the depreciation including initial depreciation shall in no case exceed the installments paid to the seller.
3. In the case of assets partly used for agricultural purpose the AITO may allow depreciation in proportion to the use of the asset for agricultural purpose.
4. No deduction shall be made if depreciation on the asset is claimed and allowed under the IT Act 1961.
5. Investment allowance equal to 10% of the notified machinery or plant owned and wholly used by the assessee for deriving agricultural income shall be deducted provided;
 - a. the plant or machinery is new;
 - b. assessee furnished requisite particulars;and that no deduction shall be allowed on any machinery or plant installed in any office premises or any residential accommodation including that of the nature of guest house and on any office appliances or road transport vehicles. If machinery or plant on which investment allowance is made is sold or transferred by the assessee at any time before the expiry of five years from the end of the previous year in which it was first put to use, the investment allowance so made shall be treated as income of the assessee for the previous year in which the plant or machinery is transferred or sold.

Rebate and Deduction [Sn.9]

1. A rebate of 20% limited to Rs.10,000/- shall be allowed to an assessee individual, association of persons, body of individuals or firm- on the agricultural income tax for:

- a. any sum paid in the previous year out of his agricultural income towards life Insurance premium or National Savings Certificate or National Savings Schemes or any other fund or Scheme approved by the Government in this behalf for:
 - (i) insurance on the life of the assessee, spouse or any child of the assessee
 - (ii) deferred annuity on the life of the assessee, spouse or child of the assessee
 - (iii) insurance on life of any partner of any firm or member of association of persons where the assessee is a firm or association of a persons. No such rebate is allowable if such claim is an admissible rebate under the provisions of the IT Act 1961.
2. Lesser of one sixth of the total agricultural income or rupees twenty thousand shall be deducted from his agricultural income for donation to notified trust, institution or fund for charitable purpose.
3. A sum not exceeding 20% of the total agricultural income of an assessee deposited out of his agricultural income during the previous year in the Investment Deposit Scheme [IDS] shall be deducted 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 schemes in this behalf ; and
 - (iii) if any withdrawals from the fund is not utilized for the purpose for which it is sanctioned it shall be treated as agricultural income of the year of the withdrawal and assessed accordingly

Explanation:

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

Investment Deposit Scheme, 1993

Deposit may be made by an assessee in any Government Treasury in one or more instalments (para 4) on an application to the Agricultural Income Tax Officer or the IAC, as the case may be, issue an authorization in form A to the Government Treasury to accept the deposit, with a copy to the applicant. Thereafter the assessee make an application to the Government Treasury along with cheque, or cash to open an account in his name under the Scheme and the treasury officer shall open an account and issue a receipt in Form B, and a pass book. The Treasury officer shall issue a statement in Form C to the assessee every year showing the deposits and withdrawals made during the year.

[para 5]

The depositor shall be entitled to withdraw the amount after the expiry of twelve months from the date of deposit and it shall be used for any of the following purposes and invested within the State of Kerala.

- (a) extension of planting, replanting, replacement or inter planting of planted areas including preparation of land, care and maintenance of such areas during the immaturity period of the crop and provision of nurseries and shade trees;
- (b) for construction or extension of roads, culverts, bridges and fencing within the estate;
- (c) for construction or extension of factories and godowns;
- (d) for purchase of tractors, road rollers, trucks, trailers, power tillers, powered trolleys, trolley tracks and conveyer systems, forklift trucks, ambulances, jeeps and motor cycles, for use in plantations within the State;
- (e) for measures of controlling soil erosion and water logging including drainage;
- (f) for provision of irrigation equipment, dams, reservoirs, sluices, wells, water spraying equipments, pumps, engines, electrical connections, piping and canals;
- (g) for spraying equipment for weed control and plant protection measures for use in plantations in this State;

- (h) for purchase of plant and machinery, weighbridges, electrical motors, power generation equipments, electric and gas grid connections, electrification of factories and labor quarters, process control equipment and acquisition of energy saving devices;
- (i) for repayment of the principal amount of term loans, deferred payment credits, hire purchase, lease rental and equipment finance taken after 31st March, 1992 for a period of three years or more from a public financial institution, Housing Development Finance Corporation, any State Housing Board, Scheduled Bank, the Tea Board, Rubber Board, Coffee Board, Spices Board or from any such other institution as the State Government may, by notification, specify in this behalf;
- (j) for purchase of computers and ancillary or related equipment for use in this State in connection with the plantation as may be notified by the Government;
- (k) setting up of any agro based manufacturing unit in the State of Kerala.

Where a deposit is made by a depositor, a copy of the receipt in Form B shall be forwarded along with the return and where a withdrawal is made a certificate by a Chartered Accountant showing the amounts withdrawn during the previous year and the purpose for which the amount so withdrawn was used shall be submitted alongwith the return. [para 9].

The amounts standing to the credit of any account shall not be pledged or offered as security for any loan or guarantee and shall not be charged or alienated in any manner whatsoever. [para 11]

A depositor may by an application made to the Treasury Officer alongwith an authorization from the AIT authorities transfer the amounts under deposit in his account to any of the purchasers of his property by whom AIT is payable under the Act [para 10].

If any depositor dispose of his agricultural land or otherwise becomes not liable to pay AIT and has not transferred the amount deposited, the balance of the deposit at his credit shall be deemed to be his agricultural income and be liable to be assessed accordingly [para 13 (i)].

If the assessee has not utilized the amount withdrawn for any of the purposes specified in para 7, or not proved by his accounts and statements that such amount was so invested, the amount not so invested or not proved as invested shall be deemed to be agricultural income of the year of withdrawal and shall be assessed to tax. [para 13(ii)].

Any deposit made in any year shall be adjusted against the replantation allowance deductible in accordance with rule 3 of Kerala Agricultural Income Tax Rules 1991 of that year and if it cannot be so set off in that year the balance amount, alongwith any deposit made during the subsequent year or years shall be set off against the replantation allowance deductible during all those years till the amount deposited is so fully set off against the replantation allowance due [para 14].

Calculation of Investment Deposit Allowance for Tea.

In the case of income from sale of tea grown and manufactured by him, whether the assessee is depositing in any fund or scheme under Sn.33 AB of the IT Act 1961 [reproduced below] or established under any provision or notification issued under that Act- Central Scheme- the investment deposit allowance do not exceeding 8% of the agricultural income liable to tax under the Act alongwith share of deduction provided under the Central Scheme shall not exceed 20% of the income computed under the Rule 8 (i) of the IT Rules 1962 [Reproduced below] and the deduction under the scheme shall be allowed only if the assessee gives an undertaking to the assessing officer that the aggregate amount deposited under the scheme and the share of the deduction provided under the Central Scheme from the agricultural income derived from the landed property situated within the State will be invested in the State in the manner provided in the respective schemes as and when the amount is withdrawn.

Section 33 AB Income Tax Act 1961Tea Development Account.

Where an assessee carrying on business of growing and manufacturing tea in India has before the expiry of 6 months from the end of the previous year or before furnishing return of his income, whichever is earlier, deposited

with the Nationalized Bank any amount or amount in an account maintained by the assessee with that Bank in accordance with and for the purposes specified in, a scheme approved in this behalf by Tea Board, the assessee shall subject to provisions of this Section, be allowed a deduction (such deduction being allowed before the loss, if any, brought forward from earlier years is set off under Sn. 72) of .

- (a) sum equal to the amount or the aggregate of the amounts so deposited; or
- (b) a sum equal to 20% of the profits of such business (computed under the head “ Profits and gains of business or Profession” before making any deduction under this Section) whichever is less.

Rule 8(1) of IT Rules 1962.

Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty percent of such income shall be deemed to be income liable to tax.

Section 9 (4).

In computing the total agricultural 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 which establish new industrial undertaking within the State out of its agricultural income in the previous year, there shall be deducted a sum not exceeding fifty per cent of the amount so invested, which shall not exceed total agricultural income in the previous year of that company, or rupees one crore, which ever is less, provided-

- (i) Such investment is not in plantation industry or agricultural activities ancillary thereto which is directly a down stream industry of the produce of that plantation;
- (ii) The amount invested is fully utilized within the State within a period of three years form 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.

Explanation - New industrial undertaking means an undertaking formed to carry on business of manufacture of goods but shall not include such industries notified by 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.

Section 9 (5)

No deduction under 9 (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.

Section 9 (6)

If the investment as above is not utilized within the State 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 agricultural income derived by the company during the year in which the period of three years from the date of investment is expired, or as the case may be, during the year in which the sale or transfer takes place and agricultural income shall be computed accordingly.

Assessment of income from lands situated partly within the State (Section 10 & Rule 12)

Where the agricultural income is derived from land situated partly within the State, if the portion of income attributable to land situated within the State can be determined from the accounts maintained by the assessee, agricultural income tax shall be levied on that portion, if it cannot be determined so, but where the value of the produce grown can be determined separately from the accounts, such income shall be computed in proportion to the value of the respective quantity of the produce raised within the State. In other cases, such income shall be computed in proportion to the respective cultivated area of the crops lying within the State.

Carry forward of loss [Section 12]

Where any loss is sustained, it 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.

Transfer of agricultural income without transfer of property [section 18]

Agricultural income transferred, whether revocable or not, where there is no transfer of asset from which the agricultural income is derived, shall be chargeable to tax as the agricultural income of the transferor and shall be included in his total agricultural income.

This shall not apply to transfer of income to a trust which is not revocable during the life time of the beneficiary and in the case of any other transfer, which is not revocable during the life time of the transferee provided that the transferor derives no direct or indirect benefit of such agricultural income in either case [Sn.20].

Income of individual includes income of spouse, minor child etc. [Sn.22]

The total agricultural income of any individual shall include all agricultural income arising directly or indirectly:-

- (i) to the spouse from the membership of the spouse in a firm carrying agricultural operation in which the individual is a partner;

Explanation

The individual shall be the husband or wife whose total agricultural income is greater.

- (ii) to a minor child from the admission of the minor to the benefits of partnership in a firm in which the individual is a partner;

Explanation II

Where both the parents are members of the firm, the agricultural income of the minor child from the partnership shall be included in the agricultural income of that parent whose total agricultural income is greater.

- (iii) to the spouse from assets transferred directly or indirectly to the spouse otherwise than for adequate consideration or in connection with an agreement to live apart;
- (iv) to a minor child from the assets transferred directly or indirectly to the minor child otherwise than for adequate consideration; and
- (v) to any person from assets transferred otherwise than for adequate consideration 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 or both.

Explanation III

Where any such 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.

Charitable Trusts and Institutions [Sn. 16]

Sn.16 (1)

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 such income is applied to such purposes in the State; and income accumulated or set apart not in excess of twenty five percent of the agricultural income from such property;
- (b) any agricultural income derived from property held under trust in part, only to the extent to which such income is applied to such purposes in the State; and income set apart for such purposes not in excess of 25% of the agricultural income from such property.

Explanation :

If in the previous year (P.Y) the agricultural income applied to charitable or religious purposes in the State falls short of 75% of agricultural income derived during that year.

- (i) for the reason that the whole or any part of the agricultural income has not been received during the year 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;
- (ii) for any Other reason, as much of the agricultural income applied to such purposes in the State during the P.Y. immediately following the P.Y. in which the agricultural income was derived; then

At the option of the assessee it shall be deemed to be agricultural income applied to such purposes during the previous year in which the agricultural income was derived; such agricultural income shall not be taken into account in calculating the amount of agricultural income applied to such purposes during the previous year in which the agricultural income is received or during the previous year immediately following the previous year in which the agricultural income is received/derived, as the case may be. 'Medical Relief' does not mean free treatment. A hospital would not be the less entitled to exemption because certain fees are taken from rich (patients) who chose to take the benefit of the hospital; An element of bounty is however, implied in a charitable purpose. If on payment, service could be had as a matter of right, an institution rendering such service cannot be categorised as a charitable institution [Chamber of Commerce Vs. Commissioner of Income Tax (1936) ITR 397]

If there are several objects of a trust, some of which are charitable and some non-charitable, and the trustees had the discretion to apply the whole income to any of the objects, no part of the income would be exempt from tax because it, was open to the trustees to apply the whole income to any of the non-charitable objects. It is immaterial in such a case that the whole income is actually applied only to charitable objects. Therefore, only, when a certain

portion of the income has been earmarked for charitable objects, the provision contained in the last part of the clause (6) of Sn.16 becomes applicable.

[Mohammed Ibrahim Razh vs. Commissioner of income Tax (AIR 1930 (Privy Council) 226]

Section 16 (2)

Where option under 16 (1) was exercised but the agricultural income is not applied to the purposes during the stipulated period, then such income shall be deemed, to be the income of the assessee for the year immediately following the previous year in which the income was received or derived, as the case may be.

Section 16 (3)

Where 75% of the agricultural income referred to in Sn. 16 (1) is not applied, or is not deemed to have been applied to purposes in the state during the previous year but is set apart or accumulated for application to such purposes in the State, that shall not be included in the total agricultural income of the previous year provided

- (a) Such person specifies, by notice in writing given to the Agricultural Income Tax in the prescribed manner the purpose for which the agricultural income is being, accumulated or set apart and the period for which the amount was set apart or accumulated, which shall in no case exceed ten years;
- (b) The money so accumulated or set apart is
 - (i) invested in any Government security, 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 Post office time, deposits ,or a scheduled bank or a Corporative Society engaged in carrying on the business of banking; or
 - (iii) deposited in an account with the KFC.

Section 16 (4)

In the case of non adherence of the conditions specified in Sn. 16 (3), any agricultural income shall be deemed to be the agricultural income of such person of the previous year in which it is applied for other purposes or ceases

to be 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.

Section 16 (5)

Where due to the circumstances beyond the control of the assessee any such income invested or deposited cannot be applied for the purposes for which it was accumulated or set apart, the Agricultural Income Tax Officer may, on an application allow such person to apply such income for such other charitable or religious purposes in the State as is specified in the application and as is in conformity with the objects of the trust.

Section 16 (6)

Section 16 (1) does not exclude

- (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 trust for charitable purposes or a charitable institution, any, agricultural income thereof, if the trust or institution is created or established for the benefits of any particular religious community or caste;
[when the trust is set up to promote a particular religion whose agricultural income does not ensure for the benefit of the general public, it could not be considered for exemption being a private trust-State of Kerala V.S.M.P. Chanti Verma Jain (1998) 5 SCC 63].
- (c) In the case of a trust for charitable or religious purposes or a charitable or religious institution
 - (i) if under the terms of the trust or the rules governing the institution any part of such income ensure; or
 - (ii) any property of the trust or institution is during the previous year , used or applied;-directly or indirectly for the benefits of any person referred to in Sn .16 (8).

Section 16 (7)

The income or the property or any part thereof of the trust or institution shall be deemed to have been used or applied for the purposes specified in clause (c) of Section 16 (6)-

- (a) if any part of the income or property of the trust or institution is lent to person referred to in sub section (8) 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 such persons 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 P.Y. in favor of any such person; or
- (d) if any funds of the trust or institution are invested for any period during the previous year in any concern in which any such person has a substantial interest.

Section 16 (8)

The persons referred to in 16 (6) and 16 (7) are:-

- (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 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.

Section 16 (9).

For the purpose of Section 16:-

- (a) “Trust” means a trust created for charitable purposes and includes any other legal obligation and “relative”, in addition 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 descendent of the individual;
 - (v) any lineal ascendant or descendent of the spouse of the individual;
 - (vi) spouse of a person referred to in such clauses (ii), (iii), (iv), (v);
 - (vii) any lineal ascendant 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 Scheduled Castes, Scheduled Tribes, Backward classes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a particular religious community or caste within the meaning of 16 (6) (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 carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in Sub Sn. (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 Sn.(8) are entitled in the

aggregate, at any time during the previous year to not less than 20% of the profits of such concern.

Section 16 (10).

Any trust or institution created for charitable or religious purposes may make an application in the prescribed form to the Deputy commissioner of AIT within six months from the date of creation of the trust or institution alongwith 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.

CHAPTER V.

COMPOUNDING OF AGRICULTURAL INCOME TAX.

Section 13 (1).

A person who hold landed property within the State extending to not more than 500 Hectares and deriving agricultural income may opt to compound the agricultural income Tax, paying a lumpsum at the rates specified in the table below.

Compounding Rate of Tax (wef 1-4-01)

Name of crops	First five hectares	On the next 3 hectares Rate per hectare Rs.	On the next 5 hectares Rate per hectare Rs.	On the next 5 hectares. Rate per hectare Rs.	On the remaining extent (upto 500 hectares) Rate per hectare Rs.
(1)	(2)	(3)	(4)	(5)	(6)
Cardamom 'c' zone, cashew, clove, cincona, Nutmeg, Cinnamon and other crops not specifically included in this table (other than tea & coffee)	Nil	300	450	800	1400
Pepper	Nil	400	600	1000	1750
Coconut, Cocoa & rubber	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

Cardamom A zone means villages of Kattappana, Amavilasam, Anakkara, Ayyappancoil, Chakkupallam and Vandanmedu of Udumbanchola Taluk, Villages of Elappara, Vagamon, Upputhora, Peerumade, Mlappara, Periyar, Manjumala and Kumili of Peerumade Taluk and Nelliampathy village of Chittur Taluk where Cardamom is grown.

Cardamon B zone means villages of Santhanpara, Rajakkad, Pooppara, Rajakumari, Bison Valley, Upputhode, Kalkoonthal, Parathode, Udumbanchola, Kanthippara, Thankamani, Chathurangappara, Pampadumpara and Karunapuram of Udumbanchola Taluk and Mananthavady, Sulthan Bathery and Vythiri Taluks where Cardamon is grown.

Cardamom C zone means the areas other than the areas in A and B zones where cardamom is grown.

Landed property exclusively cultivated with crops mentioned in Sn. 4 (1) (b) of the Act shall not be taken into account for the purpose of this Section.

If the tax payable under this Section exceeds 85% of the agricultural income derived during the previous year, it shall be limited to that extent.

No tax shall be payable on the replanted area till the plants in this area start yielding: As per Rule 14 the claim of exemption of replanted area shall be supported by a copy of the certificate issued by the Rubber Board or the Spices Board in respect of Rubber or Cardamom, as the case may be. For other crops the Agricultural Income Tax Officer may accept the claim after necessary enquiries.

Section 13 (2)

For the purpose of compounding the maximum extent of land held for not less than 180 days during the previous year shall be deemed to be the extent of land held during the previous year.

Section 13 (5)

The permission granted shall commence from the financial year for which such permission was granted and the permission 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 compounding, whichever is earlier.

The option for compounding in Form 1A along with return in Form no.1 shall reach the AITO on or before 1st day of July of every succeeding year and may be renewed once in three years on or before 1st day of July and if it is not so renewed by an application it shall be presumed that the assessee elected to continue the option. If the assessee is found eligible for compounding, the Agricultural Income Tax Officer shall issue a notice of assessment and demand in form 15, within one month from the date of filing of return. [Rule 15 (1) & (2)]

Section 13 (6)

If any person permitted to compound reopts to pay tax in accordance with Sn.3, he 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.

Section 13 (7)

Any trust or institution created for charitable or religious purposes and registered as provided in Sn.16 may opt to pay compounded tax irrespective of the extent of the holdings and for the extent above 500 hectare the rate shown in column 6 of the table shall apply. When compounding is opted no expenses can be claimed for charitable purposes – Rule 25

Section 13 (9)

The provision of this Section shall not apply to any company formed on or after the 1st day only of April 1999 by splitting up of a company holding extent more than 500 hectare.

Any trust or institution which has applied any portion of the agricultural income for religious or charitable purposes and claim exemption of such agricultural income in accordance with the provisions of Sn.16 shall not be eligible to follow the method of assessment u/s.13 (Rule 25).

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 principal crop or where the principal crop cannot be determined easily, 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 Sn. 4 (1) alongwith other crops, such landed properties shall be deemed to be planted with such other crops.

Compounding in respect of escaped extent of land [S. 14]

An extent of land escaped compounding permitted u/s.13, or compounding was permitted at too low a rate or for a lesser extent, the provision of Sn. 41 shall apply as if it were an escape of agricultural income under the Act.

CHAPTER VI

ASSESSMENT PROCEDURE

Power to make reduction in rate (Sn.17)

The Government may, by notification, 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.

Relief from double taxation [Sn.15]

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

Permanent Account Number [Sn.36]

Every person whose total agricultural income during any previous year exceeded the amount which is not chargeable to tax under this Act shall apply to the AITO for the allotment of a Permanent Account Number.

Maintenance of Accounts [Sn.33].

Every person liable to pay tax under this Act other than those opted for compounding shall maintain such books of accounts and other documents as may be prescribed.

Where the AITO is not satisfied about the correctness or the completeness of the accounts of the assessee, he may make an assessment in the manner provided in Sns. 39 (3) or 39 (4). [Sn.40].

Every assessee other than a person opted for compounding u/s. 13 shall maintain the following books of accounts of his agricultural income and expenses:-

- (i) Daily cash book;
- (ii) a journal;
- (iii) a ledger;
- (iv) crop register or production register with the details of crop received per day/per worker/each plucking/each season with details of yielding trees/plants from which the yield received.
- (v) wages register
- (vi) muster roll/check roll
- (vii) purchase bills, sale bills or voucher for all expenses and receipts. [Rule 47].

The accounts maintained by the assessee together with bills, vouchers, etc. shall be preserved for a period of five years after the relevant assessment year to which they, relate and shall be kept at the declared place. [Rule 48]

Audit of Accounts [Sn. 34]

Assessees holding landed property more than 60 hectares during the previous year, shall get his accounts audited by an accountant and obtain the report of such audit in the prescribed form and these shall be furnished along with the return.

Explanation: for the purpose of this Section “Accountant” shall have the same meaning as in the explanation to sub Sn. (2) of Sn.288 of the IT Act 1961.

Power to order production of accounts and powers of entry, inspection, search and seizure [Sn.28]

Any officer not below the rank of an Agricultural Income Tax Officer may, by notice, require any assessee other than a person who opted compounding u/s. 13, liable to pay tax under the Act, to produce any accounts, registers, records or other documents or any other relevant information and he with the authorization of his superior Officer may enter and search any building or any land or any vessel or vehicle used by any assessee or any other person who is liable to pay tax or 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 the Act. Provided that no residential accommodation shall be entered into or searched.

Power to call for information [Sn.29]

The Agricultural Income Tax Officer, the Inspecting Assistant Commissioner or the Appellate Assistant Commissioner may require (i) any firm to furnish the names and addresses of the partners of the firm and their respective shares;

- (ii) any trustee, guardian or agent to furnish him the names of the persons for or of whom he is a trustee, guardian or agent and of their addresses;
- (iii) 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 AITO, IAC or the AAC, giving information in relation to such points or matters useful or relevant to, any proceedings under this Act.

Power of Survey [Sn. 30]

An Agricultural Income Tax Inspector, AITO or IAC 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 person

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 ascertain:-

- (i) the extent of 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.

Return of Agricultural Income [Sn.35]

1. Every person, other than a Company or a person who has to get his accounts audited, liable to pay tax under this Act and every person to whom a permanent account number is allotted, shall furnish to the AITO, before the 1st July; in the case of a person who has to get his account audited in accordance with Sn. 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.
2. Any person, who, in the opinion of the AITO, is assessable to tax under this Act, whether on his total agricultural income or on the total agricultural income of any person during the P.Y., the AITO, may, before the end of the assessment year, issue a notice to such person 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 P.Y. 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, 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:

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 authorized 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 return in accordance with such Section (1).

The return shall be filed in Form No.2 and the audit report or the income and expenditure account and balance sheet shall be filed in Form 38. [Rule 51].

Charitable trust or institution which does not opt for compounding u/s.13 shall file return in Form 3 on or before 31st October alongwith an audited income and expenditure account and a balance sheet. [rule 22].

Self assessment and payment of advance tax [Sn.37]

1. Every person liable to furnish a return under Sn.35 or 41 shall pay tax for the previous year on or before the end of February of the previous year on the estimated total agricultural income which shall not be less than 80% of the total agricultural income as per return.

The Advance tax shall be paid alongwith a statement in Form No.3. The Advance tax shall be remitted to the Government treasury or to the Agricultural Income Tax Officer concerned by cheque or by DD. [rule 57]

2. Every person opted compounding under Sn. 13 shall pay the tax for the previous year before the end of February of the previous year.
3. Every person liable to furnish a return, under Sn.35 or Sn.41 before furnishing the return, shall pay the tax due on total agricultural income derived during the P.Y., after deducting the advance tax already paid by him.
4. Any person who fails to pay tax as above or against a demand notice issued under Sn. 45, shall pay simple interest @ 12 % [w.e.f 01.04.2005] 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 if he is satisfied there was sufficient reason for the non-payment of tax in time.

Interest under Sub section(4) of Section 37 shall accrue, automatically and shall be demanded in Form No. 18. [Rule 59].

5. If any person fails to pay the tax or any part thereof as laid down in sub Sn. (1) (2) or (3) above, 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 were sufficient reasons for the delay in payment.

Penalty contemplated in the Section is attracted only if there is default in payment of the admitted tax before or alongwith the return and that mere delay in paying the admitted tax before the due date for filing the return will not entail the penalty under the Section. Agricultural Income Tax Officer Vs. Mangode Estate 1995 (1) KLT 22: 1995 KLJ (Tax Cases) 6.

Enquiry before assessment [Sn.38].

For the purpose of assessment

1. the AITO may call for accounts, documents or other information on such points or matters considered relevant;
2. make necessary enquiry to obtain full information in respect of the agricultural income of any person;
3. make necessary enquiry or may inspect the holdings of a person with or without notice for obtaining information in respect of agricultural income, expenses or loss;
4. the assessee shall be given an opportunity of being heard in respect of any information gathered on the basis of any such enquiry or inspection and proposed to be utilized for the purpose of assessment.

Assessment of Agricultural Income [Sn. 39]

1. If the Agricultural Income Tax Officer is satisfied that the return furnished 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 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 call for the documents or require the assessee to appear before him on the specified date.
3. The Agricultural Income Tax Officer after considering the evidence as the assessee may produce and such other evidence 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 Sn. 35 or fails to comply with the notice issued under Section 35 (4) or having furnished a return fails to comply with all the terms of a notice issued under such 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 judgment and determine the sum payable by the assessee on the basis of such assessment.

A best judgment assessment cannot be capricious or vindictive though the assessee failed to submit return in response to the notice issued –Thomas Vs. AITO 1989 (1) KLT 909: 184 ITR 561.

In the matter of assessing income from cardamom estate, the guidelines issued by the Board of Revenue, though not conclusive are relevant and material

for the purpose of estimating the yield. – Nabeese Beevi Vs. AITO (1987) 1631 ITR 78.

5. No assessment under this Section other than assessment under sub section (1) shall be made without giving the assessee a reasonable opportunity of being heard.
6. Any assessment shall be completed within a period of two years from the date of filing of return.

Provided that in the case of assessment of agricultural income derived from rubber, coffee and manufactured tea, if the assessment under the IT Act 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 IT Authority and the limitation fixed under any of the provisions of this Act shall not apply to such revision of assessment.

Provided further that such an assessee fails to submit copy of the assessment order or appellate or revisional order under IT Act 1961, within 30 days of its receipt by him, he shall be liable to pay interest and penalty as provided under Sn. 37 (4) and 37 (5) on the balance of tax payable in accordance with the order of the IT Authority on the expiry of 90 days from the date on which he received such order.

Before completing an assessment under sub section (3) or (4) of Sn. 39 the Agricultural Income Tax Officer, shall issue a notice, intimating the proposal of completing the assessment to the best of his judgement allowing time of not less than seven days to file objections or to produce evidences. [Rule 63].

Taxing authorities entrusted with power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice – State of Kerala Vs. Shadauli AIR SC 1627 (1977) 2 SCC 777.

Rectification of Mistakes [Sn. 42].

1. An assessing authority or an appellate or revisional authority 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 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.

Income escaping assessment [Sn. 41].

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 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 a 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 five 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 1:-

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 1I:-

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 another person or persons then, an assessment of such agricultural income of such another person or persons shall, for the purpose of this sub-section 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.

The period of time fixed for service of the notice under Sn. 41 (2) is five years from the end of the financial year in which the income has escaped assessment. The expression “financial year” in the Section means only the assessment year

concerned.- Cochin Plantations Ltd. Vs. IAC 1994 (1) KLT 759: 1994 KLJ (Tax cases) 156.

For invoking the provision of escapement of assessment there has to be an assessment within the stipulated period, but subsequently initiated action under Sn. 35. As there is no completed assessment initiation of proceedings under Sn. 35 is illegal. – Commissioner of AIT Vs. K.V. Sebastain, 1996 KLJ (Tax cases) 238.

Assessment cannot be reopened forming a different opinion on the same materials by the same officer or by the succeeding officer unless there are fresh materials for doing so. The meaning of the words “ for any reason” contained in Sn. 35 cannot be enlarged so as to take in “ change of opinion” or “ error of judgement”. DC AIT Vs. T.K.S Dinakaran, 1997 KLJ (Tax cases) 177.

Notice of demand [Sn. 45].

(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 or 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.

Demand notice for any amount due under the Act, shall be in Form 18 (Rule 67).

Changes in demand consequent to appeal, revision or other proceeding [Sn. 46]

1. Where a demand notice is served and any appeal or other proceedings filed then.

(a) Where the demand is enhanced as a result another demand notice for the amount by which the original demand was enhanced shall be served; and any proceeding on the original demand may be continued without serving any fresh notice from the stage at which such proceeding stood immediately before disposal of the appeal or proceedings.

(b) Where the demand is reduced in such appeal or other proceedings issue of fresh notice is not necessary except an intimation to the assessee of the reduction and also to such authority where certificate has been issued or an application or requisition has been made to any officer or authority for recovery of such demand. Proceedings initiated on the basis of the original demand notice may be continued from the stage where it stood immediately prior to such disposal.

(c) No proceeding shall be invalid by reason only that no fresh notice was issued.

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.

2. No fresh notice is necessary where demand is not varied.

3. Where as a result of any, final order, amount of interest levied for the default in the payment of any tax has been annulled/reduced such interest shall be cancelled/ proportionately reduced and the amount of any interest/excess interest paid refunded.

Any amount refundable consequent to revisional/appellate order, the AITO shall issue the refund order within six weeks from the date of receipt of the appellate or revisional order [Rule 73]. Where appeal or revision is preferred against such appellate/revisional order, the AITO, with prior permission of the superior authority, may withhold refund. [Rule. 74]

Powers to assess individual members of Association/Companies [Sn. 47].

If 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 evading or reducing tax liability of such person, the AITO with the prior approval of the Commissioner order that the agricultural income of the company/association shall be included in his total agricultural income and he will be assessed thereon.

Before giving his approval to an order as aforesaid the Commissioner shall give the association or company an opportunity of being heard. If the person makes default in payment of tax, such tax may be recovered from the assets of the association or company.

Liability of legal representatives [Sn. 48].

Where a person dies, the legal representatives of the deceased shall be deemed to be the assessee. 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 undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which 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. The liability of the legal representative shall be limited to the extent to which the assets of the deceased is capable of meeting the liability.

Liability of representative assessee [Section 49 & 51].

Representative assessee means in respect of agricultural income of

(i) a non resident is the agent of the non-resident including any person in the State employed by or on behalf of the non resident; has any business connection with the

non resident; from or through whom the non resident receives agricultural income directly or indirectly; and a trustee of the non resident.

(ii) a minor, lunatic or idiot, the guardian or manager entitled to receive such income on their behalf.

(iii) Courts of Wards, Administrator General, official Trustee or any manager or receiver appointed by order of a court, any person entitled to receive agricultural income on their behalf.

(iv) trustee appointed under a trust is the trustee receiver or entitled to receive agricultural income.

Every representative assessee shall be deemed to be an assessee

[Section 50]

Every representative assessee shall be liable to assessment in his own name as if the income was received by him, but 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.

Section 53

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 levied against the representative assessee or against the beneficiary direct.

Assessment on succession to business [Sn. 54]

Where a person carrying on any business from which agricultural income is received has been succeeded by another person each shall be assessed in respect of his actual share of the agricultural income of the previous year.

Provided that when the persons succeeded cannot be found, the assessment upto the date of succession and for the years preceding that year shall be made on the person succeeding him and also when the tax in respect of the assessment made for such years on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding.

Assessment in the case of discontinued business [Sec. 58]

Where the agricultural income is received by a company, firm or Association of persons and the business earning such income is discontinued in any year, an assessment may be made in that year, after issuing a notice containing all requirements under Sn. 35 (2), on the basis of the agricultural income received during the period between the end of the previous year and discontinuance of business, in addition to the assessment, if any, made on the basis of the agricultural income received in the previous year.

Persons discontinuing the business shall give notice of such discontinuance within 30 days thereof. Any sum received after the discontinuance shall be deemed to be the agricultural income of the, recipient and chargeable to tax in the year of its 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.

Assessment in the case of firm/association dissolved [sn.59]

Where the agricultural income is received by a firm or association of persons and the business 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 that every person who was at the time of such discontinuance or dissolution a partner or member of association of persons and the legal representatives of any such person who is deceased shall be jointly and severally liable for the amount of tax, penalty if any imposed, or other sum payable.

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.

Assessment of Company in liquidation [Sn.60]

1. The liquidator or receiver of any company being wound up shall, within 30 days of his appointment, intimate the AITO of the fact.
2. The AITO, within three months thereafter, shall, after necessary enquiries notify to the liquidator the amount to be provided for any tax.
3. The liquidator shall not part with any of the assets or properties of the company, without leave of the Commissioner, until he has been notified and set apart the amount.
4. If the liquidator fails to comply with the provision of sub Section (1) or (3) he shall be personally liable for the payment of tax, which the company would be liable to pay.

Provided that if the amount is notified under sub section (2), the personal liability shall be to that extent.

5. Where there are more than one liquidator, the obligation and liabilities shall attach to all liquidators jointly and severally.

Section 61

Where any tax for any previous year due from 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 dues unless he proves that the non recovery is not due to any lapse on his part in relation to the affairs of the company.

Assessment when title to the property is disputed [Sn. 55]

(1) When title to any property from which agricultural income is derived or liable to 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 sub-section (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 redetermine 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.

Assessment in cases of departure from State [Sn. 56]

Where it appears to the AITO 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 has no present intention of returning, the Agricultural Income Tax Officer, after serving him a notice to furnish return 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, may proceed to assess him for the aforementioned period on the total agricultural income estimated by the Agricultural Income Tax Officer.

Assessment of persons transferring property [Sn. 57]

1. Where an assessee transfers property the transferor and the transferee shall be assessed on his actual share of agricultural income.
2. When the transferor cannot be found, assessment upto the date of transfer and for the years preceding that year shall be made on the transferee and when tax in respect of the assessment made for such period/years on the transferor cannot be recovered from him, it shall be payable by and recoverable from the transferee.
3. An assessee transferring property shall intimate the fact to the Agricultural Income Tax Officer within 15 days thereof.

CHAPTER VII

COLLECTION OF TAX AND PENALTIES

Payment of tax, penalty etc. [Sn. 62]

1. Any amount payable under this Act other than interest accrued, shall be paid as specified in the notice of demand under Sn. 45, which shall not be less than 30 days from the date of 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 the assessee shall not be deemed to be in default if he has obtained suitable orders of the appellate or revisional authority when an appeal or revision is pending.

3. Where an during the pendency of any proceedings, assessee creates a charge on, or parts with the possession by any mode of transfer, of any of his assets, such charge or transfer shall be void.

Penalty payable when tax in default [Sn. 63]

When an assessee is in default in making payment of tax, he shall, in addition to the amount of arrears and the amount of interest payable U/s. 37. (4), be liable, by way of penalty, to pay such amount as 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 such penalty the assessee shall be given a reasonable opportunity of being heard.

Mode of recovery of arrears [Sn.64]

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 there in, as if it were an arrear of land revenue.

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

Recovery of penalties [Sn.66]

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

Other modes of recovery [Sn.65]

Sub sections 1 to 5

The Agricultural Income Tax Officer may 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 including any person who holds money jointly with any other person, to pay to the Agricultural Income Tax Officer within the time specified in the notice, so much 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 . The notice shall be forwarded to the assessee at the last known address and to all the joint account holders at their last address known and such person shall be bound to comply with such notice, and, where 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. Any claim in respect of 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.

Sub. Sn.6

Where a person to whom such a notice is sent, objects by an 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 such person is not required to pay the amount but if it is discovered that such statement was false in any material particular he shall be personally liable for the assessee's liability limited to the extent of his own liability to the assessee on the date of notice.

Sub.Sn.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 assessee's liability for any sum due under this act, whichever is less.

Sub.Sn.10

If the person to whom a notice under this section is sent, fails to make payment in pursuance thereof, he shall be deemed to be an assessee in default and further proceedings may be taken against him for the realization of the amount, as if it were arrears of tax due from him.

Sub.Sn.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.

Recovery by suit [Sn.67]

There shall not be any bar on the Agricultural Income Tax Officer or the Govt. to have recourse to any law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified above.

CHAPTER – VIII

APPEAL, REVISION AND REFUNDS

Appeal against orders passed by Agricultural Income Tax Officer [Sn. 72]

Sub Sections 1 to 4

An assessee may appeal to the Appellate Assistant Commissioner [AAC] against the orders of Agricultural Income Tax Officer and to Deputy Commissioner (DC) against the orders of IAC in the prescribed form alongwith a fee of Rs. 300/- within 30 days from the date of service of the order which can be relaxed by the appellate authority, if he is satisfied that the appellate had sufficient cause for not presenting it within that period. The post of Appellate Assistant Commissioner were dispensed with and the work was entrusted with Deputy Commissioner (Appeals) with effect from 1-4-2005.

When appeal is presented after the prescribed limit it shall be accompanied by a petition for condonation of the delay, alongwith an affidavit and other documents in support of the grounds for delay [Rule 80].

Sub Section 5

No appeal under this Section shall be admitted unless at the time of presenting the appeal, the assessee had paid tax due on agricultural income admitted by him.

Sub Section 7

The appellant or the Agricultural Income Tax Officer or the IAC, as the case may be, shall have the right to be heard either in person or through an authorized agent.

Sub Section 10

The appellate authority may, at the time of hearing an appeal, allow the appellant to raise any ground of appeal, not specified in the grounds of appeal, if he is satisfied that the omission of the ground in the form of appeal was not wilful.

Subsection 11 and 12

The order of AAC or the DC disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision and shall communicate the order to the assessee and to such officers of the department.

The orders on appeal shall be communicated to the appellant and to the departmental officers concerned within 30 days of the date of the final hearing of the appeal. [Rule 84].

Subsection 13

In disposing of an appeal the Appellate Authority shall have the powers:-

(a) In an appeal against an order of assessment to confirm, reduce, enhance or annul the assessment or set aside or refer the case back to the Assessing Authority for making fresh assessment in accordance with the direction issued by the Appellate Authority or pass such other orders as he thinks fit.

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

Subsection 14.

Appellate Authority shall not enhance an assessment or a penalty or reduce the refund unless the appellant is given a reasonable opportunity of showing cause against such enhancement or reduction.

Sub Section 16

Notwithstanding that an appeal has been preferred under this section, the tax or other amount shall be paid in accordance with the order, against which an appeal has been preferred:

Provided that the Appellate Authority may give such directions in regard to the payment of tax, before the disposal of the appeal.

Section 72 refers to “assessee aggrieved” but Rule 76 refers to “person aggrieved”. On a harmonious reading of both the provisions, particularly in the context that it deals with the right to file appeal it has to be held that any person aggrieved by an order passed by the Agricultural Income Tax Officer can file an appeal to the AAC. A transferee of the property which is proceeded against under sn.57 for recovery of AIT due from the transferor is an aggrieved person and can file appeal against the assessment orders. –Benoy Kurian Vs. AITO.1997 (2) KLT 922.

Appeal to the Appellate Tribunal [Sn.74]

Sub Section (1)

Any assessee may appeal to the Appellate Tribunal against:-

- (a) an order passed by the appellate authority referred to in Sn. 72; and
- (b) an order imposing penalty by an IAC or DC.

Sub Section (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.

Sub section (3)

Every appeal under such Sections (1) or (2) above shall be filed within a period of 60 days from the date on which the order sought to be appealed against, is served to the assessee or the authority concerned.

Sub Section (4)

On receipt of notice that an appeal has been preferred under Sub Section (1) or (2), the other party, may, within 30 days of the receipt of the notice, file a memorandum of cross objections, against any part of the order of the AAC or DC 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 (3).

Sub Section (5)

The Appellate Tribunal may relax the time limit specified under Sub section (3) or (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

Sub Section (6)

An appeal to the Appellate Tribunal shall be in the prescribed form and shall, except in the case of an appeal referred to in Sub Section (2) or a memorandum of cross objections, be accompanied by a fee of Rs. 700/-

Sub Section (8)

When appeals are preferred by the assessee and the empowered officer, or cross objections are presented by either of them, against the same order of the AAC or the DC, both the appeals along with the cross objections, if any, shall be heard together and disposed of by a common order.

Sub Section (10)

(a) The appellant or the respondent may apply for review of any order passed by the Appellate Tribunal 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 of communication of order, and where the application is preferred by the assessee it shall be accompanied by a fee of Rs. 100/-

Sub Section (11)

Save as provided in Sn.78 [i.e revision by High Court], orders passed by the Appellate Tribunal on appeal shall be final.

Sub Section (13)

Notwithstanding that an appeal has been preferred under Sub Section (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 suitable direction regarding payment of tax before the disposal of appeal.

The Tribunal shall communicate the order within 30 days of the final hearing of the appeal or review [Rule 90].

Suo Motu Revision by Deputy Commissioner [Sn. 75]

Sub section (1)

The Deputy Commissioner may, of his own motion call for and examine records relating to any order passed or proceedings recorded by any authority subordinate to him, other than an AAC, which in his opinion is prejudicial to revenue and may make such enquiry and pass suitable orders.

Sub Section (2)

The Deputy Commissioner shall not make any such revision if an appeal has been preferred or petition filed in the High court or more than four years have expired after passing the order excluding the period during which any proceeding under this section is stayed by an order or injunction of any Court.

Sub Section (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 Sub Section (2) before expiry of a period of one year from the date of the order in such appeal or revision or before expiry of four years whichever is later.

Suo Motu Revision by Commissioner (Sn.76)

Sub Section (1)

The Commissioner may of his own motion call for and examine records relating to any or any order or proceeding of authority subordinate to him including AAC and DC, which in his opinion is prejudicial to revenue, and make necessary enquiry and pass suitable orders.

Sub Section (2)

The Commissioner shall not make such revision if the time for appeal against the order has not expired, or an appeal has been preferred to the AAC, DC or

Appellate Tribunal or a revision in High Court and if more than four years- excluding the period of stay and injunction –have elapsed after passing of the order.

Sub Section (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 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 four years whichever is later.

Revision by the Commissioner on application (Sn.77)

Any person objecting to an order passed by Deputy Commissioner under Sn. 16 or Sn. 75 may, within a period of 30 days- relaxable by the Commissioner in genuine cases- of communication of the order, file an application for revision of such order before the Commissioner in the prescribed form alongwith a fee of Rs.700/-

Refunds [Sn. 68]

Any person who paid amount in excess- including advance tax paid under Sn.37- of what is properly chargeable under this Act for that year shall be entitled for refund of the excess amount paid. If the refund is not made within three months, simple interest @ 15% p.a is to be paid on such amount from the date of expiry of the said three months. Where the refund is due as a result of appeal or other proceedings the refund shall be made without any claim in that behalf.

Person entitled to claim refund in certain special cases [Sn. 69]

Sub Section (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.

Sub Section (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.

Power to withhold refund in certain cases [Sn. 70]

Where a refund is a subject matter of an appeal or any other further proceedings and the AITO is of the opinion that the grant of refund is likely to adversely affect the revenue he 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.

Set off of refunds against sum payable [Sn.71]

The AITO, IAC, AAC, DC or the Commissioner may set off the amount due for refund against tax, penalty or interest remaining payable to the Government.

CHAPTER IX

OFFENCES AND PENALTIES

Penalties [Sn.79]

Sub Section (1)

If the AITO, IAC, AAC, DC, the Commissioner or the Appellate Tribunal is satisfied that any person:-

(a) has without reasonable, cause, failed to furnish return within the stipulated time;
or

(b) failed to comply with the notice issued under Sections 38 (1) or 39 (2), or summons, or to produce any accounts or documents or 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 intimate as required under Sn. 58 (2) on the discontinuance of business by any company, firm or association of persons; or

(e) wilfully contravened any of the provisions of this Act for which no express provision for penalty or punishment is provided in the Act;

may impose penalty not exceeding the amount of tax payable where it is practicable to quantify the amount of tax and in other cases a sum of money not exceeding rupees five thousand.

The amount of tax payable means the tax determined by the original, appellate or revisional authority. If the quantum of tax fixed by the officer is reduced, there shall be a corresponding proportionate reduction in the amount of penalty payable by the assessee on the income concealed. *Mani Joseph Vs. state of Kerala 1997 (2) KLT 939: 1997 KLJ (Tax cases) 510.*

Sub Section (2)

Notwithstanding anything contained in this Section :-

(a) Where a person failed to comply with a notice under Section 35 (2) or 41 (1), proves that he has no income liable to tax, the penalty under Sub Section (1) shall not exceed Rs. 100/-

(b) No penalty shall be imposed upon any person assessable to tax as the agent of a non resident for failure to furnish the return.

Sub Section (3)

No penalty shall be imposed unless the person concerned is given a reasonable opportunity of being heard.

Sub Section (4)

No prosecution shall be instituted in respect of the same act for which a penalty has been imposed.

Sub Section (5)

If the AAC/ DC/Commissioner imposes a penalty, a copy of the order shall forthwith be forwarded to the AITO or the IAC concerned.

Offences

Any person obstructs search, seizure, examination of accounts under section 28 [Section 80]; or a person makes false statement in declaration [Section 82]; or a person fails to furnish return or make false statement of supply of information without reasonable excuse shall be punishable with imprisonment or fine or with both as the case may be. A person shall not be proceeded against for an offence under Sections 80,81 or 82 except at the instance of the IAC. The IAC may, either before or after the institution of proceedings, compound any offence.

Compounding of offences [Section 86]

The Agricultural Income Tax Officer or Inspecting Assistant Commissioner or any other officer or authority authorized 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 payable, a sum of money equal to tax so payable subject to a minimum of rupees one hundred and maximum or rupees one lakh : and

(b) in other cases a sum of money not exceeding rupees five thousand:

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

CHATER X

MISCELLANEOUS

Service of notices[Section 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 any one 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 adult 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.

Service of Notice when a firm or Association of persons is dissolved [Sn.88]

Service of notice when firm etc., is dissolved:-

Where a firm or other association of persons, is dissolved or discontinued, notice 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.

Service of notice in the case of discontinued business [Sn.89]

Where a business is discontinued notice may be served in that case of a firm or association of persons to a person who was a partner of such firm or member of such association at the time of its discontinuance and in the case of a company, to the principal officer of the company.

Appropriation of payment [Sn. 91 A]

Where any tax or any other amount due or demanded under the Act is paid by an assessee, the payment so made shall be appropriated first towards interest accrued on such tax or other amount under Section 37 (4) on the date of payment and balance shall be appropriated towards principal outstanding. [The Section was incorporated through Finance Act 2005]

SURCHARGE ON AGRICULTURAL INCOME TAX

Surcharge on agricultural income tax is levied under Section 2 of the Kerala Surcharge on Taxes Act 1957 (Act 11 of 1957) and regulated by the Kerala Surcharge on Taxes (Agricultural Income Tax and Sales Tax) Rules, 1958. (The relevant section of the Act and the relevant rules are reproduced below:

Section 2 of the Kerala Surcharge on Tax Act 1957 (Act 11 of 1957)

Levy of surcharge on agricultural income tax

The agricultural income tax payable by any person (other than a company) assessed to such tax under the Kerala Agricultural Income Tax Act, 1991 shall be increased by a surcharge at the rate of ten percent of the tax payable each year, and the provisions of the Kerala Agricultural Income Tax Act, 1991 shall apply in relation to the said surcharge as they apply in relation to the agricultural income tax payable under the said Act.

Explanation – In this Section “Company” shall have the same meaning as in The Kerala Agricultural Income Tax Act, 1991.

Rule 5 of the Kerala Surcharge on taxes (Agricultural Income Tax and Sale Tax)

[Rules 1958]

The surcharge on Agricultural Income Tax payable by a person under section 2 of the Act shall be levied and collected by the Assessing Authority competent to levy and collect agricultural income tax under the Agricultural Income Tax Act 1950 and the Rules framed thereunder.

Rule 7

The surcharge shall be levied on the Agricultural Income Tax payable by a person (other than a company) under the Agricultural Income Tax Act 1950, and on the Sales Tax and purchase tax payable by a dealer under the KGST Act 1963.

Rule 13

If, for any reason, the whole or any part of the surcharge on Agricultural Income Tax payable by a person under Section 2 of the Act or the surcharge on Sale Tax and purchase tax payable by person under Section 3 of the Act has escaped assessment in any year, the assessing authority shall within the period prescribed for assessment of escaped income under the Agricultural Income Tax Act 1950, proceed to determine to the best of his judgement the amount of surcharge which has escaped assessment and assess the charge payable after issuing a notice to the person and after making such enquiry as he considers necessary.

Rule 14

If, for any reason, any surcharge has been assessed low in any year, the assessing authority may at any time within the period prescribed for assessment of escaped income under the AIT Act, 1950 proceed to revise the assessment after issuing a notice to the person and after making such enquiry as he considers necessary.

Rule 15

The authorities competent to hear appeals or revision and pass orders under the provisions of the Agricultural Income Tax Act 1991 and Rules made there under shall be competent to hear appeals or revision and pass orders on any on any order relating to the levy of surcharge subject to the conditions specified therein.

CHAPTER –XII

AUDIT CHECKS

List of Registers to be maintained in Agricultural Income Tax office.

1.	Trial or New case Register
2.	General Index Register
3.	Register of notice under section 35,39 and 41.
4.	Register of demand and collections
5.	Register of daily collections
6.	Register of irrecoverable demands
7.	Register of proceedings instituted against defaulters
8.	Register of refund applications
9.	Register of daily refund
10.	Register of applications under Section 13
11.	Register of penalties, prosecutions and compositions
12.	Register of appeals, revisions and petitions
13.	Register of refund vouchers countersigned
14.	Register showing details of stay in respect of Agricultural Income Tax surcharge
15.	Cheque Register
16.	Register of original petitions, tax revision cases, appeals, suit etc.
17.	Register of remanded cases
18.	Register showing details of files transferred form other offices

19.	Register for approval of assessment order
20.	Register of appellate orders
21.	Register of cursory inspection
22.	Register of identification cards
23.	Register of errors and commendations
24.	Register of cash receipt forms
25.	Register of additional demand created at the instance of audit
26.	Register of assessments completed under Section 13

Returns to be furnished by the assessing authorities to Superior Officers in the Department

SL. No.	Name of periodicals	Nature of periodicals	To whom due
1.	Tour diaries with statements showing progress of assessments detection of cases	Fortnightly	I.A.C
2.	Statement showing progress of final assessment	Monthly	I.A.C.
3.	Statement of revenue collections	Monthly	I.A.C./ Government
4.	Crop-war statement	Annual	I.A.C.
5.	Review on collection of arrears	Monthly	I.A.C.
6.	Review on the progress of recovery of arrears	Monthly	I.A.C
7.	Half yearly review on arrear collection	Half yearly	I.A.C

Audit checks

Scrutiny of registers to be carried out are enumerated below.

(1) Register No. I – Trial or New Case Register.

The register may be reviewed to see-

(a)	Whether trial cases are being booked promptly on receipt of report from the officer conducting field survey or information from the records of the officers, regarding the agriculture holdings of the assessee and notices under Section 35 or 41 as the case may be issued without delay.
(b)	Whether all cases found as assessable have been carried over to the Register No. II- General Index Register and whether the Government Index Register numbers of the cases are entered in the Trial cases.
(c)	Whether there is any delay in taking follow up action to finalise the case

(2) Register No. II – General Index Register.

The Register may be reviewed to see-

(a)	Whether entries regarding the issue of notices under Section 35 (2) have been made.
(b)	Whether all removals bear the initials of the assessing officer.

(3) Register No. III : Register to watch the timely completion of assessments

Test check to see-

(a)	Whether all names in the General Index Register are entered in the register and completion of assessments watched properly.
(b)	Whether cases of arrears in assessments are carried over each year to the current register and the completion of assessments watched.
(c)	Whether any assessment is barred by limitation of time under Section 41/39(6)

(4) Register No. IV : Register of demand and Collection

Test check to see-

(a)	Whether the demand figure are attested by the attesting officer.
(b)	Whether the columns are properly filled up.
(c)	Whether the collections have been posted and relevant chalans placed in the assessment files.
(d)	Whether Revenue Recovery certificate are issued within the time limit prescribed in Section 64.
(e)	Whether the arrears of collections have been correctly worked out in each case and brought forward from the previous registers.

(5) Register No. V : Daily Collections Register

The Register may be checked to see –

(a)	Whether the total collections have been reconciled with treasury figures.
(b)	Whether the collections have been posted in the Demand and Collection Register correctly.
(c)	Whether the Demand Numbers have been noted correctly.

The details of remittances for two selected months may be collected from the register and verified with the records of the treasury.

(6) Register No. VI: Register of irrecoverable demands.

(7) Register No. VII: Register of proceedings instituted against defaulters under Section 64.

(8) Register No. VIII: Register of Refund applications.

(9) Register No. IX: Register of Daily refunds.

(10) Register No. X: Register of applications.

(11) Register No. XI: Register of penalties, prosecutions, etc

(12) Register No. XII: Register of Appeals, Revision etc.

(13) Register No. XIII: Register showing details of stay in respect of Agricultural Income-Tax.

(14) Cheque Register.

(15) Register of Remanded / Modified Cases.

(16) Register showing details of files transferred from other offices.

Registers at serial Nos. from 6 to 16 may be reviewed generally.

(17) Cash Book.

Cash book may be checked in detail for the selected months besides conducting general review, to see,

(a)	Whether the cash book is being maintained according to the provision of the K.T.C.
(b)	Whether the amounts collected by assessing officers towards tax and surcharge due are being entered in the cash book promptly.
(c)	Whether there is any delay in remittance of receipts.
(d)	Whether the amounts of tax collected and remitted by the assessing officer are entered in the Register of Daily Collection (Register No.V) and adjusted against the relevant entry of demand in the Demand and Collection Register (Register No.IV).

(18) Printed Receipts issued for amounts received.

(a)	Whether printed receipts are being issued for amounts of tax collected, as prescribed in the K.T.C Vol. I?
(b)	Whether the amounts received have been accounted in the cash book promptly and correctly?
(c)	Whether a stock account of unused receipt books is being maintained and verified periodically by the assessing officer?

Scrutiny of assessment files and refund files are enumerated below.
Important points to be looked into by local Audit Parties during the audit of assessment and refunds of Agricultural Income Tax.

1. Return of Income

(1) If the assessee has filed a voluntary return of income under Section 35 of the AIT Act-

(a)	Whether he has declared all the sources from which he derived agricultural income during the accounting year and has furnished full particulars of the income derived by him.
(b)	In case when the assessee has concealed the particulars of his agricultural income or has deliberately furnished inaccurate particulars whether penalty under Section 79 of the Act has been levied.

(2) If a return of income was called for by the assessing authority under Section 35 of the Act-

(a)	whether the relevant notice under Section 35 requiring the assessee to file the return of income was served on the assessee before the end of the relevant assessment year and
(b)	if not whether a notice under Section 41 of the Act was served on the assessee within the time limit prescribed under section 41 of the Act.
(c)	In case when the assessee has failed without reasonable cause to furnish the return within the time limit allowed, or has concealed the particulars of his agricultural income with the return filed or has deliberately furnished inaccurate particulars, whether penalty under section 79 has been levied.

(3) In the case of an assessee who was granted permission to the tax on compounded system, it should be seen that.

(a)	the assessee has furnished full particulars of the landed properties (name of village, survey number, crops raised etc.) held by him.
(b)	the assessee has remitted the tax due on the extent disclosed by him and proof thereof attached with the return.

II. Procedure of assessment.

(1) If the assessment is made under Section 39 of the Act, the return and accounts filed by the assessee should be analysed thoroughly and critically examined to ensure that:

- (i) the returns and accounts are correct and complete and do not contain factual inaccuracies and contradictions;
- (ii) all items of receipts/ income assessable to tax have been considered for assessment; and
- (iii) deduction allowed are in conformity with the provisions of the Act and rules made thereunder.

(2) If the assessment is made under Section 39 (3) of the Act-

(a)	whether the accounts of the assessee were obtained for scrutiny under Section 35 (4) and whether a hearing was conducted under Section 39 (3) before finalizing the proposals for assessment and communicating the basis on which the assessment is proposed to be made to the assessee in the form of a pre-assessment notice.
(b)	Whether the facts disclosed by the accounts maintained by assessee and those recorded at the time of hearing were taken into account for finalizing the proposals for assessment.

(3) Best judgement assessment under Section 39 (4).

If the assessment is made to the best of judgement of the assessing officer under Section 39 (4), whether-

- (i) the assessing officer has considered all the data available on record regarding the agricultural holdings of the assessee and the income derived by him therefrom:
- (ii) the estimate of the yield is based on some reliable data (e.g. data gathered on plot inspection etc.):
- (iii) value of the commodities adopted does not vary appreciably in the case of different assessees in a particular locality unless there is some satisfactory

reasons for such variation. (Here critical comparative study of the rates prescribed by the Inspecting Assistant Commissioner adopted for assessment purposes with the prevailing market rates of the relevant accounting year should be conducted, with a view to highlight cases of appreciable variations resulting in loss or revenue).

- (4) If the assessee has communicated his objections to the proposals contained in the pre-assessment notice and if the assessing officer has reduced the income on the basis of the objections whether such reductions are reasonable and are supported by facts on record.
- (5) If the assessee has not objected to the proposals, whether the assessment completed in accordance with the proposals communicated to the assessee in the pre-assessment notice.

III. Computation of income and assessment of tax

- (1) Whether there are any arithmetical mistakes in the computation of income and assessment of tax, in the assessment order.
- (2) In case, where the total agricultural income of the assessee includes income from firm/association of individuals/property held as tenants-in-common, whether the total agricultural income of the firm/associations of individuals/tenants in-common has been computed and apportioned correctly.
- (3) Whether the deductions allowed in computing the income on account of expenses incurred by the assessee are supported by provisions of section 5 of the A.I.T. Act.
- (4) If it is a case where depreciation and/or investment allowance has been claimed by the assessee.
 - (a) whether the assessee has properly furnished the particulars in accordance with the Agricultural Income-Tax Rules relating to the claim of depreciation allowance.
 - (b) whether the assets are the property of the assessee and are used for the purpose of deriving agricultural income.
 - (c) whether the assessing authority has worked out the written down value correctly and allowed the depreciation at the prescribed rates.

- (d) whether the investment allowance has been allowed only in respect of eligible assets and only in the year of acquisition thereof
- (5) Whether the deductions allowed include any item of capital expenditure and whether any of the inadmissible deductions specified in Sn. 6 has been allowed.
- (6) In cases where deductions from total agricultural income exclusion from certain properties has been allowed to the assessee for the reasons that the properties in question were alienated/transferred, whether the income from such property is assessed in the hands of the transferee. (Details of settlements, dispositions received from S.R.A. parties auditing Sub- Registry Offices), if any may be utilized profitably to exercise these checks.
- (7) In the case of transfer of property of tangible value exceeding Rs. 100/- whether the transfer is supported by registered documents.
- (8) In the case of transfer of property, whether the transaction is hit by the provisions of Section 21 of the Act and if so whether the income from such property has been included in the total income of the transferor and assessed to tax.
- (9) In the case of transfer of property, by the assessee to his spouse/minor child or purchase of property in the name of his wife/minor child whether the transaction is hit by Section 22 (i), (ii), (iii) and (iv) of the AIT and if so, whether the income from such property is included in the total income of the assessee for purposes of assessment to tax.
- (10) Whether the share income received by the spouse/minor child of the assessee, from membership in a firm in which the assessee is a partner is included in the total income of the assessee and assessed to tax in his hand.
- (11) In the case of remuneration/salary paid to the partner of a firm, whether the expenditure on payment of remuneration/salary to partner has been disallowed in the assessment of the firm and the amount of salary/remuneration set apart and included in the share of income of the partner who actually received it, while apportioning the income of the firm.
- (12) Whether the agricultural income tax, and surcharge have been demanded at the prescribed rates.

- (13) (1) Whether the exemptions allowed under Section 6 (1) of the Act are correct and exemption from payment of tax allowed on donations paid to a trust, institution of fund under Section 9 (2) is supported by orders of Government.
- (2) Whether the rebate in tax allowed under Section 9 (1) in respect of payments towards LIC premium, NSC, NSS or other scheme is correct and in accordance with the provisions.
- (14) Whether the aggregate of the exemption under Section 9 (2) has been limited to 1/6th of the total agricultural income of the assessee or Rs.20,000 whichever is less and whether the rebate under Section 9 (1) has been restricted to 20% of the subscription/contributions and limited to Rs. 10,000
- (15) Whether rebate/deduction under Sn.9 has been allowed in assessment completed under the compounding system. This is not admissible.
- (16) Whether the assessment of income has been made within the time limit of 2 years from the date of filing of returns as provided under Sn.39 (6).
- (17) In the case of assessments compounded under Section 13-
- (a) whether the particulars of the entire agricultural holdings including replanted (immature) are have been furnished in the return.
- (b) Whether the name of the villages, in the cases of cardamom cultivators, has been furnished in the return so as to ascertain the cardamom zone.
- (c) Whether tax for the first three hectares only, after giving exemption to five hectares has been computed at the rate specified in the first slab.
- (d) Whether the replanted area was also reckoned for rate purpose as well as to decide the minimum and maximum limits of extent provided for levy of tax.
- (e) In the case of a firm, whether tax on entire extent was computed at the rate specified in column 5 of the Table of compounding rates of tax.
- (f) Whether claim of exemption in respect of re-planted areas of rubber and cardamom is supported by certificates issued by Rubber Board/Spices Board as the case may be.

IV. Status - tax effect on incorrect status assigned to the assessee.

Whether the status assigned to the person is correct.

- (a) Association of individuals and tenants-in-common.

- (1) Whether the benefit contemplated under Section 3 (2) of the Act has been allowed in the case of persons holding properties as tenants-in common only.
- (2) In the case of “Association of Individuals” whether tax has been demanded on the total income of the association at the rates applicable in the case of a ‘person’ other than a company.

(An association of individuals may be distinguished from “persons holding property as tenants-in-common” in the light of the case laws reported in KBR Bulletins and ITRs).

V. Miscellaneous

A. Assessment based on the data gathered by the assessing officer by local inspection of the agricultural holdings of the assessee.

- (1) Whether the local inspection covered the entire agricultural holdings of the assessee, and if not, whether the income from the area not inspected has been estimated by making local enquiries and recorded in the notes of inspection/taken into account at the time of making the assessment.
- (2) Whether the data of inspection have been applied correctly in the assessments completed.
- (3) Whether the income from any of the plantations which were immature at the time of inspection but reported as likely to yield in the future years, has escaped assessments in the subsequent assessments completed.
- (4) Whether the signature of the assessee/representative of the assessee present at the time of inspection, has been obtained in the notes of inspection.\

B. Completion of assessment after the death of the assessee

- (1) When a person dies before the assessment of his agricultural income is made, action for assessment is initiated, whether the requirements of Section 48 of the AIT Act have been properly complied with.
- (2) Whether notice to all legal representatives has been served.

(3) Whether income accrued to the persons for the part of the accounting year till the date of his death has been considered for assessment in the hands of the deceased person.

(4) Whether income derived by the legal heirs/representatives for the remaining part of the accounting year after the date of death of the person has been assessed to tax in the hands of the legal heirs/representatives assessing the appropriate status according to the personal laws governing the succession.

C. Agricultural income derived by Court of Wards, Administrator General etc.

(1) In the case of agricultural income received by Court of Wards, Administrator General, or any Receiver appointed by the Court to receive such income on behalf of any person, whether notices under different sections required to be issued under the provisions of the AIT Act before proceeding to assess such income in the hands of the Court Wards, Administrator General or Receiver, were issued and served on the Court of Wards, Administrator General or the Receiver,

(2) When the income received by the Court of Wards. Administrator General etc. is part only of the total Agricultural Income of the person whether tax payable has been determined on the total agricultural income of the person and demanded from the Court of Wards. Administrator General etc. and from the person rateably accordingly to the income received by each (vide Section 49 (1) (iii) of the Act).

D. Carrying forward of losses

(1) Whether the loss carried forward under Section 12 of the Act is the loss determined by the assessing officer in the previous assessments.

(2) Whether any loss has been carried forward for more than eight years.

E. Method of Accounting

In the case of assessee, who maintain proper accounts of their agricultural income.

(1) Whether the assessee is maintaining accounts on 'Cash basis' or 'Mercantile basis'.

(2) In the case of assessee who maintain accounts on 'cash basis' whether any deduction was allowed in respect of any liability for payment incurred by the assessee during the previous year, but not actually paid.

(3) In the case of assessee who maintains accounts on 'Mercantile basis'.

(a) Whether any item of payment made by the assessee during the previous year for which provision was made in the earlier years and allowed as deductions in the relevant years assessments has been allowed as deduction again.

(b) Whether all items of provisions made in excess over requirement and written back to the profit and loss of account of the assessee as receipt have been included in the total agricultural income assessed to tax.

(c) Whether provisions made in the accounts and charged off to the profit of the year are only for payments for which liability has actually been incurred by the assessee.

(d) Whether any provisions for future payment of liability already incurred are not excessive; and

(e) In the case of change in the method of accounting whether items of expenditure which have been allowed on cash basis are not allowed on accrual basis and vice versa.

(4) Whether the requirements of maintenance of accounts and audit of accounts whenever necessary under Section 33 and 34 have been satisfied.

F. Revision of assessment

(1) If the revision is based on any appellate decision or orders. Whether the changes or modification effected in the income of the assessee, already computed are in accordance with the directions contained in the appellate order.

(2) Whether any reduction in the agricultural income already computed and assessed, ordered by the Appellate Authority was due to any omission/failure on the part of the assessing authority in presenting the true facts of the case or producing the relevant documents before the appellate authority.

(3) If the revision is made under Section 42 of the Act for rectifying any mistake apparent from records, whether the revision is made within the time limit of four years from the date of the original assessment order.

G. Registering of new cases for assessment

(1) Whether a “Register of Land – holders” is maintained by the office as prescribed in Chapter-XII of the AIT&ST Manual Volume III and whether internal and external survey as prescribed in the manual are being conducted.

(2) If a person is being assessed to tax for the first time based on the voluntary return of income filed by him under Section 35 (1) of the Act, whether there is any indication in the records to show that he was deriving agricultural income assessable to tax during the previous accounting years and that such income escaped assessment due to the absence of an effective machinery for survey in the department or due to the non-maintenance of proper register like “Register of Landowners” by the office.

(3) If the agricultural income derived by a person is being brought to assessment of tax for the first time on the basis of the particulars collected from field survey or local enquiry by the assessing officer, whether notice under Section 41 was duly served on the assessee calling for the returns of income for all the assessment years for which assessments were open at the time of receipt of such particulars and whether agricultural income derived by the assessee during any years escaped assessment as a consequence of the delay in issuing/serving the notice under Section 41 or failure on the part of the assessing authority in taking follow up action.

H. Demand and collection of tax

(1) Whether a valid demand notice under Section 45 of the Act was served on all persons from whom tax or penalty is due.

(2) Whether the assessee has remitted the tax before the last date prescribed in the demand notice and whether advance tax and tax on self assessment have been paid in accordance with the provisions of Section 37.

(3) Whether the classification of tax etc. furnished in the chalans of remittance is correct.

(4) (a) whether penalty for belated/non-payment of tax has been imposed in deserving cases under Section 63 of the Act.

(b) whether penalty for failure to furnish return, comply with notice and concealment of agricultural income etc. has been levied under Section 79 of the Act.

(5) Whether action to recover the tax etc. due from the defaulters has been initiated under the Revenue Recovery Act within the time limit of three years from the last

date of payment fixed in the demand notice vide Section 63 of the Act, and whether the action for recovery is being pursued properly.

(6) Whether any amount has become irrecoverable due to failure on the part of the assessing authority in initiating action for recovery within the time limit prescribed.

1. Refunds

(1) Whether the revised assessments based on which refunds are ordered, are made according to the provisions of the Act.

(2) Whether the assessee had actually remitted amounts in excess of the tax fixed in the revised assessments and the amount to be refunded has been worked out correctly.

(3) Whether the fact of refund has been noted in the original chalangis of remittance and also against the relevant entries in the Register NO. V- Register of Daily Collections.

(4) Whether any refund has been granted when there were dues outstanding against the assessee.

(5) Where interest on refund for delay over 3 months has been paid, whether the delay was an avoidable one.

ANNEXURE –I

Forms prescribed under Kerala Agricultural Income Tax Rules, 1991

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1.	Returns-details of Properties and Income	15
2.	Statement of Total Agricultural Income during the previous year ended.... under Section 35	51
3.	Statement of advance tax payable under Section 37	57

	of KAIT Act, 1991	
4.	Application for extension of time for filing returns under Section 35 (2)	53
5.	Application for allotment of permanent account number under Section 36.	54
6.	Application for withdrawal of permanent account number	56
7.	Notice under Section 35 (2) of KAIT Act, 1991	52,68
8.	Notice for production of accounts, documents, registers, statements etc. under Section 28 (1) 35 (4) of KAIT Act, 1991	16,43,51 61, 62
9.	Notice under Section 14 of KAIT Act, 1991 (for escaped extent of land compounded)	65
10.	Notice under Section 41 of KAIT Act, 1991 (for assessment of income escaped)	64
11.	Application for registration of charitable religious trust or institution under Section 16	18
12.	Application for verification of crops b y the assessee	49
13.	Notice for inspection of land for verification of crops	49
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15.	Notice of assessment and demand under Section 13	15
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17.	Carry forward of losses under Section 12	13
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21.	Requisition for other modes of recovery under Section 65	70
22.	Application filed before Commissioner under Section 37 (4) or section 37 (5)	60
23.	Application for refund of Agricultural Income tax	71
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25.	Order for refund of Agricultural income tax	72
26.	Appeal to AAC of DC	77
27.	Forms for returning defective appeal petitions	81
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29.	Memorandum of cross objections to Appellate Tribunal	87
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31.	Revision under Section 77	91
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34.	Application for disclosure of information under Section 32	30
35.	Application for relief from double payment of tax under Section 15	41
36.	Authorization under Section 28	44
37.	Summons to appear in person and/or to produce documents	46
38.	Audit report under Section 34 (1)	42,51
39.	Requisition to Agricultural Income Tax Officer under Section 26 (3)	45
40.	Declaration under Section 43 (1) claiming identical question of law pending in High Court/Supreme Court.	66
41.	Authorization of representative to appear on behalf of assessee	96

ANNEXURE –II

Institutions which have been exempted from A.I.T.by Government

1. Calicut Regional Engineering College exempted vide G.O.M.S. 64/78/TD dated: 30.05.1978.
2. Nityananda Ashram Hosdurg declared as a Charitable Institution for purposes of Agricultural income Tax Act, 1950 vide G.O.M.S. 60/77/T dated: 08.06.1977.
3. Shri. Shaila Estate, Quilandyunder Shri. Sathya Sai Trust, Kerala Calicut exempted in SRO No.905/77 vide G.O. M.S. 101/77/TD dated:07.09.1977.
4. Kerala Agricultural University exempted in SRO, No.146/80 vide G.O.M.S, 2/80/TD dated:02.01.1980.
5. Indian Cardamom Research Institute, Myladumpara exempted in SRO No.1347/91 vide GO (P) 154191/TD dated:12.11.1991.
6. National Thermal Power Corporation (for Thermal Power Station, Karthikappally, Alappuzha) exempted in SRO NO.639/91 vide G.O. (P) 89/91/TD dated:22.04.1991.
7. Central Plantation Crops Research Institute, Kasargod exempted in SRO No.346/91 dated:15.03.1991.
8. S.R.O. No. GO (P) 4/94/TD dated:13.01.1994 National Research Centre for Spices, Kozikode has been exempted from payment of agricultural; income tax payable in regard to the whole of the agricultural income of the institution.
9. SRO 889/95 dated:11.07.1995 . The AIT payable by the Ananthakrishnapuram Boarding Trust, Kalpatta, Wayanad exempted in regard to the whole of the agricultural income due from the 17th day of July 1985.
10. SRO No. 264/93 –GO(P)No.14/93/TD dated 9-2-1993 – Plant and machinery eligible for investment Allowance under Section 7(5)
 - (i). Centrifuging machinery
 - (ii). Sprinkles systems
 - (iii). Energy saving device (saving electrical energy/Fuel)

GENERAL EXEMPTIONS

Number and Date of Notification		Previous Year	Assessment Year	Exempted Crops	To Whom Applicable
1	SRO.No.305/1999	1998-1999	1999-2000	Rubber	Rubber cultivators upto 20 Hectares
2	SRO.No.293/2000 GO(P)No.55/2000/TD dated 31-3-2000	2000-2001	2001-2002	Rubber Coffee	Cultivators having landed property not exceeding 20 Meetares
3	SRO.No.800/2001 GO.(P)No.97/2001/TD dated 16-8-2001	2001-2002	2002-2003	All crops	All assessees except Companies
4	SRO.No.9/2003 GO(P)No.5/2003/TD dated 3-1-2003	2002-2003	2003-2004	All crops	All assessees except Companies
5	SRO.No.392/2005	2003-2004	2004-2005	Coffee Tea	All assessees except Companies
	GO(P)No. 69/2005/TD dated 22-4-2005	2004-2005	2005-2006	Coffee Tea	All assessees except Companies
6	SRO.No.561/2006 GO(P)No.72/2006/TD dated 26-7-2006	2005-2006	2006-2007	Tea Coffee Pepper Cardamom	All assessees except Companies
7	SRO.No.377/2007 GO(P)No. 99/2007/TD dated 21-4-2007	2006-2007	2007-2008	Tea Coffe Pepper Cardamom	All assessees except Companies

