THE GIFT-TAX ACT, 1958

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THE GIFT-TAX ACT, 1958

ACT NO. 18 OF 1958

[15*th May,* 1958.] An Act to provide for the levy of gift-tax.

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1.Short title, extent and commencement. — (*1*) This Act may be called the Gift-tax Act, 1958.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir*.

(*3*) It shall be deemed to have come into force on the 1st day of April, 1958.

2.Definitions. —In this Act, unless the context otherwise requires,—

[1]* * * * *

[2][(*ii*) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act;

(*iii*) "assessee" means a person by whom gift-tax or any other sum of money is payable under this Act, and includes—

(*a*) every person in respect of whom any proceeding under this Act has been taken for the determination of gift-tax payable by him or by any other person or the amount of refund due to him or such other person;

(*b*) every person who is deemed to be an assessee under this Act;

(*c*) every person who is deemed to be an assessee in default under this Act;

[3][(*iiia*) "Assessing Officer" means the [4][Assistant Commissioner or Deputy Commissioner]or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (*1*) or sub-section (*2*) of section 120 or any other provision of the Income-tax Act which apply for the purposes of gift-tax under section 7 of this Act, and also the [5][Joint Commissioner] who is directed under clause (*b*) of sub-section (*4*) of the said section 120 to exercise or perform all or any of the powers and functions conferred on or assigned to the Assessing Officer under that Act;]

(*iv*) "assessment" includes reassessment;

* **Subject to verification and confirmation by the Administrative ministry.**

1. Clause (*i*) omitted by Act 4 of 1988, s. 162 (w.e.f. 1-4-1988).

2. Subs. by Act 53 of 1962, s. 2, for clauses (*ii*), (*iii*) and (*iv*) (w.e.f. 1-4-1963).

3. Ins. by Act 4 of 1988, s. 162 (w.e.f. 1-4-1988).

4. Subs. by Act 21 of 1998, s. 76, for "Assistant Commissioner" (w.e.f. 1-10-1998).

5. Subs. by s. 76, *ibid*., for "Deputy Commissioner" (w.e.f. 1-10-1998).

*. *Vide* notification No. S.O. 3912(E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

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

(*v*) "Board" means the [1][Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)];

[2][(*va*) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility [3]***;]

[4]* * * * *

[5]* * * * *

[6][(*vii*) the expressions "company", "Indian company" and "company in which the public are substantially interested" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act;]

[7]* * * * *

(*viii*) "donee" means any person who acquires any property under a gift, and, where a gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary;

(*ix*) "donor" means any person who makes a gift;

(*x*) "executor" means an executor or administrator of the estate of a deceased person;

[8][(*xi*) the expressions "firm", "partner" and "partnership" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act;]

(*xii*) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and [9][includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section].

[10][*Explanation.*—A transfer of any building or part thereof referred to in clause (*iii*), clause (*iiia*) or clause (*iiib*) of section 27 of the Income-tax Act by the person who is deemed under the said clause to be the owner thereof made voluntarily and without consideration in money or money's worth, shall be deemed to be a gift made by such person;]

[11]* * * * *

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1. Subs. by Act 54 of 1963, s. 5 for "Central Board of Revenue constituted under the Central Board of Revenue Act, 1924" (w.e.f. 1-1-1964).
2. Ins. by Act 53 of 1962, s. 2 (w.e.f. 1-4-1963).
3. The words "not involving the carrying on of any activity for profit" omitted by Act 67 of 1984, s. 71 (w.e.f. 1-4-1984).
4. Clause (*vi*) omitted by Act 4 of 1988, s. 162 (w.e.f. 1-4-1988).
5. Clause (*via*) omitted by s. 162, *ibid*. (w.e.f. 1-4-1988).
6. Subs. by s. 162, *ibid*., for clause (*vii*) (w.e.f. 1-4-1988).
7. Clause (*viia*) omitted by s. 162, *ibid*. (w.e.f. 1-4-1988).
8. Subs. by s. 162, *ibid*., for clause (*xi*) (w.e.f. 1-4-1989).
9. Subs. by Act 32 of 1971, s. 37, for "includes the transfer of any property deemed to be a gift under section 4" (w.e.f. 1-4-1972).
10. Ins. by Act 11 of 1987, s. 90 (w.e.f. 1-4-1988).
11. Clause (*xiii*) omitted by Act 4 of 1988, s. 162 (w.e.f. 1-4-1989).

[1][(*xiv*) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);]

[2]* * * * *

[3]* * * * *

[4]* * * * *

[5][(*xvib*) "legal representative" has the meaning assigned to it in clause (*11*) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908);]

[6]* * * * *

(*xviii*) "person" includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not;

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

(*xx*) "previous year", in relation to any assessment year—

(*a*) in the case of an assessee [7][having no source of income, profits or gains or] having a source of income, profits or gains in respect of which there is no previous year under the Income-tax Act, means the twelve months ending on the 31st day of March immediately preceding the assessment year;

[8]* * * * *

(*c*) in the case of any other assessee, means the previous year as defined in [9][section 3] of the Income-tax Act if an assessment Act for that year :

[10][Provided that where a person who has not been assessed under this Act for any assessment year makes a gift on a date which does not fall within a previous year as defined in sub-clause (*a*) [11]*** or sub-clause (*c*), the previous year shall be the twelve months ending on the 31st day of March immediately preceding the assessment year;

[12]* * * * *]

(*xxi*) "principal officer", used with reference to a company or any association of persons, means—

(*a*) the secretary and treasurer, manager, managing agent, managing director or agent of the company or association; or

(*b*) any person connected with the management of the affairs of the company or association upon whom the [13][Assessing Officer] has served a notice of his intention of treating him as the principal officer thereof;

1. Subs. by Act 53 of 1962, s. 2, for clause (*xiv*) (w.e.f. 1-4-1963).
2. Clause (*xv*) omitted by Act 4 of 1988, s. 162 (w.e.f. 1-4-1989).
3. Clause (*xvi*) omitted by, s. 162, *ibid.* (w.e.f. 1-4-1989).
4. Clause (*xvia*) omitted by, s. 162, *ibid.* (w.e.f. 1-4-1989).
5. Ins. by Act 53 of 1962, s. 2 (w.e.f. 1-4-1963).
6. Clause (*xvii*) omitted by Act 4 of 1988, s. 162 (w.e.f. 1-4-1989).
7. Ins. by Act 12 of 1959, s. 27 (w.e.f. 1-4-1959).
8. Sub-clause (*b*) omitted by Act 4 of 1988, s. 162 (w.e.f. 1-4-1989).
9. Subs. by Act 53 of 1962, s. 2, for "clause (*11*) of section 2" (w.e.f. 1-4-1963).
10. Ins. by Act 12 of 1959, s. 27 (w.e.f. 1-4-1959).
11. The words "or sub-clause (*b*)" omitted by Act 4 of 1988, s. 162 (w.e.f. 1-4-1989).
12. The Second proviso omitted by s.162, *ibid,* (w.e.f. 1-4-1989).
13. Subs. by s. 161, *ibid.*, for "Gift-tax Officer" (w.e.f. 1-4-1988).

(*xxii*) "property" includes any interest in property, movable or immovable;

(*xxiii*) "taxable gifts" means gifts chargeable to gift-tax under this Act;

[1][(*xxiiia*) territories to which this Act extends shall be deemed to include the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry—

(*a*) as respects any period for the purposes of section 5; and

(*b*) as respects any period included in the previous year, for the purposes of making any assessment for the assessment year commencing on the 1st day of April, 1963, or for any subsequent year;]

(*xxiv*) "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(*a*) the creation of a trust in property;

(*b*) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(*c*) the exercise of a power of appointment [2][(whether general, special or subject to any restrictions as to the persons in whose favour the appointment may be made)] of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(*d*) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person;

[3][(*xxv*) the expressions "Chief Commissioner", "Director General", "Commissioner", "Commissioner (Appeals)", "Director", [4]["Additional Director of Income-tax", "Additional Commissioner of Income-tax", "Additional Commissioner of Income-tax (Appeals)", "[5][Joint Director"]] [6]["Joint Commissioner"], "Deputy Commissioner (Appeals)", [7]["Assistant Commissioner or Deputy Commissioner"], "Income-tax Officer", "Tax Recovery Officer" and "Inspector of Income-tax" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act.]

CHAPTER II

CHARGE OF GIFT-TAX AND GIFTS SUBJECT TO SUCH CHARGE

3.Charge of gift-tax. — [8][(*1*)] Subject to the other provisions contained in this Act, there shall be charged for every [9][assessment year] commencing on and from the 1st day of April, 1958, [10][but before the 1st day of April, 1987,] a tax (hereinafter referred to as gift-tax) in respect of the gifts, if any, made by

1. Ins. by The Taxation Laws (Extension to Union Territories) Regulation, 1963 (3 of 1963), by s. 3 and the Schedule (w.e.f. 1-4-1963).

2. Ins. by Act 44 of 1980, s. 42 (w.e.f. 1-4-1980).

3. Ins. by Act 4 of 1988, s. 162 (w.e.f. 1-4-1988).

4. Ins. by Act 32 of 1994, s. 54 (w.e.f. 1-6-1994).

5. Subs. by Act 21 of 1998, s. 76 for "Deputy Director" (w.e.f. 1-10-1998).

6. Subs. by s. 76, *ibid*., for "Deputy Commissioner" (w.e.f. 1-10-1998).

7. Subs. by s. 76, *ibid*., for "Assistant Commissioner" (w.e.f. 1-10-1998).

8. Section 3 renumbered as sub-section (*1*) thereof by Act 23 of 1986, s. 41 (w.e.f. 1-4-1987).

9. Subs. by Act 53 of 1962, s. 3, for "financial year" (w.e.f. 1-4-1963).

10. Ins. by Act 23 of 1986, s. 41 (w.e.f. 1-4-1987).

a person during the previous year (other than gifts made before the 1st day of April, 1957), at the rate or rates specified in [1][Schedule I].

[2][(*2*) [3][Subject to the other provisions (including provisions for the levy of additional gift-tax) contained in this Act], there shall be charged for every assessment year commencing on and from the 1st day of April, 1987, gift-tax in respect of the gifts, if any, made by a person during the previous year, at the rate of thirty per cent. on the value of all taxable gifts.]

[4][(*3*) Notwithstanding anything contained in sub-section (*2*), the provisions of this Act shall cease to apply and shall have no effect whatsoever in respect of any gift made on or after the 1st day of October, 1998.]

4. Gifts to include certain transfers. — [5][(*1*)] For the purposes of this Act,—

(*a*) where property is transferred otherwise than for adequate consideration, the amount by which the [6][value of the property as on the date of the transfer and determined in the manner laid down in Schedule II,] exceeds the value of the consideration shall be deemed to be a gift made by the transferor :

[7][Provided that nothing contained in this clause shall apply in any case where the property is transferred to the Government or where the value of the consideration for the transfer is determined or approved by the Central Government or the Reserve Bank of India;]

(*b*) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor, the amount of the consideration which has not passed or is not intended to pass shall be deemed to be a gift made by the transferor;

(*c*) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment to the extent to which it has not been found to the satisfaction of the [8][Assessing Officer] to have been *bona fide,* shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;

(*d*) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be a gift made in his favour by the person who causes or has caused the property to be so vested;

[9][(*e*) where a person who has an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration or for a consideration which is not adequate, the value of the interest so surrendered, relinquished or allowed to be terminated or, as the case may be, the amount

1. Subs. by Act 3 of 1989, s. 79, for "the Schedule" (w.e.f. 1-4-1989).

2. Ins. by Act 23 of 1986, s. 41 (w.e.f. 1-4-1989).

3. Subs. by Act 4 of 1988, s. 163, for "Subject to the other provisions contained in this Act" (w.e.f. 1-4-1989).

4. Ins. by Act 21 of 1998, s. 75 (w.e.f. 1-1-1998).

5. Section 4 renumbered as sub-section (*1*) thereof by Act 32 of 1971, s. 37 (w.e.f. 1-4-1972).

6. Subs. by Act 49 of 1991, s. 84, for "market value of the property at the date of the transfer" (w.e.f. 1-4-1992).

7. The Proviso ins. by Act 25 of 1975, s. 29 (w.e.f. 1-4-1974).

8. Subs. by Act 4 of 1988, s. 161, for "Gift-tax officer" (w.e.f. 1-4-1988).

9. Ins. by Act 44 of 1980, s. 42 (w.e.f. 1-4-1980).

by which such value exceeds the consideration received, shall be deemed to be a gift made by such person.]

1[(*2*) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereafter in this sub-section referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, for the purpose of computation of the taxable gifts made by the individual, the individual shall be deemed to have made a gift of so much of the converted property as the members of the Hindu undivided family other than such individual would be entitled to, if a partition of the converted property had taken place immediately after such conversion.]

5. Exemption in respect of certain gifts. — (*1*) Gift-tax shall not be charged under this Act in respect of gifts made by any person—

(*i*) of immovable property situate outside the territories to which this Act extends;

(*ii*) of movable property situate outside the said territories unless the person—

(*a*) being an individual, is a citizen of India and is ordinarily resident in the said territories, or

(*b*) not being an individual, is resident in the said territories, during the previous year in which the gift is made;

2[(*iia*) being an individual who is not resident in India, to any person resident in India, of foreign currency or other foreign exchange as defined respectively, in clause (*c*) and clause (*d*) of section 2 of the Foreign Exchange Regulation Act, 1947 (7 of 1947), remitted from a country outside India in accordance with the provisions of the said Act and any rules made thereunder, during the period commencing on the 26th day of October, 1965, and ending on the 28th day of February, 1966, or such later date as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation. —For the purposes of this clause, the expression "resident in India" shall have the meaning assigned to it in the Income-tax Act;]

3[(*iib*) being a person resident outside India, out of the moneys standing to his credit in a Non-resident (External) Account in any bank in India in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder.

Explanation. —For the purposes of this clause, "person resident outside India" has the meaning assigned to it in clause (*q*) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(*iic*) being a citizen of India, or a person of Indian origin, who is not resident in India, to any relative of such person in India, of convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder.

Explanation. —For the purposes of this clause and clause (*iid*),—

(*a*) a person shall be deemed to be of Indian origin if he or either of his parents or any of his grand-parents was born in undivided India;

1. Ins. by Act 32 of 1971, s. 37 (w.e.f. 1-4-1972).

2. Ins. by Act 13 of 1966, s. 41 (w.e.f. 1-4-1966).

3. Ins. by Act 14 of 1982, s. 38 (w.e.f. 1-4-1983).

(*b*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

(*c*) "relative" has the meaning assigned to it in clause (*41*) of section *2* of the Income-tax Act;

(*d*) "resident of India" shall have the meaning assigned to it in the Income-tax Act;]

(*iid*) being a citizen of India or a person of Indian origin, who is not resident in India, to any relative of such person in India of property in the form of [1][any foreign exchange asset as defined in clause (*b*) of section 115C of the Income-tax Act];]

[2][(*iie*) being an individual who is a non-resident Indian, once out of the moneys standing to his credit in an account opened and operated in accordance with the Non-resident (Non-repatriable) Rupee Deposit Scheme, 1992.

Explanation. —For the purposes of this clause, "non-resident Indian" shall have the meaning assigned to it in clause (*e*) of section 115C of the Income-tax Act;]

(*iii*) of property in the form of savings certificates issued by the Central Government, which that Government, by notification in the Official Gazette exempts from gift-tax;

[3]* * * * *

[4][(*iiib*) of property in the form of Special Bearer Bonds, 1991;]

[5][(*iiic*) [6][being an individual or a Hindu undivided family, of property in the form of such Capital Investment Bonds] as the Central Government may, by notification in the Official Gazette, specify in this behalf subject to a maximum of rupees ten lakhs in value in the aggregate in one or more previous years :

Provided that the exemption conferred by this clause shall be available only to a person who has initially subscribed to the said bonds;]

[7][(*iiid*) being an individual or a Hindu undivided family, of property in the form of such Relief Bonds, as the Central Government may, by notification in the Official Gazette, specify in this behalf subject to a maximum of rupees five lakhs in value in the aggregate in one or more previous years :

Provided that the exemption conferred by this clause shall be available only to a person who has initially subscribed to the said Bonds;]

[8][(*iiie*) being an individual who is a non-resident Indian, [9][of property in the form of the bonds specified under sub-clause (*iid*) of clause (*15*) of section 10 of the Income-tax Act:

Provided that] where an individual, who is a non-resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this clause shall apply in respect of the gifts of property referred to in this clause in such subsequent year or any year thereafter.

1. Subs. by Act 12 of 1983, s. 42, for certain words (w.e.f. 1-4-1984).

2. Ins. by Act 38 of 1993, s. 41 (w.e.f. 1-4-1993).

3. Clause (*iiia*) omitted by Act 23 of 1986, s. 42 (w.e.f. 1-4-1987).

4. Ins. by Act 7 of 1981, s. 7 (w.e.f. 12-1-1981).

5. Ins. by Act 14 of 1982, s. 38 (w.e.f. 1-4-1983).

6. Subs. by Act 12 of 1983, s. 42 for "of property in the form of such Capital Investment Bonds" (w.e.f. 1-4-1983).

7. Ins. by Act 26 of 1988, s. 67 (w.e.f. 1-4-1988).

8. Ins. by Act 3 of 1989, s. 80 (w.e.f. 1-4-1989).

9. Subs. by Act 49 of 1991, s. 85, for certain words (w.e.f. 1-4-1991).

Explanation. —For the purposes of this clause, the expressions—

[1]* * * * *

(*b*) "non-resident Indian" shall have the meaning assigned to it in clause (*e*) of section 115C of the Income-tax Act;]

(*iv*) to the Government or any local authority [2][or any authority referred to in clause (*20A*) of section 10 of the Income-tax Act ;]

(*v*) to any institution or fund established [3][or deemed to be established] for a charitable purpose to which the provisions of [4][section 80G] of the Income-tax Act apply ;

[5][(*va*) (*i*) to such temple, mosque, gurdwara, church or other place as has been notified by the Central Government for the purposes of [6][clause (*b*) of sub-section (*2*) of section 80G of the Income-tax Act] ; or

(*ii*) by way of settlement on trust, of property, the income from which, according to the deed of settlement, is to be used exclusively in connection with the temple, mosque, gurdwara, church or other place specified therein and notified as aforesaid ;]

[7]* * * * *

(*vii*) to any relative dependent upon him for support and maintenance, on the occasion of the marriage of the relative, subject to a maximum of rupees [8][one hundred thousand] in value in respect of the marriage of each such relative ;

[9]* * * * *

[10]* * * * *

(*x*) under a will ;

(*xi*) in contemplation of death ;

(*xii*) for the education of his children, to the extent to which the gifts are proved to the satisfaction of the [11][Assessing Officer] as being reasonable having regard to the circumstances of the case ;

(*xiii*) being an employer, to any employee by way of bonus, gratuity or pension or to the dependants of a deceased employee, to the extent to which the payment of such bonus, gratuity or pension is proved to the satisfaction of the [11][Assessing Officer] as being reasonable having regard to the circumstances of the case and is made solely in recognition of the services rendered by the employee;

[12]* * * * *

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1. Clause (*a*) omitted by Act 49 of 1991, s. 85 (w.e.f. 1-4-1991).
2. Ins. by Act 66 of 1976, s. 28 (w.e.f. 1-4-1977).
3. Ins. by Act 21 of 1973, s. 21 (w.e.f. 1-4-1974).
4. Subs. by Act 32 of 1971, s. 37, for "section 88" (w.e.f. 1-4-1968).
5. Ins. by Act 10 of 1965, s. 71 (w.e.f. 1-4-1965).
6. Subs. by Act 43 of 1971, s. 37, for "sub-section (*6*) of section 88 of the Income-tax Act, 1961" (w.e.f. 1-4-1968).
7. Clause (*vi*) omitted by 23 of 1986, s. 42 (w.e.f. 1-4-1987).
8. Subs. by Act 32 of 1994, s. 55, for "thirty thousand" (w.e.f. 1-4-1995).
9. Clause (*viii*) omitted by 23 of 1986, s. 42 (w.e.f. 1-4-1987).
10. Clause (*ix*) omitted, s. 42, *ibid*, (w.e.f. 1-4-1987).
11. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).
12. Clause (*xiv*) omitted by 23 of 1986, s. 42 (w.e.f. 1-4-1987).

(*xv*) to any person in charge of any such *Bhoodan* or *Sampattidan* movement as the Central Government may, by notification in the Official Gazette, specify.

[1]* * * * *

[2][(*1A*) Any reference in clause (*v*) [3]*** of sub-section (*1*) to charitable purpose in relation to a gift made on or after the 1st day of April, 1964, shall be construed as not including a purpose the whole or substantially the whole of which is of a religious nature.]

(*2*) Without prejudice to the provisions contained in sub-section (*1*), gift-tax shall not be charged under this Act in respect of gifts made by any person during the previous year, subject to a maximum of rupees [4][thirty thousand] in value.

[5]* * * * *

Explanation.—For the purposes of this section,—

(*a*) an individual shall be deemed to be ordinarily resident in the territories to which this Act extends during the previous year in which the gift is made if during that year he is regarded as a resident but not as not ordinarily resident [6][within the meaning of section 6 of the Income-tax Act, subject to the modification that references in that section to India shall be construed as references to the territories to which this Act extends] ;

(*b*) a Hindu undivided family, firm or other association of persons shall be deemed to be resident in the territories to which this Act extends during any previous year unless, during that year, the control and management of its affairs was situated wholly outside the said territories ;

(*c*) a company shall be deemed to be resident in the territories to which this Act extends during the previous year, if—

(*i*) it is a company formed and registered under the Companies Act, 1956 (1 of 1956), or is an existing company within the meaning of that Act ; or

(*ii*) during that year, the control and management of that company was situated wholly in the said territories ;

(*d*) "gifts made in contemplation of death" has the same meaning as in section 191 of the Indian Succession Act, 1925 (39 of 1925).

[7][**6.Value of gifts, how determined.** — (*1*) Subject to the provisions of sub-section (*2*), the value of any property, other than cash, transferred by way of gift shall, for the purpose of this Act, be its value as on the date on which the gift was made and shall be determined in the manner laid down in Schedule II.

(*2*) Where a person makes a gift which is not revocable for a specified period, the value of the property gifted shall be the capitalised value of the income from such property during the period for which the gift is not revocable.]

6A. [*Aggregation of gifts made during a certain period.*] — *Omitted by the Finance Act,* 1986 (23 of 1986), s. 43(*w.e.f.* 1-4-1987).

1. Clause (*xvi*) omitted by 23 of 1986, s. 42, (w.e.f. 1-4-1987).

2. Ins. by Act 15 of 1965, s. 21 (w.e.f. 1-4-1964).

3. The words, brackets and figures "or clause (*vi*)"omitted by Act 23 of 1986, s. 42 (w.e.f. 1-4-1987).

4. Subs. by Act 38 of 1993, s. 41, for "twenty thousand" (w.e.f. 1-4-1994).

5. Sub-section (*3*) omitted by 23 of 1986, s. 42 (w.e.f. 1-4-1989).

6. Subs. by Act 53 of 1962, s. 4, for "in the taxable territories with the meaning of the income-tax Act" (w.e.f. 1-4-1963).

7. Subs. by Act 3 of 1989, s. 81, for section 6 (w.e.f. 1-4-1989).

CHAPTER III

GIFT-TAX AUTHORITIES

[1][**7.Gift-tax authorities and their jurisdiction.** —The income-tax authorities specified in section 116 of the Income-tax Act shall be the gift-tax authorities for the purposes of this Act and every such authority shall exercise the powers and perform the functions of a gift-tax authority under this Act in respect of any person within his jurisdiction, and for this purpose his jurisdiction under this Act shall be the same as he has under the Income-tax Act by virtue of orders or directions issued under section 120 of that Act (including orders or directions assigning concurrent jurisdiction) or under any other provision of that Act.

Explanation.—For the purposes of this section, the gift-tax authority having jurisdiction in relation to a person who has no income assessable to income-tax under the Income-tax Act shall be the gift-tax authority having jurisdiction in respect of the area in which that person resides.

7A.*[Powers of Commissioner respecting specified areas, cases, persons, etc.]— Omitted by the Direct Tax Laws* (*Amendment*) *Act,* 1988 (4 *of* 1988), *s.* 165 (*w.e.f.* 1-4-1988).

7AA. [*Concurrent jurisdiction of Inspecting Assistant Commissioner and Gift-tax Officer.*] — *Omitted bys.* 165, *ibid*. (*w.e.f.* 1-4-1988).

7B. [*Power to transfer cases.*]— *Omit* 4-1988).

8.Control of gift-tax authorities. —Section 118 of the Income-tax Act and any notification issued thereunder shall apply in relation to the control of gift-tax authorities as they apply in relation to the control of the corresponding income-tax authorities, except to the extent to which the Board may, by notification in the Official Gazette, otherwise direct in respect of any gift-tax authority.

8A. [*Commissioners of gift-tax Appeals.*] **—** *Omitted by the Direct Tax Laws* (*Amendment*) *Act,* 1988 (4 *of* 1988), *s.* 165 (*w.e.f.* 1-4-1988).

9.Instructions to subordinate authorities. — (*1*) The Board may, from time to time, issue such orders, instructions and directions to other gift-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued—

(*a*) so as to require any gift-tax authority to make a particular assessment or to dispose of a particular case in a particular manner ; or

(*b*) so as to interfere with the discretion of the Deputy Commissioner (Appeals) or Commissioner (Appeals) in the exercise of his appellate functions.

(*2*) Without prejudice to the generality of the foregoing power,—

(*a*) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections [2][13, 14, 15, 16, 16B,] 17 and 34 or otherwise), general or special orders in respect of any class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be

1. Subs. by Act 4 of 1988, s. 164, for sections 7, 8, 9 and 10 (w.e.f. 1-4-1988).

2. Subs. by Act 12 of 1990, s. 59, for "15, 16" (w.e.f. 1-4-1990).

followed by other gift-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information ;

(*b*) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any gift-tax authority, not being a Deputy Commissioner (Appeals) or Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.]

9A. [*Directors of Inspection***.**] **—** *Omitted by the Direct Tax Laws* (*Amendment*) *Act,* 1988 (4 *of* 1988), *s.* 165 (*w.e.f.* 1-4-1988).

10. Jurisdiction of Assessing Officers and power to transfer cases. — (*1*) The provisions of sections 124 and 127 of the Income-tax Act shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Income-tax Act, subject to the modifications specified in sub-section (*2*).

(*2*) The modifications referred to in sub-section (*1*) shall be the following, namely :—

(*a*) in section 124 of the Income-tax Act,—

(*i*) in sub-section (*3*), references to the provisions of the Income-tax Act shall be construed as references to the corresponding provisions of the Gift-tax Act ;

(*ii*) sub-section (*5*) shall be omitted ;

(*b*) in section 127 of the Income-tax Act, in the *Explanation* below sub-section [1][(*4*)] references to proceedings under the Income-tax Act shall be construed as including references to proceedings under the Gift-tax Act.]

11. [*Inspector of Gift-tax.*] **—** *Omitted by the Direct Tax Laws* (*Amendment*) *Act,* 1988 (4 *of* 1988), *s.* 165 (*w.e.f.* 1-4-1988).

11A. [*Commissioner competent to perform any function or functions.*] — *Omitted by s.* 165, *ibid.* (*w.e.f.* 1-4-1988).

11AA. [*Gift-tax Officer competent to perform any function or functions.*] — *Omitted by s.* 165, *ibid.* (*w.e.f.* 1-4-1988).

11B. [*Control of gift-tax authorities.*] — *Omitted by s.* 165, *ibid.* (*w.e.f.* 1-4-1988).

12. [*Gift-tax authorities to follow orders, etc., of the Board.*] — *Omitted bys.* 165, *ibid.* (*w.e.f.* 1-4-1988).

[2][**12A.Power of** [3][**Chief Commissioner or Commissioner**] **and of** [4][[5][**Joint Commissioner**] **to make enquiries under this Act.** — The [3][Chief Commissioner or Commissioner] and the [4][[5][**Joint Commissioner**] shall be competent to make any enquiry under this Act, and for this purpose, shall have all the powers that an [6][Assessing Officer] has under this Act in relation to the making of enquiries.]

1. Subs. by Act 3 of 1989, s. 82, for "(*5*)" (w.e.f. 1-4-1988).
2. Ins. by Act 53 of 1962, s. 9 (w.e.f. 1-4-1963).
3. Subs. by Act 4 of 1988, s. 161, for "Commissioner of Gift-tax" (w.e.f. 1-4-1988).
4. Subs. by s. 161, *ibid*., for "Inspecting Assistant Commissioner of Gift-tax" (w.e.f. 1-4-1988).
5. Subs. by Act 21 of 1998, s. 76, for "Deputy Commissioner" (w.e.f. 1-10-1988).
6. Subs. by Act 4 of 1988, s. 161, *ibid*., for "Gift-tax Officer" (w.e.f. 1-4-1988).

CHAPTER IV

ASSESSMENT

13. Return of gifts. — [1][(*1*) Every person who during a previous year has made any taxable gifts, or is assessable in respect of the taxable gifts made by any other person under this Act, which, in either case, exceeded the maximum amount not chargeable to gift-tax, shall, on or before the 30th day of June of the corresponding assessment year, furnish a return of such gifts in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(*2*) Notwithstanding anything contained in any other provision of this Act, a return which shows the amount of taxable gifts below the maximum amount which is not chargeable to tax shall be deemed never to have been furnished :

Provided that this sub-section shall not apply to a return furnished in response to a notice under section 16.]

[2]* * * * *

[3][**14. Return after due date and amendment of return**. — If any person has not furnished a return within the time allowed under sub-section (*1*) of section 13 or by a notice issued under clause (*i*) of sub-section (*4*) of section 15, or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier :

Provided that—

(*a*) where such return or revised return relates to the assessment year commencing on the 1st day of April, 1987, or any earlier assessment year, it may be furnished at any time up to and inclusive of the 31st day of March, 1990 or before the completion of the assessment, whichever is earlier;

(*b*) where such return or revised return relates to the assessment year commencing on the 1st day of April, 1988, it may be furnished at any time up to and inclusive of the 31st day of March, 1991, or before the completion of the assessment, whichever is earlier.]

[4][**14A. Return by whom to be signed.** — The return made under section 13 or section 14 shall be signed and verified—

[5][(*a*) in the case of an individual,—

(*i*) by the individual himself ;

(*ii*) where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf

(*iii*) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf ; and

(*iv*) where, for any other reason, it is not possible for the individual to sign the return, by any person duly authorised by him in this behalf :

1. Subs. by Act 4 of 1988, s. 166, for sub-sections (*1*) and (*2*) (w.e.f. 1-4-1989).

2. Sub-section (*3*) omitted by s. 166, *ibid.* (w.e.f. 1-4-1989).

3. Subs. by s. 167, *ibid*., for section 14 (w.e.f. 1-4-1989).

4. Ins. by Act 53 of 1962, s. 11 (w.e.f. 1-4-1963).

5. Subs. by Act 4 of 1988, s. 168, for clause (*a*) (w.e.f. 1-4-1989).

Provided that in a case referred to in sub-clause (*ii*) or sub-clause (*iv*), the person signing the return holds a valid power of attorney from the individual to do so, which shall be attached to the return ;]

(*b*) in the case of a Hindu undivided family, by the karta, and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family ;

[1][(*c*) in the case of a company, by the managing director thereof or where for any unavoidable reason such managing director is not able to sign and verify the return, or where there is no managing director, by any director thereof :

[2]Provided that where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return :

Provided further that,—

(*a*) where the company is being wound up, whether under the orders of the court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be signed and verified by the liquidator referred to in sub-section (*1*) of section 178 of the Income-tax Act ;

(*b*) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be signed and verified by the principal officer thereof ;]

(*d*) in the case of a firm, by the managing partner thereof or where for any unavoidable reason such managing partner is not able to sign and verify the return, or where there is no managing partner as such, by any partner thereof, not being a minor ;]

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

(*f*) in the case of any other person, by that person, or by some person competent to act on his behalf.]

[3][**14B. Self-assessment.** — (*1*) Where any tax is payable on the basis of any return furnished under section 13 or under section 14 or in response to a notice under clause (*i*) of sub-section (*4*) of section 15 or under section 16, after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax, together with interest payable under any provision of this Act for any delay in furnishing the return, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

Explanation.—Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

(*2*) After the regular assessment under section 15 has been made, any amount paid under sub-section (*1*) shall be deemed to have been paid towards such regular assessment.

(*3*) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (*1*), he shall, without prejudice to any other consequences which he may

1. Subs. by Act 41 of 1975, s. 111, for clauses (*c*) and (*d*) (w.e.f. 1-4-1976).

2. The provisos added by Act 4 of 1988, s. 168 (w.e.f. 1-4-1989).

3. Ins. by s. 169, *ibid.* (w.e.f. 1-4-1989).

incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid and all the provisions of this Act shall apply accordingly.]

1[(*4*) The provisions of this section shall apply in respect of assessment for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]

2**[15. Assessment.** — (*1*) (*a*) Where a return has been made under section 13 or section 14 or in response to a notice under clause (*i*) of sub-section (*4*),—

(*i*) if any tax or interest is found due on the basis of such return after adjustment of any amount paid by way of tax or interest, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice issued under section 31 and all the provisions of this Act shall apply accordingly ; and

(*ii*) if any refund is due on the basis of such return, it shall be granted to the assessee :

Provided that in computing the tax or interest payable by, or refundable to the assessee, the following adjustments shall be made in the taxable gifts declared in the return, namely :—

(*i*) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;

(*ii*) any exemption or deduction, which, on the basis of the information available in such return, accounts or documents is prima facie admissible but which is not claimed or made in the return, shall be allowed;

(*iii*) any exemption or deduction claimed or made in the return, which, on the basis of the information available in such return, accounts or documents, is *prima facie* inadmissible, shall be disallowed:

3[Provided further that where adjustments are made under the first proviso, an intimation shall be sent to the assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments:]

4[5[Provided also] that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the gifts were first assessable.]

(*b*) Where as a result of an order made under 3[sub-section (*3*) or sub-section (*5*) of this section or] section 16 or section 22 or section 23 or section 24 or section 26 or section 28 or section 34 relating to any earlier assessment year and passed subsequent to the filing of the return referred to in clause (*a*), there is any variation in the exemption or deduction claimed or made in the return, and as a result of which,—

(*i*) if any tax or interest is found due, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 31 and all the provisions of this Act shall apply accordingly; and

(*ii*) if any refund is due, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial year in which any such order was passed.

1. Ins. by Act 36 of 1989, s. 31 (w.e.f. 1-4-1989).

2. Subs. by Act 4 of 1988, s. 170, for section 15 (w.e.f. 1-4-1989).

3. Ins. by Act 36 of 1989, s. 32 (w.e.f. 1-4-1989).

4. Ins. by Act 3 of 1989, s. 83 (w.e.f. 1-4-1989).

5. Subs. by Act 36 of 1989, s. 32, for "provided further" (w.e.f. 1-4-1989).

1[(*1A*) (*a*) Where in the case of any person, the taxable gift, as a result of the adjustments made under 2[the first proviso] to clause (*a*) of sub-section (*1*), exceeds the taxable gift declared in the return by any amount, the Assessing Officer shall,—

(*i*) further increase the amount of tax payable under sub-section (*1*) by an additional gift-tax calculated at the rate of twenty per cent. of the tax payable on such excess amount and specify the additional gift-tax in the intimation to be sent under sub-clause (*i*) of clause (*a*) of sub-section (*1*);

(*ii*) where any refund is due under sub-section (*1*), reduce the amount of such refund by an amount equivalent to the additional gift-tax calculated under sub-clause (*i*).

(*b*) Where as a result of an order under section 22 or section 23 or section 24 or section 26 or section 28 or section 34, the amount on which additional gift-tax is payable under clause (*a*) has been increased or reduced, as the case may be, the additional gift-tax shall be increased or reduced accordingly, and,—

(*i*) in a case where the additional gift-tax is increased, the Assessing Officer shall serve on the assessee a notice of demand under section 31;

(*ii*) in a case where the additional gift-tax is reduced, the excess amount paid, if any, shall be refunded.

Explanation.—For the purposes of this sub-section, "tax payable on such excess amount" means the difference between the tax on the taxable gift and the tax that would have been chargeable had such taxable gift been reduced by the amount of adjustments.]

3[(*1B*) Where an assessee furnishes a revised return under section 14 after the issue of an intimation, or the grant of refund, if any, under sub-section (*1*) of this section, the provisions of sub-sections (*1*) and (*1A*) of this section shall apply in relation to such revised return and—

(*i*) the intimation already sent for any gift-tax, additional gift-tax or interest shall be amended on the basis of the said revised return and where any amount payable by way of gift-tax, additional gift-tax or interest specified in the said intimation has already been paid by the assessee then, if any such amendment has the effect of—

(*a*) enhancing the amount already paid, the intimation amended under this clause shall be sent to the assessee specifying the excess amount payable by him and such intimation shall be deemed to be a notice of demand issued under section 31 and all the provisions of this Act, shall apply accordingly;

(*b*) reducing, the amount already paid, the excess amount paid shall be refunded to the assessee;

(*ii*) the amount of the refund already granted shall be enhanced or reduced on the basis of the said revised return and where the amount of refund already granted is—

(*a*) enhanced, only the excess amount of refund due to the assessee shall be paid to him;

(*b*) reduced, the excess amount so refunded shall be deemed to be the tax payable by the assessee and an intimation shall be sent to the assessee specifying the amount so payable, and such intimation shall be deemed to be a notice of demand issued under section 31 and all the provisions of this Act, shall apply accordingly:

Provided that an assessee, who has furnished a revised return under section 14 after the service upon him of the intimation under sub-section (*1*) of this section, shall be liable to pay additional

1. Ins. by Act 3 of 1989, s. 83 (w.e.f. 1-4-1989).

2. Subs. by Act 36 of 1989, s. 32, for "the proviso" (w.e.f. 1-4-1989).

3. Ins. by Act 12 of 1990, s. 60 (w.e.f. 1-4-1989).

gift-tax in relation to the adjustments made under the first proviso to clause (*a*) of sub-section (*1*) and specified in the said intimation, whether or not he has made the said adjustments in the revised return.]

(*2*) 1[Where a return has been made under section 13 or section 14 or in response to a notice under clause (*i*) of sub-section (*4*) of this section, the Assessing Officer shall, if he] considers it necessary or expedient to ensure that the assessee has not omitted to disclose any taxable gift or has not understated the amount or value of any such gift or has not under-paid the tax in any manner, 2[serve on the assessee] a notice requiring him, on a date to be specified therein, either to attend at the office of the Assessing Officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return :

3[Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.]

(*3*) On the date specified in the notice issued under sub-section (*2*) or, as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer

may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by order in writing, assess the value of taxable gifts made by the assessee and determine the sum payable by him on the basis of such assessment.

(*4*) For the purposes of making an assessment under this Act, the Assessing Officer may serve, on any person who has made a return under section 13 or section 14 or in whose case the time allowed under sub-section (*1*) of section 13 for furnishing the return has expired, a notice requiring him, on a date to be specified therein,—

(*i*) where such person has not made a return [4][within the time allowed under sub-section (*1*) of section 13], to furnish a return of the taxable gifts made by him or of the taxable gifts made by any other person in respect of which he is assessable under this Act during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or

(*ii*) to produce or cause to be produced such accounts, records or other documents as the Assessing Officer may require.

(*5*) If any person,—

(*a*) fails to make the return required under sub-section (*1*) of section 13 and has not made a return or a revised return under section 14, or

(*b*) fails to comply with all the terms of a notice issued under sub-section (*2*) or sub-section (*4*),

the Assessing Officer, after taking into account all relevant material which he has gathered, shall, after giving such person an opportunity of being heard, estimate the value of taxable gifts to the best of his judgment and determine the sum payable by such person on the basis of such assessment :

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the person to show cause on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (*4*) has been issued prior to the making of the assessment under this sub-section.

1. Subs. by Act 36 of 1989, s. 32, for "In a case referred to in sub-section (*1*), if the Assessing Officer" (w.e.f. 1-4-1989).

2. Subs. by s. 32, *ibid*., for "he shall serve on the assessee" (w.e.f. 1-4-1989).

3. Subs. by Act 49 of 1991, s. 86, for the proviso (w.e.f. 1-10-1991).

4. Subs. by Act 12 of 1990, s. 60, for "before the end of the relevant assessment year" (w.e.f. 1-4-1990).

(*6*) Notwithstanding anything contained in section 6, for the purpose of making an assessment under this Act, [1][where under the provisions of section 6 read with Schedule II, the fair market value of any property transferred by way of gifts is to be taken into account in such assessment,] the Assessing Officer may refer the valuation of such property to the Valuation Officer,—

(*a*) in a case where the value of the property as returned is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so returned is less than its fair market value ;

(*b*) in any other case, if the Assessing Officer is of opinion—

(*i*) that the fair market value of the property exceeds the value of the property as returned by more than such percentage of the value of the property as returned or by more than such amount as may be prescribed in this behalf; or

(*ii*) that having regard to the nature of the property and other relevant circumstances, it is necessary so to do,

and where any such reference is made, the provisions of sub-sections (*2*), (*3*), (*4*), (*5*) and (*6*) of section 16A, clauses (*ha*) and (*i*) of sub-section (*1*) and sub-sections (*3A*) and (*4*) of section 23, sub-section (*5*) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (*1*) of section 16A of that Act.

Explanation.—In this sub-section, "Valuation Officer" has the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

[2][(*7*) Where a regular assessment under sub-section (*3*) or sub-section (*5*) is made,—

(*a*) any tax or interest paid by the assessee under sub-section (*1*) shall be deemed to have been paid towards such regular assessments;

(*b*) if no refund is due on regular assessment or the amount refunded under sub-section (*1*) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(*8*) The provisions of this section, except those of sub-section (*6*), as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

[3][*Explanation*.—An intimation sent to the assessee under sub-section (*1*) or sub-section (*1B*) shall be deemed to be an order for the purposes of sub-section (*1*) of section 24.]

16. Gift escaping assessment. — [4][(*1*) If the Assessing Officer [5][has reasons to believe] that the taxable gifts in respect of which any person is assessable under this Act, (whether made by him or by any other person) have escaped assessment for any assessment year (whether by reason of under-assessment

1. Ins. by Act 3 of 1989, s. 83 (w.e.f. 1-4-1989).

2. Ins. by Act 36 of 1989, s. 32 (w.e.f. 1-4-1989).

3. Ins. by Act 49 of 1991, s. 86 (w.e.f. 1-10-1991).

4. Subs. by Act 4 of 1988, s. 171, for sub-section (*1*) (w.e.f. 1-4-1989).

5. Subs. by Act 3 of 1989, s. 84, for "for reasons to be recorded by him in writing, is of the opinion" (w.e.f. 1-4-1989).

or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and section 16A, serve on such person a notice requiring him to furnish within such period, [1]*** as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner, setting forth the taxable gifts made by him or by such other person during the previous year mentioned in the notice, in respect of which he is assessable, along with such other particulars as may be required by the notice, and may proceed to assess or re-assess such gifts and also any other taxable gifts in respect of which such person is assessable, which have escaped assessment and which come to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereafter in this section referred to as the relevant assessment year); and the provisions of this Act shall, so far as may be, apply as if the return were a return required under section 13 :

Provided that where an assessment under sub-section (*3*) of section 15 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any taxable gift chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 13 or section 14 or in response to a notice issued under sub-section (*4*) of section 15 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year :

[2][Provided further that the Assessing Officer shall, before issuing any notice under this sub-section, record his reasons for doing so.]

Explanation.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

(*1A*) No notice under sub-section (*1*) shall be issued for the relevant assessment year,—

(*a*) in a case where an assessment under sub-section (*3*) of section 15 or sub-section (*1*) of this section has been made for such assessment year,—

(*i*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (*ii*) or sub-clause (*iii*);

(*ii*) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;

(*iii*) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year;

(*b*) in any other case,—

(*i*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (*ii*) or sub-clause (*iii*) ;

(*ii*) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year ;

1. The words "not being less than thirty days" omitted by the Act 32 of 2003, s. 101, (w.e.f. 1-4-1989).

2. Ins. by Act 3 of 1989, s. 84 (w.e.f. 1-4-1989).

(*iii*) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.

Explanation.—For the purposes of sub-section (*1*) and sub-section (*1A*), the following shall also be deemed to be cases where taxable gifts chargeable to tax have escaped assessment, namely :—

(*a*) where no return of taxable gifts has been furnished by the assessee although the taxable gifts made by him or the taxable gifts made by any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to gift-tax;

(*b*) where return of taxable gifts has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the amount or value of the taxable gifts or has claimed excessive exemption or deduction in the return.

(*1B*) (*a*) In a case where an assessment under sub-section (*3*) of section 15 or sub-section (*1*) of this section has been made for the relevant assessment year, no notice shall be issued under sub-section (*1*) [1][by an Assessing Officer, who is below the rank of [2][Assistant Commissioner or Deputy Commissioner], unless the [3][Joint Commissioner] is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(*b*) In a case, other than a case falling under clause (*a*), no notice shall be issued under sub-section (*1*) by an Assessing Officer, who is below the rank of [3][Joint Commissioner], after the expiry of four years from the end of the relevant assessment year, unless the [3][Joint Commissioner], is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]

(*2*) Nothing contained in this section limiting the time within which any proceedings for assessment or reassessment may be commenced shall apply to an assessment or reassessment to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 22, section 23, section 24, section 26 or section 28 [4][or by a court in any proceedings under any other law].

[5][**16A**. **Time limit for completion of assessment and re-assessment.** —[6][(*1*) No order of assessment shall be made under section 15 at any time after the expiry of [7][two years] from the end of the assessment year in which the gifts were first assessable :

[8][Provided that,—

(*a*) where the gifts were first assessable in the assessment year commencing on the 1st day of April, 1987, or any earlier assessment year, such assessment may be made on or before the 31st day of March, 1991;

(*b*) where the gifts were first assessable in the assessment year commencing on the 1st day of April, 1988, such assessment may be made on or before the 31st day of March, 1992.]

1. Subs. by Act 12 of 1990, s. 61, for "except by an Assessing Officer of the rank of Assistant Commissioner or Deputy Commissioner" (w.e.f. 1-4-1990).
2. Subs. by Act 21 of 1998, s. 76, for "Assistant Commissioner" (w.e.f. 1-10-1998).
3. Subs. by s. 76, *ibid*., for "Deputy Commissioner" (w.e.f. 1-10-1998).
4. Added by Act 4 of 1988, s. 171 (w.e.f. 1-4-1989).
5. Ins. by Act 41 of 1975, s. 112 (w.e.f. 1-10-1975).
6. Subs. by Act 4 of 1988, s. 172, for sub-section (*1*) and (*2*) (w.e.f. 1-4-1989).
7. Subs. by Act 13 of 1989, s. 31, for "one year" (w.e.f. 1-4-1989).
8. Subs. by s. 31, *ibid*., for the proviso (w.e.f. 1-4-1989).

(*2*) No order of assessment or re-assessment shall be made under section 16 after the expiry of two years from the end of the financial year in which the notice under sub-section (*1*) of that section was served :

Provided that,—

(*i*) where the notice under clause (*a*) of sub-section (*1*) of section 16 was served during the financial year commencing on the 1st day of April, 1985, or the 1st day of April, 1986, such assessment or re-assessment may be completed on or before the 31st day of March, 1990 ;

(*ii*) where the notice under clause (*b*) of sub-section (*1*) of section 16 relates to the assessment for the assessment year commencing on the 1st day of April, 1985, or the 1st day of April, 1986, such assessment or re-assessment may be completed on or before the 31st day of March, 1990, or the expiry of two years from the end of the financial year in which such notice was served, whichever is later.

Explanation.—References to section 16 in the proviso shall be construed as references to that section as it stood before its amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988).]

(*3*) Notwithstanding anything contained in sub-sections (*1*) and (*2*), an order of fresh assessment in pursuance of an order passed on or after the 1st day of April, 1975, under section 22, section 23 or section 24, setting aside or cancelling an assessment, may be made at any time before the expiry of [1][two years] from the end of the financial year in which the order under section 22 or section 23 is received by the [2][Chief Commissioner or Commissioner] or, as the case may be, the order under section 24 is passed by the Commissioner :

[3][Provided that where the order setting aside or cancelling the assessment was passed during the financial year commencing on the 1st day of April, 1985, or the 1st day of April, 1986, the order of fresh assessment may be made on or before the 31st day of March, 1990.]

(*4*) The provisions of sub-sections (*1*) and (*2*) shall not apply to the assessment or re-assessment made on the assessee in consequence of, or to give effect to, any finding or direction contained in an order under section 22, section 23, section 24, section 26 or section 28 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act and such assessment or re-assessment may, subject to the provisions of sub-section (*3*), be completed at any time.

Explanation 1.—In computing the period of limitation for the purposes of this section—

(*i*) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under the proviso to section 38, or

(*ii*) the period during which the assessment proceeding is stayed by an order or injunction of any court,

shall be excluded:

[4][Provided that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (*1*), (*2*) and (*3*) available to the Assessing Officer for making an order

of assessment or re-assessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.]

1. Subs. by Act 4 of 1988, s. 172, for "four years" (w.e.f. 1-4-1989).

2. Subs. by s. 161, *ibid*., for "Commissioner" (w.e.f. 1-4-1988).

3. The proviso ins. by s. 171, *ibid.* (w.e.f. 1-4-1989).

4. The proviso ins. by Act 49 of 1991, s. 87 (w.e.f. 27-9-1991).

Explanation 2.—Where, by an order referred to in sub-section (*4*), any gift is excluded from the taxable gifts for an assessment year in respect of an assessee, then, an assessment of such gift for another assessment year shall, for the purposes of sub-section (*2*) of section 16 and this section, be deemed to be one made in consequence of, or to give effect to, any finding or direction contained in the said order.]

[1][**16B. Interest for defaults in furnishing return of gifts.** — (*1*) Where a return of gifts for any assessment year under sub-section (*1*) of section 13 or section 14, or in response to a notice under clause (*i*) of sub-section (*4*) of section 15, is furnished after the 30th day of June of such year, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the 1st day of July of the assessment year, and,—

(*a*) where the return is furnished after the 30th day of June ending on the date of furnishing of the return; or

(*b*) where no return has been furnished, ending on the date of completion of the assessment under sub-section (*5*) of section 15,

on the amount of tax payable on the taxable gifts as determined [2][under sub-section (*1*) of section 15 or] on regular assessment.

[3][*Explanation 1*.—In this sub-section, "tax payable on the taxable gifts as determined under sub-section (*1*) of section 15" shall not include the additional gift-tax, if any, payable under section 15.]

Explanation 2.—Where in relation to an assessment year the assessment is made for the first time under section 16, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

[2][*Explanation 3*.—In this sub-section, "tax payable on the taxable gifts as determined under sub-section (*1*) of section 15 or on regular assessment" shall, for the purposes of computing the interest payable under section 14B, be deemed to be tax payable on the taxable gifts as declared in the return.]

(*2*) The interest payable under sub-section (*1*) shall be reduced by the interest, if any, paid under section 14B towards the interest chargeable under this section.

(*3*) Where the return of gifts for any assessment year, required by a notice under sub-section (*1*) of section 16 issued [2][after the determination of taxable gifts under sub-section (*1*) of section 15 or] after the completion of an assessment under sub-section (*3*) or sub-section (*5*) of section 15 or section 16, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,—

(*a*) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(*b*) where no return has been furnished, ending on the date of completion of the re-assessment under section 16,

on the amount by which the tax on the taxable gifts determined on the basis of such re-assessment exceeds the tax on the taxable gifts as determined [2][under sub-section (*1*) of section 15 or] on the basis of the earlier assessment aforesaid.

[4]* * * * *

1. Ins. by Act 4 of 1988, s. 173 (w.e.f. 1-4-1989).

2. Ins. by Act 3 of 1989, s. 85 (w.e.f. 1-4-1989).

3. Subs. by s. 85, *ibid*., for *Explanation 1* (w.e.f. 1-4-1989).

4. The *Explanation* omitted by s. 85, *ibid*, (w.e.f.

(*4*) Where, as a result of an order under section 22 or section 23 or section 24 or section 26 or section 28 or section 34, the amount of tax on which interest was payable under this section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and,—

(*i*) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 31 and the provisions of this Act shall apply accordingly, and

(*ii*) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(*5*) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]

[1]**[17. Penalty for failure to furnish returns, to comply with notices and concealment of gifts, etc.**— (*1*) If the [2][Assessing Officer], [3][Deputy Commissioner (Appeals)], [4][Commissioner (Appeals),] [5][Chief Commissioner or Commissioner] or Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

[6]* * * * *

(*b*) has [7]*** failed to comply with a notice under sub-section (*2*) or sub-section (*4*) of section 15; or

(*c*) has concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof, he or it may, by order in writing, direct that such person shall pay by way of penalty—

[8]* * * * *

[9][(*ii*) in the cases referred to in clause (*b*), in addition to the amount of gift-tax payable by him, a sum which shall not be less than one thousand rupees, but which may extend to twenty-five thousand rupees for each such failure;]

(*iii*) in the cases referred to in clause (*c*), in addition to any gift-tax payable by him, a sum which shall not be less than twenty per cent. but which shall not exceed one and half times the amount of the tax, if any, which would have been avoided if the return made by such person had been accepted as correct:

[10][Provided that in the cases referred to in clause (*b*), no penalty shall be imposable if the person proves that there was a reasonable cause for the failure referred to in that clause.]

[11][*Explanation*.—Where any adjustment is made in the taxable gifts declared in the return under the proviso to clause (*a*) of sub-section (*1*) of section 15 and additional gift-tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustments so made.]

1. Subs. by Act 53 of 1962, s. 14, for Section 17 (w.e.f. 1-4-1963).

2. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

3. Subs. by s. 161, *ibid*., for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).

4. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).

5. Subs. by Act 4 of 1988, s. 161, for "Commissioner" (w.e.f. 1-4-1988).

6. Clause (*a*) omitted by Act 3 of 1989, s. 86 (w.e.f. 1-4-1989).

7. The words "without reasonable cause" omitted by Act 46 of 1986, s. 40 (w.e.f. 10-9-1986).

8. Clause (*i*) omitted by Act 3 of 1989, s. 86 (w.e.f. 1-4-1989).

9. Subs. by s. 86, *ibid*., for clause (*ii*) (w.e.f. 1-4-1989).

10. Subs. by s. 86, *ibid*., for the proviso (w.e.f. 1-4-1989).

11. Ins. by s. 86, *ibid.* (w.e.f. 1-4-1989).

(*2*) No order imposing a penalty under sub-section (*1*) shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard.

[1][(*3*) No order imposing a penalty under sub-section (*1*) shall be made,—

(*i*) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(*ii*) by the [2][Assistant Commissioner or Deputy Commissioner] where the penalty exceeds twenty thousand rupees,

except with the prior approval of the [3][Joint Commissioner.]

(*4*) A [4][Deputy Commissioner (Appeals)], [5][a Commissioner (Appeals), a [6][Chief Commissioner or Commissioner] or the Appellate Tribunal] on making an order under this section imposing a penalty, shall forthwith send a copy of the same to the [7][Assessing Officer].]

[8][(*5*) No order imposing a penalty under this section shall be passed—

(*i*) in a case where the assessment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or Commissioner (Appeals) under section 22 or an appeal to the Appellate Tribunal under sub-section (*2*) of section 23, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever is later;

(*ii*) in a case where the relevant assessment is the subject-matter of revision under sub-section (*2*) of section 24, after the expiry of six months from the end of the month in which such order of revision is passed;

(*iii*) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation.—In computing the period of limitation for the purposes of this section,—

(*i*) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 38; and

(*ii*) any period during which a proceeding under this section for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded.

(*6*) The provisions of this section as they stood immediatelybefore their amendment by theDirect Tax Laws (Amendment) Act, 1989 (3 of 1989) shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

1. Subs. by Act 3 of 1989, s. 86, for sub-section (*3*) (w.e.f. 1-4-1989).
2. Subs. by Act 21 of 1998, s. 76, for "Assistant Commissioner" (w.e.f. 1-10-1998).
3. Subs. by s. 76, *ibid*., for "Deputy Commissioner" (w.e.f. 1-10-1998).
4. Subs. by Act 4 of 1988, s. 161 for "An Appellate Assistant Commissioner" (w.e.f. 1-4-1988).
5. Subs. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).
6. Subs. by Act 4 of 1988, s. 161 for "Commissioner" (w.e.f. 1-4-1988).
7. Subs. by s. 161, *ibid*., "Gift-tax Officer" (w.e.f. 1-4-1988).
8. Ins. by Act 3 of 1989, s. 86 (w.e.f. 1-4-1989).

[1]**[17A. Penalty for failure to answer questions, sign statements, furnish information, allow inspections, etc.** — (*1*) If a person,—

(*a*) being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by a gift-tax authority in the exercise of his powers under this Act; or

(*b*) refuses to sign any statement made by him in the course of any proceedings under this Act, which a gift-tax authority may legally require him to sign; or

(*c*) to whom a summons is issued under sub-section (*1*) of section 36, either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce the books of account or documents at the place and time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure :

Provided that no penalty shall be imposable under clause (*c*) if the person proves that there was reasonable cause for the said failure.

(*2*) If a person fails to furnish in due time any statement or information which such person is bound to furnish to the Assessing Officer under section 37, he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees but which may extend to two hundred rupees for every day during which the failure continues :

Provided that no penalty shall be imposable under this sub-section if the person proves that there was reasonable cause for the said failure.

(*3*) Any penalty imposable under sub-section (*1*) or sub-section (*2*) shall be imposed—

(*a*) in a case where the contravention, failure or default in respect of which such penalty is imposable occurs in the course of any proceeding before a gift-tax authority not lower in rank than a [2][Joint Director] or a [3][Joint Commissioner], by such gift-tax authority;

(*b*) in any other case, by the [2][Joint Director] or the [3][Joint Commissioner].

(*4*) No order under this section shall be passed by any gift-tax authority referred to in sub-section (*3*) unless the person on whom penalty is proposed to be imposed has been heard or has been given a reasonable opportunity of being heard in the matter by such authority.

Explanation.—In this section, "gift-tax authority" includes a Director General, Director, [2][Joint Director], [4][Assistant Director or Deputy Director] or Valuation Officer while exercising the powers vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the matters specified in sub-section (*1*) of section 36.]

[5][**18. Rebate on advance payments.** — If a person making a taxable gift pays into the treasury within fifteen days of his making the gift any part of the amount of tax due on the gift calculated at rates

1. Subs. by Act 3 of 1989, s. 87, for section 17A (w.e.f. 1-4-1989).

2. Subs. by Act 21 of 1998, s. 76, for "Deputy Director" (w.e.f. 1-10-1998).

3. Subs. by s. 76, *ibid*., for "Deputy Commissioner" (w.e.f. 1-10-1998).

4. Subs. by s. 76, *ibid*., for "Assistant Director" (w.e.f. 1-10-1998).

5. Subs. by Act 41 of 1975, s. 115, for section 18 (w.e.f. 1-4-1976).

specified in the Schedule [1][or at the rate specified in sub-section (*2*) of section 3], he shall, at the time of assessment under section 15, be given credit—

(*i*) for the amount so paid; and

(*ii*) for a sum equal to one-ninth of the amount so paid, so however, that such sum shall in no case exceed one-tenth of the tax due on the gift.

Explanation.—If a person makes more than one taxable gift in the course of a previous year, the amount of tax due on any one of such gifts shall be the difference between the total amount of tax due on the aggregate value of all the taxable gifts so far made, including the taxable gift in respect of which tax has to be paid, calculated at the rates specified in the Schedule or, as the case may be [2][at the rate specified in sub-section (*2*) of section 3], and the total amount of tax on the aggregate value of all the gifts made during that year, excluding the taxable gift in respect of which tax has to be paid, calculated at the rates specified in the Schedule or, as the case may be, [2][at the rate specified in sub-section (*2*) of section 3].]

[3][**18A. Credit for stamp duty paid on instrument of gift.** — Where any stamp duty has been paid under any law relating to stamp duty in force in any State on an instrument of gift of property, the assessee shall be entitled to a deduction from the gift-tax payable by him of an amount equal to the stamp duty so paid or one-half of the gift-tax payable, before making the deduction under this section, whichever is less.]

[4]* * * * *

CHAPTER V

LIABILITY TO ASSESSMENT IN SPECIAL CASES

19. Tax of deceased person payable by legal representative. — (*1*) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the gift-tax determined as payable by such person, or any sum which would have been payable by him under this Act if he had not died.

(*2*) Where a person dies without having furnished a return under section 13, or after having furnished a return which the [5][Assessing Officer] has reason to believe to be incorrect or incomplete, the [5][Assessing Officer] may make an assessment of the value of the taxable gifts made by such person and determine the gift-tax payable by him, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person if he had survived, require from the executor, administrator, or other legal representative of the deceased person any accounts, documents, or other evidence which might, under the provisions of section 15, have been required from the deceased person.

(*3*) The provisions of sections 13, 14 and 16 shall apply to an executor, administrator or other legal representative as they apply to any person referred to in [6][those sections].

1. Subs. by Act 23 of 1986, s. 44, for "or, in case where the provisions of Section 6-A are applicable to a gift, in the manner specified in that section" (w.e.f. 1-4-1987).
2. Subs. by s. 44, *ibid*., for "in the manner specified in section 6A" (w.e.f. 1-4-1987).
3. Subs, by Act 14 of 1982, s. 39 for section 18A (w.e.f. 1-4-1983).
4. Chapter IV-A containing section 18-B" omitted by Act 3 of 1989, s. 95 (w.e.f. 1-4-1989). Earlier it was inserted by Act 4 of 1988, s. 175 (w.e.f. 1-4-1989).
5. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).
6. Subs. by Act 58 of 1960, s. 3 and the Second Schedule, for "that section" (w.e.f. 26-12-1960).

[1][**19A. Assessment of persons leaving India.** — (*1*) Notwithstanding anything contained in section 3, when it appears to the [2][Assessing Officer] that any individual may leave India during the current assessment year, or shortly after its expiry and that he has no present intention of returning to India, the gifts made by such individual during the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India, shall be chargeable to gift-tax in that assessment year.

(*2*) The taxable gifts made in each completed previous year or part of any previous year included in such period shall be chargeable to gift-tax at the rate or rates specified in the Schedule [3][or, as the case may be, at the rate specified in sub-section (*2*) of section 3], and separate assessment shall be made in respect of each such completed previous year or part of any previous year.

(*3*) The [2][Assessing Officer] may estimate the value of the gifts made by such individual during such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(*4*) For the purpose of making an assessment under sub-section (*1*), the [2][Assessing Officer] may serve a notice upon such individual requiring him to furnish, within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as [4][a return under sub-section (*1*) of section 13], giving particulars of the gifts made by him during each completed previous year comprised in the period referred to in sub-section (*1*) and during any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply [5][as if the notice were a notice issued under clause (*i*) of sub-section (*4*) of section 15].

(*5*) The gift-tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(*6*) Where the provisions of sub-section (*1*) are applicable, any notice issued by the [2][Assessing Officer] under [6][clause (*i*) of sub-section (*4*) of section 15] or under section 16 in respect of any gift-tax chargeable under any other provisions of this Act may, notwithstanding anything contained in [6][clause (*i*) of sub-section (*4*) of section 15], or section 16, as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the [2][Assessing Officer] may think proper.]

20. Assessment after partition of a Hindu undivided family. — (*1*) Where, at the time of making an assessment, it is brought to the notice of the [2][Assessing Officer] that a partition has taken place among the members of a Hindu undivided family, and the [2][Assessing Officer], after enquiry, is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an order to that effect and he shall make assessments [7][on the value of the taxable gifts] made by the family as such as if no partition had taken place and each member or group of members

shall be liable jointly and severally for the tax assessed on the value of the taxable gifts made by the joint family as such.

(*2*) Where the [2][Assessing Officer] is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family.

1. Ins. by Act 53 of 1962, s. 15 (w.e.f. 1-4-1963).

2. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

3. Ins. by Act 23 of 1986, s. 45 (w.e.f. 1-4-1987).

4. Subs. by Act 4 of 1988, s. 186, for "a return under sub-section (*2*) of section 13" (w.e.f. 1-4-1989).

5. Subs. by s. 186, *ibid*., for "as if the notice were a notice issued under sub-section (*2*) of section 13" (w.e.f. 1-4-1989).

6. Subs. by s. 186, *ibid*., for "sub-section (*2*) of section 13" (w.e.f. 1-4-1989).

7. Subs. by Act 58 of 1960, s. 3 and the Second Schedule, for "on the amount of taxable gifts" (w.e.f. 26-12-1960).

21. Liability in case of discontinued firm or association of persons. — (*1*) Where a firm or association of persons liable to pay gift-tax has been discontinued or dissolved, the [1][Assessing Officer] shall determine the gift-tax payable by the firm or association of persons as such as if no such discontinuance or dissolution had taken place.

(2) If the [1][Assessing Officer], the [2][Deputy Commissioner (Appeals)], [3][the Commissioner (Appeals)] or the Appellate Tribunal in the course of any proceeding under this Act in respect of any such firm or other association of persons as is referred to in sub-section (*1*) is satisfied that the firm or association is guilty of any of the acts specified in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (*1*) of section 17, he or it may impose or direct the imposition of a penalty in accordance with the provisions of that section.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm or a member of the association, as the case may be, shall be jointly and severally liable for the amount of tax or penalty payable, and all the provisions of Chapter VII, so far as may be, shall apply to any such assessment or imposition of penalty.

[4]**[21A. Assessment of donee when the donor cannot be found.** — (*1*) Where an [1][Assessing Officer] after using all due and reasonable diligence cannot find the donor who had made any taxable gifts, for the purpose of service of notice under sub-section (*2*) of section 13 or under section 16, the [1][Assessing Officer] may make an assessment of the value of all such taxable gifts made by him and determine the gift-tax payable by him and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the donor, require from the donee or donees any accounts, documents or other evidence which might, under the provisions of section 15, have been required from the donor.

(*2*) Where any assessment in respect of the taxable gifts made by the donor has been made under sub-section (*1*), every donee shall be liable for the gift-tax so assessed :

Provided that where the donees are more than one, they shall be jointly and severally liable for the amount of the gift-tax so assessed :

Provided further that the amount of the gift-tax which may be recovered from each donee shall not exceed the value of the gift made to him as on the date of the gift.

(3) The provisions of sections 13, 14 and 16 shall apply to a donee as they apply to any person referred to in those sections.]

CHAPTER VI

APPEALS, REVISIONS AND REFERENCES

22. Appeal to the [2][Deputy Commissioner (Appeals)] from orders of [1][Assessing Officer]. —(*1*) [5][Subject to the provisions of sub-section (*1A*), any person,]—

(*a*) objecting to the value of [6]* * * taxable gifts determined under this Act; or

(*b*) objecting to the amount of gift-tax determined as payable by him under this Act; or

(*c*) denying his liability to be assessed under this Act; or

1. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

2. Subs. by s. 161, *ibid*., for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).

3. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).

4. Ins. by Act 53 of 1962, s. 16 (w.e.f. 1-4-1963).

5. Subs. by Act 29 of 1977, s. 39 and the Fifth Sc 0-7-1978).

6. The word "his" omitted by Act 53 of 1962, s. 17 (w.e.f. 1-4-1963).

[1][(*d*) objecting to any penalty imposed by the Assessing Officer under section 17 [2]* * *]; or

(*e*) objecting to any order of the [3][Assessing Officer] under sub-section (*2*) of section 20; or

(*f*) objecting to any penalty imposed by the [3][Assessing Officer] under [4][sub-section (*1*) of section 221 of the Income-tax Act] as applied under section 33 for the purposes of gift-tax; [5][or]

[6][(*g*) objecting to an order of the [3][Assessing Officer] under section 34 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under that section; or

[7]* * * * *]

may appeal to the [8][Deputy Commissioner (Appeals)] against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner :

Provided that no appeal shall lie under clause (*f*) unless the tax has been paid before the appeal is filed.

[9][(*1A*) Notwithstanding anything contained in sub-section (*1*), any person,—

(*a*) objecting to the value of taxable gifts determined under this Act or objecting to the amount of gift-tax determined as payable by him or denying his liability to be assessed under this Act where the value of taxable gifts determined on assessment exceeds two lakh rupees; or

[10][(*b*) objecting to any assessment or order referred to in clauses (*a*) to (*g*) (both inclusive) of sub-section (*1*), where such assessment or order has been made by the [11][Joint Commissioner] in exercise of the powers or functions conferred on or assigned to him under section 7 or section 10; or

[12][(*c*) objecting to any penalty imposed under sub-section (*1*) of section 17 with the previous approval of the [11][Joint Commissioner] as specified in sub-section (3) of that section;]

(*d*) objecting to any penalty imposed by the [13][Joint Director] or the [11][Joint Commissioner] under section 17A; or]

(*e*) objecting to any order made by an [3][Assessing Officer] in the case of such persons or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct,

may appeal to the Commissioner (Appeals) against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner:

1. Subs. by Act 4 of 1988, s. 176, for clause (*d*) (w.e.f. 1-4-1989).
2. The words, figures, letters and bracket "as it stood immediately before the 1st day of April, 1989 or under section 17 as amended by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988)" omitted by Act 3 of 1989, s. 88 (w.e.f. 1-4-1989).
3. Subs. by Act 4 of 1988, s. 161, for "Gift –tax Officer" (w.e.f. 1-4-1988).
4. Subs. by Act 53 of 1962, s. 17, for "sub-section (*1*) of section 46 of the Income-tax Act" (w.e.f. 1-4-1963).
5. Added by s. 17, *ibid.* (w.e.f. 1-4-1963).
6. Ins. by s. 17, *ibid*, (w.e.f. 1-4-1963).
7. Clause (*h*) omitted by Act 4 of 1988, s. 176 (w.e.f. 1-4-1989).
8. Subs. by s. 161, *ibid*., for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).
9. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).
10. Subs. by Act 4 of 1988, s. 176, for clauses (*b*), (*c*) and (*d*) (w.e.f. 1-4-1989).
11. Subs. by Act 21 of 1998, s. 76, for "Deputy Commissioner" (w.e.f. 1-10-1998).
12. Subs. by Act 3 of 1989, s. 88, for clause (*c*) (w.e.f. 1-4-1989).
13. Subs. by Act 21 of 1998, s. 76, for "Deputy Director" (w.e.f. 1-10-1998).

Provided that no appeal shall lie under clause (*b*) of this sub-section against any order referred to in clause (*f*) of sub-section (*1*) unless the tax has been paid before the appeal is filed.]

[1][(*1B*) Notwithstanding anything contained in sub-section (*1*), the Board or the Director General or the Chief Commissioner or the Commissioner, if so authorised by the Board, may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals), if the Board or, as the case may be, the Director General, the Chief Commissioner or the Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature

of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was before it was so transferred :

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be reheard.]]

(*2*) An appeal shall be presented within thirty days of the receipt of the notice of demand relating to the assessment or penalty objected to, or the date on which any order objected to, is communicated to him, but the [2][Deputy Commissioner (Appeals)] [3][or, as the case may be, the Commissioner (Appeals)] may admit an appeal after the expiration of the period aforesaid if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(*3*) The [2][Deputy Commissioner (Appeals)] [3][or, as the case may be, the Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing.

(*4*) The [2][Deputy Commissioner (Appeals)] [3][or, as the case may be, the Commissioner (Appeals)] may,—

(*a*) at the hearing of an appeal allow an appellant to go into any ground of appeal not specified in the grounds of appeal;

(*b*) before disposing of an appeal, make such further inquiry as he thinks fit or cause further enquiry to be made by the [4][Assessing Officer].

(*5*) In disposing of an appeal, the [2][Deputy Commissioner (Appeals)] [3][or, as the case may be, the Commissioner (Appeals)] may pass such order as he thinks fit which may include an order enhancing the amount of gift-tax determined or penalty imposed:

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

[5][(*5A*) In disposing of an appeal, the [2][Deputy Commissioner (Appeals)] [3][or, as the case may be, the Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [2][Deputy Commissioner (Appeals)] [3][or, as the case may be, the Commissioner (Appeals)] by the appellant.

(*5B*) The order of the [2][Deputy Commissioner (Appeals)] [3][or, as the case may be, the Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.]

1. Subs. by Act 4 of 1988, s. 176, for "sub-sections (*1B*) and (*1C*)" (w.e.f. 1-4-1989).

2. Subs. by s. 161, *ibid*., for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).

3. Ins. by Act 29 of 1977, s. 39 and Fifth Schedule (w.e.f. 10-7-1978).

4. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

5. Ins. by Act 53 of 1962, s. 17 (w.e.f. 1-4-1963).

(*6*) A copy of every order passed by the [1][Deputy Commissioner (Appeals)] [2][or, as the case may be, the Commissioner (Appeals)] under this section shall be forwarded to the appellant and the [3][Chief Commissioner or Commissioner.]

22A. [*Application by the assessee in certain cases.*]— *Omitted by the Direct Tax Laws (Amendment) Act,* 1989 (3 *of* 1989), *s.* 95 *(w.e.f.* 1-4-1989). *Which was inserted by the Direct Tax Laws (Amendment) Act,* 1987(4 *of* 1988), *s.* 177 *(w.e.f.* 1-4-1989*).*

23. Appeal to the Appellate Tribunal. —[4][(*1*) An assessee, objecting to an order passed by the [1][Deputy Commissioner (Appeals)] [5][or the Commissioner (Appeals)] [6][under section 17 or section 17A] or section 22 [7]* * *] or sub-section (*2*) of section 36 [8]* * *, may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.]

(*2*) The Commissioner may, if he is not satisfied as to the correctness of any order passed by a [1][Deputy Commissioner (Appeals)] [5][or a Commissioner (Appeals)] under section 22, direct the [9][Assessing Officer] to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days of the date on which the order is communicated to the Commissioner.

[10][(*2A*) The [9][Assessing Officer] or the assessee, as the case may be, on receipt of the notice that an appeal against the order of the [1][Deputy Commissioner (Appeals)] [5][or the Commissioner (Appeals)] has been preferred under sub-section (*1*) or sub-section (*2*) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the [1][Deputy Commissioner (Appeals)] [5][or the Commissioner (Appeals)], and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (*1*) or sub-section (*2*).]

[11][(*3*) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (*1*) or sub-section (*2*) or sub-section (*2A*), if it is satisfied that there was sufficient cause for not presenting it within that period.]

(*4*) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to in sub-section (*2*), be accompanied by a fee of [12][two hundred rupees].

(*5*) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the amount of gift-tax determined or penalty imposed:

1. Subs. by Act 4 of 1988, s. 161, for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).
2. Ins. by 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).
3. Subs. by Act 4 of 1988, s. 161, for "Commissioner" (w.e.f. 1-4-1988).
4. Subs. by Act 53 of 1962, s. 18, for sub-section (*1*) (w.e.f. 1-4-1963).
5. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).
6. Subs. by Act 41 of 1975, s. 116, for "under section 17" (w.e.f. 1-4-1976).
7. The words, figure and letters "or section 22A" omitted by Act 3 of 1989, s. 95 (w.e.f. 1-4-1989). Earlier inserted by Act 4 of 1988, s. 186 (w.e.f. 1-4-1989).
8. The Words "or to an order passed by the Inspecting Assistant Commissioner under section 17A" omitted by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).
9. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).
10. Ins. by Act 53 of 1962, s. 18 (w.e.f. 1-4-1963).
11. Subs. by s. 18, *ibid*., for sub-section (*3*) (w.e.f. 1-4-1963).
12. Subs. by Act 16 of 1981, for "one hundred and twenty-five rupees" (w.e.f. 1-6-1981).

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

[1]* * * * *

[2]* * * * *

[3]* * * * *

(*9*) A copy of every order passed by the Appellate Tribunal under this section shall be forwarded to the assessee and the Commissioner.

(*10*) Save as provided in section 26, any order passed by the Appellate Tribunal on appeal shall be final.

(*11*) The provisions of [4][sub-sections (*1*), (*4*) and (*5*) of section 255] of the Income-tax Act shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Income-tax Act.

24. Powers of Commissioner to revise orders of subordinate authorities. — (*1*) The Commissioner may, either on his own motion or on application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause such inquiry to be made, and subject to the provisions of this Act, pass such order thereon, not being an order prejudicial to the assessee, as the Commissioner thinks fit :

Provided that the Commissioner shall not revise any order under this sub-section in any case—

(*a*) where an appeal against the order lies to the [5][Deputy Commissioner (Appeals)] [6][or to the Commissioner (Appeals)] or to the Appellate Tribunal and the time within which such appeal can be made has not expired or, [7][in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal], the assessee has not waived his right of appeal;

(*b*) where the order is pending in appeal before the [5][Deputy Commissioner (Appeals)] or has been the subject of an appeal [6][to the Commissioner (Appeals) or] to the Appellate Tribunal;

(*c*) where the application is made by the assessee for such revision unless—

(*i*) the application is accompanied by a fee of rupees twenty-five; and

(*ii*) the application is made within one year from the date of the order sought to be revised or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period; and

(*d*) where the order is sought to be revised by the Commissioner of his own motion, if such order is made more than one year previously.

1. Sub-section (6) omitted by Act 45 of 1972, s. 22 (w.e.f. 1-1-1973).

2. Sub-section (*7*) omitted by s. 22, *ibid*, (w.e.f. 1-1-1973).

3. Sub-section (*8*) omitted by s. 22, *ibid*, (w.e.f. 1-1-1973).

4. Subs. by Act 53 of 1962, s. 18, for "sub-sections (*5*), (*7*) and (*8*) of section 5-A" (w.e.f. 1-4-1963).

5. Subs. by Act 4 of 1988, s. 161, for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).

6. Ins. by Act 29 of 1977, s. 39 of the Fifth Schedule (w.e.f. 10-7-1978).

7. Subs. by s. 39 *ibid*., of the Fifth Schedule, "in the case of the Appellate Tribunal" (w.e.f. 10-7-1978).

Explanation.—For the purposes of this sub-section,—

(*a*) the [1][Deputy Commissioner (Appeals)] shall be deemed to be an authority subordinate to the Commissioner; and

(*b*) an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(*2*) Without prejudice to the provisions contained in sub-section (*1*), the Commissioner may call for and examine the record of any proceeding under this Act, and, if he considers that any order passed therein by an [2][Assessing Officer] is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

[3][*Explanation.*—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(*a*) an order passed [4][on or before or after the 1st day of June, 1988] by the Assessing Officer shall include an order passed by the [5][Joint Commissioner] in exercise of the powers or in performance of the functions of an Assessing Officer conferred on or assigned to him under orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf under section 120 of the Income-tax Act read with section 7 of this Act;

(*b*) "record" [6][shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(*c*) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal, [4][filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this sub-section shall extend [4][and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

(*3*) No order shall be made under sub-section (*2*) after the expiry of two years [7][from the end of the financial year in which the order sought to be revised was passed.]

[8][*Explanation.*—In computing the period of limitation for purposes of this sub-section, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 38 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.]

25. Appeal to the Appellate Tribunal from orders of enhancement by [9][Chief Commissioner or Commissioner]. — [10][(*1*) An assessee objecting to an order passed by the [9][Chief Commissioner or Commissioner] [11][under section 17 or section 17A] or to an order of enhancement passed by him under section 24 [1][or an order passed by the Director-General or Director under section 17A] may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.]

1. Subs. by Act 4 of 1988, s. 161, for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).
2. Subs. by s. 161, *ibid*., for "Gift-tax Officer" (w.e.f. 1-4-1988).
3. Subs. by Act 26 of 1988, s. 68, for *Explanation* (w.e.f. 1-6-1988).
4. Ins. by Act 13 of 1989, s. 32 (w.e.f. 1-6-1988).
5. Subs. by Act 21 of 1998, s. 76, for "Deputy Commissioner" (w.e.f. 1-10-1998).
6. Subs. by Act 13 of 1989, s. 32, for "includes" (w.e.f. 1-6-1988).
7. Subs. by Act 67 of 1984, s. 74, for "form the date of the order sought to be revised" (w.e.f. 1-10-1984).
8. *Explanation* added by Act 53 of 1962, s. 19 (w.e.f. 1-4-1963).
9. Subs. by Act 4 of 1988, s. 161, for "Commissioner" (w.e.f. 1-4-1988).
10. Subs. by Act 53 of 1962, s. 20 (w.e.f. 1-4-1963).
11. Subs. by Act 41 of 1975, s. 117, for "under Section 17" (w.e.f. 1-4-1976).

(*2*) An appeal to the Appellate Tribunal under sub-section (*1*) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of [2][two hundred rupees].

(*3*) The provisions of [3][sub-sections (*3*), (*5*), (*9*) and (*10*)] of section 23 shall apply in relation to any appeal under this section as they apply in relation to any appeal under that section.

26. Reference to High Court. — [4][(*1*) The assessee or the [5][Chief Commissioner or Commissioner] may, within sixty days of the date upon which he is served with notice of an order under section 23 or section [6][or clause (*e*) of sub-section (*1*) of section 34] by application in the prescribed form accompanied, where the application is made by the assessee, by a fee of [7][two hundred rupees], require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

(*2*) The Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period specified in sub-section (*1*), allow it to be presented within a further period not exceeding thirty days.]

(*3*) If, on an application made under sub-section (*1*), the Appellate Tribunal,—

(*a*) refuses to state a case on the ground that no question of law arises, or

(*b*) rejects it on the ground that it is time barred,

the applicant may, within ninety days from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that, if in any case where the Appellate Tribunal has been required by an assessee to state a case, the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives notice of refusal to state the case, withdraw his application, and if he does so, the fee paid by him under sub-section (*1*) shall be refunded to him.

[8][(*3A*) If, on an application made under this section, the Appellate Tribunal is of the opinion that on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.]

(*4*) The statement to the High Court [8][or the Supreme Court] shall set forth the facts, the determination of the Appellate Tribunal, and the question of law which arises out of the case.

1. Ins. by Act 3 of 1989, s. 89 (w.e.f. 1-4-1989).
2. Subs. by Act 16 of 1981, s. 33, for "one hundred and twenty-five rupees" (w.e.f. 1-6-1981).
3. Subs. by Act 45 of 1972, s. 23 for "sub-sections (*3*) and (*5*) to (*10*) inclusive" (w.e.f. 1-1-1973).
4. Subs. by Act 53 of 1962, s. 21, for "sub-section (*1*) and (*2*) (w.e.f. 1-4-1963).

5. Subs. by Act 4 of 1988, s. 161, for "Commissioner" (w.e.f. 1-4-1988).

6. Ins. by Act 49 of 1991, s. 88 (w.e.f. 27-9-1991).

7. Subs. by Act 16 of 1981, s. 34, for "one hundred and twenty-five rupees" (w.e.f. 1-6-1981).

8. Ins. by Act 53 of 1962, s. 21, (w.e.f. 1-4-1963).

(*5*) If the High Court [1][or the Supreme Court] is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modification therein as it may direct.

(6) The High Court [1][or the Supreme Court], upon hearing any such case, shall decide the question of law raised therein, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the grounds on which such decision is founded and shall send a copy of the judgment under the seal of the court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

[2][(*7*) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the court.]

27. Hearing by High Court. — When a case has been stated to the High Court under section 26, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority of such Judges, if any:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

28. Appeal to Supreme Court. — (*1*) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 26 in any case which the High Court certifies as a fit case for appeal to the Supreme Court.

(*2*) Where the judgment of the High Court is varied or reversed on appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (*6*) of section 26.

(*3*) The High Court may, on application made to it for the execution of any order of the Supreme Court in respect of any costs awarded by it, transmit the order for execution to any court subordinate to the High Court.

[3]**[28A. Tax to be paid notwithstanding reference, etc.** — Notwithstanding that a reference has been made to the High Court or the Supreme Court, or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

28B. Definition of High Court. — In this Chapter, "High Court" means —

(*i*) in relation to any State, the High Court of that State;

[4][(*ii*) in relation to the Union territory of Delhi, the High Court of Delhi;

[5]* * * * *]

[6][(*iii*) in relation to the Union territories of Arunachal Pradesh and Mizoram, the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);]

1. Ins. by Act 53 of 1962, s. 21 (w.e.f. 1-4-1963).

2. Subs. by s. 21, *ibid*., for sub-section (*7*), (*8*) and (*9*) (w.e.f. 1-4-1963).

3. Ins. by s. 22, *ibid*, (w.e.f. 1-4-1963).

4. Subs. by the Punjab Reorganisation and Delhi High Court (Adaptation of Laws on Union Subjects) Order, 1968, for clause (*ii*) (w.r.e.f. 1-11-1966).

5. Clause (*iia*) omitted by State of Himachal Pradesh (Adaptation of Laws on Union Subjects) Order, 1973 (w.r.e.f. 25-1-1971).

6. Subs. by the North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974, for clause (*iii*) (w.r.e.f. 21-1-1972.)

(*iv*) in relation to the Union territory of Andaman and Nicobar Islands, the High Court of Calcutta;

(*v*) in relation to the Union territory of [1][Lakshadweep], the High Court of Kerala;]

[2][(*va*) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana;]

[3][(*vi*) in relation to the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay;

(*vii*) in relation to the Union territory of Pondicherry, the High Court at Madras.]

CHAPTER VII

PAYMENT AND RECOVERY OF GIFT-TAX

[4][**29. Gift-tax by whom payable.** — Subject to the provisions of this Act, gift-tax shall be payable by the donor but when in the opinion of the [5][Assessing Officer] the tax cannot be recovered from the donor, it may be recovered from the donee:

Provided that where the donees are more than one, they shall be jointly and severally liable for the amount of tax determined to be payable by the donor:

Provided further that the amount of tax which may be recovered from each donee shall not exceed the value of the gift made to him as on the date of the gift.]

30. Gift-tax to be charged on property gifted. — Gift-tax payable in respect of any gift comprising immovable property shall be a first charge on that property but any such charge shall not affect the title of a *bona fide* purchaser for valuable consideration without notice of the charge.

[6][**31 Notice of demand.** — When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the [5][Assessing Officer] shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.]

32.Recovery of tax and penalties. — (*1*) Any amount specified as payable in a notice of demand under section 31 shall be paid within [7][thirty days] of the service of the notice at the place and to the person mentioned in the notice:

Provided that, where the [2][Assessing Officer] has any reason to believe that it will be detrimental to revenue if the full period of [7][thirty days] aforesaid is allowed, he may, with the previous approval of the [8][[9][Joint] Commissioner], direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of [7][thirty days] aforesaid, as may be specified by him in the notice of demand.

1. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for "the Laccadive, Minicoy and Amindivi Islands" (w.r.e.f. 1-11-1973).
2. Ins. by the Punjab Reorganisation and Delhi High Court (Adaptation of Laws on Union Subjects) Order, 1968 (w.r.e.f. 1-11-1966).
3. Ins. by the Taxation Laws (Extension to Union Territories) Regulation, 1963 (3 of 1963), s. 3 and the Schedule (w.e.f. 1-4-1963).
4. Ins. by Act 53 of 1962, s. 23 (w.e.f. 1-4-1963).
5. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).
6. Subs. by Act 53 of 1962, s. 24, for Section 31, 32 and 33 (w.e.f. 1-4-1963).
7. Subs. by Act 4 of 1988, s. 178, for "thirty-five days" (w.e.f. 1-4-1989).
8. Subs. by s. 161, *ibid,* for"Inspecting Assistant Commissioner" (w.e.f. 1-4-1988).
9. Subs. by Act 21 of 1998, s. 76, for "Deputy Commissioner" (w.e.f. 1-10-1998).

(*2*) If the amount specified in any notice of demand under section 31 is not paid within the period limited under sub-section (*1*), the assessee shall be liable to pay simple interest at [1][one and one-half per cent. for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (*1*) and ending with the day on which the amount is paid]:

[2][Provided that where as a result of an order under section 22, or section 23, or section 24, or section 25, or section 26, or section 28, or section 34, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded:]

[3][Provided further that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one- h or part of a month.]

(*3*) Without prejudice to the provisions contained in sub-section (*2*), on an application made by the assessee before the expiry of the due date under sub-section (*1*), the [4][Assessing Officer] may extend the time for payment or allow payment by instalments subject to such conditions as he may think fit to impose in the circumstances of the case.

(*4*) If the amount is not paid within the time limited under sub-section (*1*) or extended under sub-section (*3*), as the case may be, at the place and to the person mentioned in the said notice, the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (*3*), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(*6*) Where the assessee has presented an appeal under section 22, the [4][Assessing Officer] may in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired as long as such appeal remains undisposed of.]

33.Mode of recovery. —The provisions contained in [5][sections 221 to 227, 228A,] 229, 231 and 232 of the Income-tax Act and the Second and Third Schedules to that Act and any rules made thereunder shall, so far as may be, apply as if the said provisions were provisions of this Act and referred to gift-tax and sums imposed by way of penalty, fine and interest under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under that Act [6][and to the corresponding gift-tax authorities instead of to the income-tax authorities specified therein].

1. Subs. by Act 4 of 1988, s. 178, for "fifteen per cent. annum from the day commencing after the end of the period mentioned in sub-section (*1*)" (w.e.f. 1-4-1989).
2. The proviso added by Act 5 of 1964, s. 52 (1-4-1963).
3. The proviso ins. by Act 4 of 1988, s. 178 (w.e.f. 1-4-1989).
4. Subs. by s. 161, *ibid*., for "Gift-tax Officer" (w.e.f. 1-4-1988).
5. Subs. by Act 16 of 1972, s. 53, for "sections 221 to 227" (w.e.f. 1-4-1972).
6. Subs. by Act 4 of 1988, s. 179, for "Gift-tax Officer and Commissioner of Gift-tax instead of to Income tax Officer and Commissioner of Income-tax" (w.e.f. 1-4-1988).

Explanation I.— Any reference to sub-section (*2*) or sub-section (*6*) of section 220 of the Income-tax Act in the said provisions of that Act or the rules made thereunder shall be construed as references to sub-sections (*2*) and (*6*) respectively of section 32 of this Act.

[1][*Explanation II.*—The Chief Commissioner or Commissioner and the Tax Recovery Officer referred to in the Income-tax Act shall be deemed to be the corresponding gift-tax authorities for the purpose of recovery of gift-tax and sums imposed by way of penalty, fine and interest under this Act].]

[2][CHAPTER VIIA

REFUNDS

33A.Refunds. — (*1*) Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the [3][Assessing Officer] shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

[4][Provided that where, by the order aforesaid,—

(*a*) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(*b*) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the [5][taxable gifts] returned by the assessee.]

[6][(*2*) Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-sect a return has been made under section

13 or section 14 or in response to a notice under clause (*i*) of sub-section (*4*) of section 15 and the Assessing Officer is of the opinion, having regard to the fact that,—

(*i*) a notice has been issued, or is likely to be issued, under sub-section (*2*) of section 15 in respect of the said return; or

(*ii*) the order is the subject-matter of an appeal or further proceeding; or

(*iii*) any other proceeding under this Act is pending,

that the grant of the refund is likely to adversely affect the revenue, the [3][Assessing Officer] may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.]

1. Subs. by Act 4 of 1988 s. 179, for "*Explanation II*" (w.e.f. 1-4-1989).

2. Ins. by Act 53 of 1962, s. 25 (w.e.f. 1-4-1963).

3. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

4. The proviso added by Act 4 of 1988, s. 180 (w.e.f. 1-4-1989).

5. Subs. by Act 3 of 1989, s. 90, for "total income" (w.e.f. 1-4-1989).

6. Subs. by Act 36 of 1989, s. 33, for sub-section (*2*) (w.e.f. 1-4-1989).

(*3*) Where a refund is due to the assessee in pursuance of an order referred to in sub-section (*1*) and the [1][Assessing Officer] does not grant the refund within a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at [2][fifteen per cent.] per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

[3][(*3A*) Where the whole or any part of the refund referred it in sub-section (*3*) is due to an assessee as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (*3*) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted :

Provided that, where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalments or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted :

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding :

Provided also that, where any interest is payable to an assessee under this sub-section, no interest under sub-section (*3*) shall be payable to him in respect of the amount so found to be in excess.]

(*4*) Where a refund is withheld under the provisions of sub-section (*2*), the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceedings for a period commencing after the expiry of six months from the date of the order referred to in that sub-section to the date the refund is granted.

[4][(*4A*) The provisions of sub-sections (*3*), (*3A*) and (*4*) shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment year.

(*4B*) (*a*) [5][Where refund of any amount becomes due to the assessee under this Act,] he shall, subject to the provisions of this sub-section, be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one [6]* * * per cent. for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, "date of payment of the tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 31 is paid in excess of such demand.

1. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

2. Subs. by Act 67 of 1984, s. 75, for "twelve per cent." (w.e.f. 1-10-1984).

3. Ins. by Act 41 of 1975, s. 118 (w.e.f. 1-10-1975).

4. Ins. by Act 4 of 1988, s. 180 (w.e.f. 1-4-1989).

5. Subs. by Act 3 of 1989, s. 90, for "Where, in pursuance of any order passed under this Act, the refund of any amount becomes due to the assess" (w.e.f. 1-4-1989).

6. The words "and a half" omitted by Act 49 of 1991, s. 89 (w.e.f. 1-10-1991).

(*b*) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(*c*) Where, as a result of an order under [1][sub-section (*3*) or sub-section (*5*) of section 15 or] section 16 or section 22 or section 23 or section 24 or section 26 or section 28 or section 34, the amount on which the interest was payable under clause (*a*) has been increased or reduced, as the case may be, interest shall be increased or reduced accordingly, and, in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 31 and the provisions of this Act shall apply accordingly.

(*d*) The provisions of this sub-section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.]

(*5*) Where under any of the provisions of this Act, a refund is found to be due to any person, the [2][Assessing Officer], [3][Deputy Commissioner (Appeals)] [4][Commissioner (Appeals)] or [5][Chief Commissioner or Commissioner], as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.]

CHAPTER VIII

MISCELLANEOUS

[6][**34.Rectification of mistakes.** — (*1*) With a view to rectifying any mistake apparent from the record—

(*a*) the [2][Assessing Officer] may amend any order of assessment or of refund or any other order passed by him;

[7][(*aa*) a gift-tax authority may amend any intimation sent by it under sub-section (*1*) of section 15 or enhance or reduce the amount of refund granted by it under that sub-section;]

[8][(*b*) the [9][Joint Director] or [10][Joint Commissioner] or Director or Commissioner or Deputy Commissioner (Appeals) or Commissioner (Appeals) may amend any order passed by him under section 17A;

(*c*) the Deputy Commissioner (Appeals) or Commissioner (Appeals) may amend any order passed by him under section 22 [11]* * *;

(*d*) the Commissioner may amend any order passed by him under section 24;

1. Ins. by Act 3 of 1989, s. 90 (w.e.f. 1-4-1989).

2. Subs. by Act 4 of 1988, s. 161 for "Gift-tax Officer" (w.e.f. 1-4-1988).

3. Subs. by s. 161, *ibid*., for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).

4. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).

5. Subs. by Act 4 of 1988, s. 161, for "Commissi

6. Subs. by Act 53 of 1962, s. 26, for section 34 (w.e.f. 1-4-1963).

7. Ins. by Act 4 of 1988, s. 181 (w.e.f. 1-4-1989).

8. Subs. by s. 186, *ibid*., for "clauses (*b*), (*c*), (*d*) and (*e*)" (w.e.f. 1-4-1989).

9. Subs. by Act 21 of 1998, s. 76, for "Deputy Director" (w.e.f. 1-10-1998).

10. Subs. by s. 76, *ibid*., for "Deputy Commissioner" (w.e.f. 1-10-1998).

11. The words, figures and letter "or section 22A" omitted by Act 3 of 1989, s. 91 (w.e.f. 1-4-1989).

(*e*) the Appellate Tribunal may amend any order passed by it under section 23 or section 25.]

(*2*) Subject to the other provisions of this section, the authority concerned—

(*a*) may make an amendment under sub-section (*1*) of its own motion; and

(*b*) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the [1][Deputy Commissioner (Appeals)] [2][or the Commissioner (Appeals)] or the Appellate Tribunal, by the [3][Assessing Officer] also.

(*3*) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(*4*) Where an amendment is made under this section, an order shall be passed in writing by the gift-tax authority concerned.

(*5*) Subject to the provisions of sub-section (*2*) of [4][section 33A], where any such amendment has the effect of reducing the assessment, the [3][Assessing Officer] shall make any refund which may be due to such assessee.

(*6*) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the [3][Assessing Officer] shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 31 and the provisions of this Act shall apply accordingly.

(*7*) No amendment under this section shall be made after the expiry of four years [5][from the end of the financial year in which the order sought to be amended was passed].]

35.Prosecution. — (*1*) If any person fails without reasonable cause,—

(*a*) to furnish in due time any return of gifts under this Act;

(*b*) to produce, or cause to be produced, on or before the date mentioned in any notice under [6]* * * sub-section (*4*) of section 15, such accounts, records and documents as are referred to in the notice;

[7]* * * * *

he shall, on conviction before a magistrate, be punishable with fine which may extend to rupees ten for every day during which the default continues.

(*2*) If a person makes a statement in a verification in any return of gift furnished under this Act or in a verification mentioned in section 22, 23 or 25 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall, on conviction before a magistrate, be punishable with simple imprisonment which may extend to one year, or with fine which may extend to rupees one thousand, or with both.

1. Subs. by Act 4 of 1988, s. 161, for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).

2. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).

3. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

4. Subs. by Act 5 of 1964, s. 52, for "section 33" (w.e.f. 1-4-1963).

5. Subs. by Act 67 of 1984, s. 76, for "from the date of the order sought to be amended" (w.e.f. 1-10-1984).

6. The words, brackets and figure "sub-section (*2*)" omitted by Act 41 of 1975, s. 119 (w.e.f. 1-4-1976).

7. Clause (*c*) omitted by s. 119. *ibid*, (w.e.f. 1-4-1976).

[1][(*2A*) If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any gifts chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall, on conviction before a magistrate, be punishable with

simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.]

2[(*3*) A person shall not be proceeded against for an offence under this Act except with the previous sanction of the Commissioner or Commissioner (Appeals):

Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions or directions to the aforesaid gift-tax authorities as he may deem fit for institution of proceedings under this sub-section.

(*4*) Any such offence may, either before or after the institution or proceedings, be compounded by the Chief Commissioner or Director General.]

3[4[*Explanation 1*].—For the purposes of this section, "magistrate" means a presidency magistrate or a magistrate of the first class.]

5[*Explanation 2*.— For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other gift-tax authorities for the proper composition of offences under this section.]

6**[35A.Offences by companies.** —(*1*) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means a body corporate, and includes—

(*i*) a firm, and

(*ii*) an association of persons or a body of individuals, whether incorporated or not; and

(*b*) "director", in relation to—

(*i*) a firm, means a partner in the firm,

1. Ins. by Act 53 of 1962, s. 27 (w.e.f. 1-4-1963).

2. Subs. by Act 49 of 1991, s. 90, for sub-sections (*3*) and (*4*) (w.e.f. 1-10-1991).

3. Subs. by Act 53 of 1962, s. 27, for *Explanation* (w.e.f. 1-4-1963).

4. The *Explanation* renumbered as *Explanation* 1 thereof by Act 49 of 1991, s. 90 (w.e.f. 1-4-1963).

5. Ins. by s. 90, *ibid*, (w.r.e.f. 1-4-1958.)

6. Ins. by Act 41 of 1975, s. 120 (w.e.f. 1-10-1975).

(*ii*) an association of persons or a body of individuals means any member controlling the affairs thereof.

35B.Offences by Hindu undivided families. — (*1*) Where an offence under this Act has been committed by a Hindu undivided family, the *karta* thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the *karta* liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a Hindu undivided famil offence has been committed with the

consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

35C. Section 360 of the Code of Criminal Procedure, 1973 and the Probation of Offenders Act, 1958, not to apply. — Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.]

[1][**35D.Presumption as to culpable mental state.** —(*1*) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact, or belief in or reason to believe, a fact.

(*2*) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]

[2]**[35E. Proof of entries in records or documents.** —Entries in the records or other documents in the custody of a gift-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Act, and all such entries may be proved either by the production of the records or other documents in the custody of the gift-tax authority containing such entries, or by the production of a copy of the entries certified by the gift-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.]

[3][**36.Power regarding discovery, production of evidence, etc.** — (*1*) The [4][Assessing Officer], the [5][Deputy Commissioner (Appeals)] [6][the Commissioner (Appeals)], the [7][Chief Commissioner or Commissioner] and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of

1. Ins. by Act 46 of 1986, s. 41 (w.e.f. 10-9-1986).
2. Ins. by Act 3 of 1989, s. 92 (w.e.f. 1-4-1989).
3. Subs. by Act 53 of 1962, s. 28, for section 36 (w.e.f. 1-4-1963).
4. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).
5. Subs. by s. 161, *ibid*., for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).
6. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).
7. Subs. by Act 4 of 1988, s. 161, for "Commissioner" (w.e.f. 1-4-1988).

the following matters, namely :—

(*a*) discovery and inspection;

(*b*) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(*c*) compelling the production of books of account and other documents; and

(*d*) issuing commissions.

[1][(*1A*) If the Director General or Director or [2][Joint Director] or [3][Assistant Director or Deputy Director] has reason to suspect that any gifts chargeable to tax under this Act have been concealed, or are likely to be concealed, by any person or class of persons within his jurisdiction, then, for the purposes of making any inquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (*1*) on the gift-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other gift-tax authority.]

[4]* * * * *]

37. Power to call for information. — [5][Where, for the purposes of this Act, it appears necessary for any gift-tax authority to obtain any state y person or banking company,] [6][such

gift-tax authority] may serve a notice requiring such person, on or before a date to be therein specified, to furnish such statement or information on the points specified in the notice, and that person shall, notwithstanding anything in any law to the contrary, be bound to furnish such statement or information to [6][such gift-tax authority]:

Provided that no legal practitioner shall be bound to furnish any statement or information under this section based on any professional communications made to him otherwise than as permitted by section 126 of the Indian Evidence Act, 1872 (1 of 1872).

38. Effect of transfer of authorities on pending proceedings. — Whenever in respect of any proceeding under this Act any gift-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises such jurisdiction, the authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

[7][Providedthat the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.]

[8][**39. Computation of period of limitation.** — In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.]

1. Ins. by Act 26 of 1988, s. 70 (w.e.f. 1-6-1988).
2. Subs. by Act 21 of 1998, s. 76, for "Deputy Director" (w.e.f. 1-10-1998).
3. Subs. by s. 76, *ibid*., for "Assistant Director" (w.e.f. 1-10-1998).
4. Sub-section (*2*) omitted by Act 4 of 1988, s. 182 (w.e.f. 1-4-1989).
5. Subs. by s. 183, *ibid*., for "Where, for the purposes of determining the gift-tax payable by any person, it appears necessary for the Gift-tax Officer to obtain any statement or information from any person" (w.e.f. 1-4-1989).
6. Subs. by s. 183, *ibid*., for "the Gift-tax Officer" (w.e.f. 1-4-1989).
7. The Proviso added by Act 53 of 1962, s. 29 (w.e.f. 1-4-1963).
8. Subs. by s. 30, *ibid*., for section 39 (w.e.f. 1-4-1963).

40.Service of notice. — (*1*) A notice or a requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

(*2*) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager or any adult male member of the family, and in the case of a company or association of persons be addressed to the principal officer thereof.

[1][(*3*) After a finding of total partition has been recorded by the [2][Assessing Officer] under section 20 in respect of any Hindu family, notices under this Act in respect of the gifts made by the family, shall be served on the person who was the last manager of the Hindu family, or if such person is dead, then on all surviving adults who were members of the Hindu family immediately before the partition.

(*4*) Where a firm or other association of persons is dissolved, notices under this Act in respect of the gifts made by the firm or association 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.]

[*41. Prohibition of disclosure of information.*] —*Omitted by the Finance Act,* 1964(5 *of* 1964)*, s.* 52(*w.e.f.* 1-4-1964)*. Earlier, this section was substituted by the Gift-tax (Amendment) Act,* 1962(53 *of* 1962)*, s.* 32(*w.e.f.* 1-4-1963)*.*

[3][**41A.Publication of information respecting assessees.** —(*1*) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any assessees and any other particulars relating to any proceedings [4][or prosecutions] under this Act in respect of such assessees, it may cause to be published such names and particulars in such manner as it thinks fit.

[5][(*2*) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the [6][Deputy Commissioner (Appeals)] [7][or, as the case may be, the Commissioner (Appeals)] has expired without an appeal having been presented or the appeal, if presented, has been disposed of.]

Explanation.—In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

41B. Disclosure of information respecting assessees. — Where a person makes an application to the [8][Chief Commissioner or Commissioner] in the prescribed form for any information relating to any assessee in respect of any assessment made under this Act, the [8][Chief Commissioner or Commissioner] may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment only and his decision in this behalf shall be final and shall not be called in question in any court of law.]

[9][**41C. Return of gifts, etc., not to be invalid on certain grounds.** — No return of gifts, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of gifts, assessment, notice summons or other proceeding, if such return of gifts, assessment, notice summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.]

1. Ins. by Act 53 of 1962, s. 31 (w.e.f. 1-4-1963).
2. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).
3. Subs. by Act 5 of 1964, s. 52, for sections 41A and 41B (w.e.f. 1-4-1964).
4. Ins. by Act 41 of 1975, s. 121 (w.e.f. 1-10-1975).
5. Subs. by s. 121, *ibid*., for sub-section (*2*) (w.e.f. 1-10-1975).
6. Subs. by Act 4 of 1988, s. 161, for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).
7. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).
8. Subs. by Act 4 of 1988, s. 161, for "Commissioner" (w.e.f. 1-4-1988).
9. Ins. by Act 41 of 1975, s. 122 (w.e.f. 1-10-1975).

42.Bar of suits in civil court. — No suit shall lie in any civil court to set aside or modify [1][any proceeding taken or order made] under this Act, and no prosecution, suit or other legal proceedings shall lie against [2][the Government or] any officer of the Government for anything in good faith done or intended to be done under this Act.

[3][**43. Appearance before gift-tax authorities by authorised representatives.** —An assessee who is entitled to or required to attend before any gift-tax authority or the Appellate Tribunal in connection with any proceeding under this Act, except where he is required under this Act to attend in person, may attend by a person who would be entitled to represent him before any income-tax authority or the Appellate Tribunal under section 288 of the Income-tax Act.]

[4][**43A.Appearance by registered valuer in certain matters.** — Any assessee who is entitled or required to attend before any gift-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, except where he is required under this Act to attend in person, may attend by a registered valuer.

Explanation.—In this section, "registered valuer" has the same meaning as in clause (*oaa*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

44.Agreement for avoidance or relief of double taxation with respect to gift-tax. — [5][The Central Government may enter into an agreement with the Government of any reciprocating country—

(*a*) for the avoidance or relief of double taxation with respect to gift-tax payable under this Act and under the corresponding law in force in the reciprocating country, or

(*b*) for exchange of information for the prevention of evasion or avoidance of gift-tax chargeable under this Act or under the corresponding law in force in that country or investigation of cases of such evasion or avoidance, or

(*c*) for recovery of tax under this Act and under the corresponding law in force in that country,

and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.]

Explanation.—The expression "reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

6[**44A. Rounding off of taxable gifts.** — The amount assessed in accordance with the foregoing provisions of this Act as being the value of all taxable gifts shall be rounded off to the nearest multiple of ten rupees and, for this purpose, any part of a rupee consisting of paise shall be ignored and thereafter, if such amount is not a multiple of ten rupees, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and, if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten ; and the

1. Subs. by Act 26 of 1988, s. 71, for "any order made" (w.e.f. 1-3-1988).

2. Ins. by Act 5 of 1964, s. 52 (w.e.f. 1-4-1964).

3. Subs. by Act 53 of 1962, s. 34, for section 43 (w.e.f. 1-4-1963).

4. Ins. by Act 45 of 1972, s. 24 (w.e.f. 1-1-1973).

5. Subs. by Act 16 of 1972, s. 54, for the portion beginning with words "The Central Government may" and ending with the words "for implementing the agreement." (w.e.f. 1-4-1972).

6. Ins. by Act 42 of 1970, s. 70 (w.e.f. 1-4-1971).

amount so rounded off shall be deemed to be the value of all taxable gifts of the assessee for the purposes of this Act.

44B.Rounding off of tax, etc. — The amount of gift-tax, interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act, shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored.]

45. Act not to apply in certain cases. — 1[No tax shall be levied under this Act in respect of gifts made by]—

2[(*a*) a company in which the public are substantially interested;

(*b*) any company to an Indian company in a scheme of amalgamation;]

3[(*e*) any institution or fund the income whereof is exempt from income-tax under 4[section 11 or section 12] of the Income-tax Act.]

5[*Explanation 1.*—For the purposes of clause (*b*), the term "amalgamation" shall have the meaning assigned to it in clause (*1B*) of section 2 of the Income-tax Act.]

6[*Explanation 3.*—For the removal of doubts, it is hereby declared that the exemption admissible under clause (*e*) in relation to gifts made by an institution or fund referred to in that clause shall not be denied merely on either or both of the following grounds, namely :—

(*i*) that, subsequent to the gift, any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of 7[section 11 or section 12 or section 12A] of the Income-tax Act ;

(*ii*) that, under clause (*c*) of sub-section (*1*) of section 13 of the Income-tax Act, the exemption under 8[section 11 or section 12] of that Act is denied to the institution or fund in relation to any income arising to it from any investment referred to in clause (*h*) of sub-section (*2*) of section 13 of the said Act where the aggregate of the funds invested by it in a concern referred to in the said clause (*h*) does not exceed five per cent. of the capital of that concern.]

46.Power to make rules. — (*1*) The Board may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(*a*) the manner in which the value of any property may be determined;

(*b*) the form in which returns under this Act shall be made and the manner in which they shall be verified;

(*c*) the form in which appeals and applications under this Act may be made, and the manner in which they shall be verified;

1. Subs. by Act 4 of 1988, s. 184, for "The provisions of this Act shall not apply to gifts made by" (w.e.f. 1-4-1989).

2. Subs. by s. 184, *ibid*., for clause (*a*), (*b*), (*c*), (*d*) and (*da*) (w.e.f. 1-4-1989).

3. Subs. by s. 184, *ibid*., for clause (*e*) (w.e.f. 1-4-1989).

4. Subs. by Act 16 of 1972, s. 55, for "section 11" (w.e.f. 1-4-1973).

5. Subs. by Act 3 of 1989, s. 93, for *Explanations* 1 and 2 (w.e.f. 1-4-1989).

6. Ins. by Act 32 of 1971, s. 37 (w.e.f. 1-4-1972).

7. Subs. by Act 16 of 1972, s. 55, for "section 11" (w.e.f. 1-4-1973).

8. Subs. by s. 55, for "section 11" (w.e.f. 1-4-1973).

[1][(*cc*) the circumstances in which, the conditions subject to which and the manner in which, the [2][Deputy Commissioner (Appeals)] [3][or the Commissioner (Appeals)] may permit an appellant to produce evidence which he did not produce or which he was not allowed to produce before the [4][Assessing Officer];

(*d*) the form of any notice of demand under this Act;

(*e*) the refunds of gift-tax paid in respect of gifts which are revoked on the happening of any specified event which does not depend on the will of the donor or of any amount paid under section 18;

[5][(*ee*) the procedure to be followed in calculating interest payable by assessees or interest payable by the Government to assessees under any provisions of this Act, including the rounding off of the period for which such interest is to be calculated in cases where such period includes a fraction of a month, and specifying the circumstances in which and the extent to which petty amounts of interest payable by assessees may be ignored;]

(*f*) the areas for which lists of valuers may be drawn up;

(*g*) any other matter which has to be, or may be, prescribed for the purposes of this Act.

[6][(*3*) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assessees.]

[7][(*4*) The Central Government shall cause every rule made under this Act to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session [8][or in two or more successive sessions], and if, before the expiry of the session [9][immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[10][**46A. Power to make exemption, etc., in relation to certain Union territories.** — (*1*) If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly or removing any difficulty that may arise as a result of the application of this Act to the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, or in the case of the Union territory of Pondicherry, for implementing any provision of the Treaty of Cession concluded between France and India on the 28th day of May, 1956, the Central Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of gift-tax in favour of any class of gifts or in regard to the whole or any part of the gifts made by any assessee or class of assessees :

1. Ins. by Act 16 of 1972, s. 56, (w.e.f. 1-4-1972).

2. Subs. by Act 4 of 1988, s. 161, for "Appellate Assistant Commissioner" (w.e.f. 1-4-1988).

3. Ins. by Act 29 of 1977, s. 39 and the Fifth Schedule (w.e.f. 10-7-1978).

4. Subs. by Act 4 of 1988, s. 161, for "Gift-tax Officer" (w.e.f. 1-4-1988).

5. Ins. by Act 42 of 1970, s. 71 (w.e.f. 1-4-1971).

6. Subs. by Act 26 of 1974, s. 19, for sub-section (*3*) (w.e.f. 18-8-1974).

7. Subs. by Act 53 of 1962, s. 36, for "sub-sectio

8. Subs. by Act 41 of 1975, s. 123, for "or in two successive sessions" (w.e.f. 1-4-1976).

9. Subs. by s. 123, *ibid*., for "in which it is so laid or the session immediately following" (w.e.f. 1-4-1976).

10. Ins. by The Taxation Laws (Extension to Union Territories) Regulation, 1963 (3 of 1963), by s. 3 and the Schedule (w.e.f. 1-4-1963).

Provided that the power conferred by this section shall not be exercisable after the 31st day of March, 1967, except for the purpose of rescinding an exemption, reduction or modification already made.]

[1][**47.Power to remove difficulties.** — (*1*) If any difficulty arises in giving effect to the provisions of this Act as amended by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiration of three years from the 1st day of April, 1988.

(*2*) Every order made under sub-section (*1*) shall be laid before each House of Parliament.]

1. Ins. by Act 4 of 1988, s. 185 (w.e.f. 1-4-1988).

[1][SCHEDULE [2][I]

[3][[*See* section 3(*1*)]]

RATES OF GIFT-TAX

(*1*) where the value of all taxable gifts does not exceed Rs. 20,000 — 5 per cent. of the value of such gifts;

(*2*) where the value of all taxable gifts exceeds Rs. 20,000 but does not exceed Rs. 50,000 — Rs. 1,000 *plus* 10 per cent. of the amount by which the value of such gifts exceeds Rs. 20,000;

(*3*) where the value of all taxable gifts exceeds Rs. 50,000 but does not exceed Rs. 1,00,000 — Rs. 4,000 *plus* 15 per cent. of the amount by which the value of such gifts exceeds Rs. 50,000;

(*4*) where the value of all taxable gifts exceeds Rs. 1,00,000 but does not exceed Rs. 2,00,000 — Rs. 11,500 *plus* 20 per cent. of the amount by which the value of such gifts exceeds Rs. 1,00,000;

(*5*) where the value of all taxable gifts exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000 — Rs. 31,500 *plus* 25 per cent. of the amount by which the value of such gifts exceeds Rs. 2,00,000;

(*6*) where the value of all taxable gifts exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 — Rs. 1,06,500 *plus* 30 per cent. of the amount by which the value of such gifts exceeds Rs. 5,00,000;

(*7*) where the value of all taxable gifts exceeds Rs. 10,00,000 but does not exceed Rs. 15,00,000 — Rs. 2,56,500 *plus* 40 per cent. of the amount by which the value of such gifts exceeds Rs. 10,00,000;

(*8*) where the value of all taxable gifts exceeds Rs. 15,00,000 but does not exceed Rs. 20,00,000 — Rs. 4,56,500 *plus* 50 per cent. of the amount by which the value of such gifts exceeds Rs. 15,00,000;

(*9*) where the value of all taxable gifts exceeds Rs. 20,00,000 — Rs. 7,06,500 *plus* 75 per cent. of the amount by which the value of such gifts exceeds Rs. 20,00,000.]

1. Subs. by Act 19 of 1970, s. 27, for the Schedule (w.e.f. 1-4-1971).

2. The Schedule renumbered as the Schedule (*1*) thereof by Act 3 of 1989, s. 94 (w.e.f. 1-4-1989).

3. Subs. by Act 23 of 1986, s. 46, for "(*See* section 3)" (w.e.f. 1-4-1987).

[1][SCHEDULE II

[*See* section 6(*1*)]

RULES FOR DETERMINING THE VALUE OF PROPERTY GIFTED

1. Value of gifted property, how to be determined. — [2][Subject to the provisions of rules 2 to 7, the value of any property], other than cash, transferred by way of gift shall, for the purposes of this Act, be determined in accordance with the provisions of Schedule III to [3][the Wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as the Wealth-tax Act)], which shall apply subject to the following modifications, namely :—

In the said Schedule,—

(*a*) references by whatever form of words to the Wealth-tax Act shall be construed as references to this Act ;

(*b*) in rule 5, the reference to the year ending on the valuation date shall be construed as a reference to the previous year as defined in this Act;

(*c*) save as provided in clause (*b*), references to the valuation date shall be construed as references to the date on which the gift was made ;

(*d*) reference to section 7 of the Wealth-tax Act shall be construed as references to section 6 of this Act ;

(*e*) references to section 16A of the Wealth-tax Act shall be construed as references to sub-section (6) of section 15 of this Act.]

[4][**2.Quoted shares and debentures of companies.** — The value of an equity share or a preference share in any company or a debenture of any company which is a quoted share or a quoted debenture shall be taken as the value quoted in respect of such share or debenture on the date on which the gift was made or where there is no such quotation on such date, the quotation on the date closest to such date and immediately preceding such date.

Explanation.—The words and expressions used in this rule and rules 3 to 7 but not defined and defined in rule 2 of Schedule III to the Wealth-tax Act shall have the meanings respectively assigned to them in rule 2 of that Schedule.

3.Special provision for quoted shares of companies. — Notwithstanding anything in rule 2, the value of an equity share in any company which is a quoted share may, at the option of the assessee or a company, be taken on the basis of the average of the value quoted on the 31st day of March immediately preceding the assessment year and the values quoted in respect of such share on the said dates in relation to each of the immediately preceding nine assessment years, or where there is no such quotation on any of the aforesaid dates, the quotation on the date closest to the said date and immediately preceding such date :

Provided that where for any reason the value of such share is quoted in relation to lesser number of assessment years than the said nine assessment years, then the value or values so quoted shall be taken into account for the purposes of the aforesaid average:

1. Ins. by Act 3 of 1989, s. 94 (w.e.f. 1-4-1989).

2. Subs. by Act 38 of 1993, s. 42, for "The value of property" (w.e.f. 1-4-1993).

3. Subs. by s. 42, *ibid*., for "the Wealth-tax Act" (w.e.f. 1-4-1993).

4. Ins. by s. 42, *ibid*, (w.e.f. 1-4-1993).

Provided further that where the assessee opts for the average of the values so quoted, he shall get such values certified by an accountant and attach the certificate to the return of gifts in respect of the relevant assessment year.

Explanation.—For the purposes of this rule, "accountant" shall have the same meaning as in the *Explanation* below sub-section (*2*) of section 288 of the Income-tax Act.

4.Unquoted preference shares. — (*1*) Subject to the provisions of sub-rule (*2*), the value of an unquoted preference share in any company shall,—

(*a*) where the preference share is issued before the date on which the gift was made at a rate of dividend of not less than eight per cent. be the paid-up value of such share; and

(*b*) where the preference share is issued before the said date at a rate of dividend of less than eight per cent. be the adjusted paid-up value of such share.

(*2*) Where no dividend has been paid in respect of an unquoted preference share by any company continuously for not less than three accounting years ending on the date on which the gift was made or, in

a case where the accounting year of the company does not end on that date, for not less than three continuous accounting years ending on a date immediately before the date on which the gift was made, the paid-up value or, as the case may be, the adjusted paid-up value shall be reduced—

(*a*) in the case of a non-cumulative preference share, as indicated in the Table below :

TABLE

Number of accounting years ending on the date on which the gift was made or, in a case where the accounting year does not end on that date, the number of accounting years ending on a date immediately preceding the date on which the gift was made, for which no dividend has been paid	Rate of reduction
(*1*)	(*2*)
Three Years	10% of the paid-up value or the adjusted paid-up value, as the case may be;
Four Years	20%
Five Years	30%
Six Years and above	40%

(*b*) in the case of a cumulative preference share, by one-half of the rates specified in the aforesaid Table.

Explanation.—For the purposes of this rule, "adjusted paid-up value", in relation to a preference share, means an amount which bears to the paid-up value of the preference share the same proportion as the stipulated rate of dividend [being the rate of dividend on the preference share specified in the terms of issue of such share, and in a case where such dividend is required to be increased under the provisions of section 3 of the Preference Shares (Regulation of Dividends) Act, 1960 (63 of 1960), the rate of dividend as so increased] on such share bears to the rate of eight per cent.

5.Unquoted equity shares in companies other than investment companies. — (*1*) The value of an unquoted equity share in any company, other than an investment company, shall be determined in the manner set out in sub-rule (*2*).

(*2*) The value of all the liabilities as shown in the balance sheet of such company shall be deducted from the value of all its assets shown in that balance sheet; the net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance sheet ; the result multiplied by the paid-up value of each equity share shall be in the break-up value of each unquoted equity share, and an amount equal to eighty per cent. of the break-up value so determined shall be the value of the unquoted equity share for the purposes of this Act.

(*3*) For the purposes of sub-rule (*2*),—

(*a*) the following amounts shown as assets in the balance sheet shall not be treated as assets, namely :—

(*i*) any amount paid as advance tax under the Income-tax Act;

(*ii*) any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset ;

(*b*) the following amounts shown as liabilities in the balance sheet shall not be treated as liabilities, namely :—

(*i*) the paid-up capital in respect of equity shares;

(*ii*) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date on which the gift was made at a general body meeting of the co

(*iii*) reserves, by whatever name called, other than those set apart towards depreciation ;

(*iv*) credit balance of the profit and loss account ;

(*v*) any amount representing provision for taxation, other than the amount referred to in sub-clause (*i*) of clause (*a*), to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(*vi*) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

Explanation.—For the purposes of this rule, "balance sheet", in relation to any company, means the balance sheet of such company (including the Notes annexed thereto and

forming part of the accounts) as drawn up on the date on which the gift was made and, where there is no such balance sheet, the balance sheet drawn up on a date immediately preceding that date, and, in the absence of both, the balance sheet drawn up on a date immediately after the date on which the gift was made.

6.Unquoted equity shares in investment companies. (*1*) Subject to rule 7, the value of an unquoted equity share in an investment company shall be determined in the manner specified in sub-rule (*2*).

(*2*) The value of all the liabilities as shown in the balance sheet of such company shall be deducted from the value of all its assets shown in that balance sheet ; the net amount so arrived at shall be divided by the total paid-up equity share capital of the company as shown in the balance sheet, and the result multiplied by the paid-up value of each equity share shall be the value of the unquoted equity share in that investment company for the purposes of this Act.

(*3*) For the purposes of sub-rule (*2*), the value of an asset disclosed in the balance sheet of the company shall be taken to be its value determined in accordance with the rules as applicable to that particular asset and, in the absence of any such rule, the value of such asset shall be its value as determined under rule 20 of Schedule III to the Wealth-tax Act.

(*4*) For the purposes of this rule,—

(*a*) "balance sheet" has the same meaning as in rule 5;

(*b*) the amounts referred to in sub-rule (*3*) of rule 5 shall not be treated as assets or liabilities.

(*5*) For the purpose of facilitating the valuation of unquoted equity shares under this rule and rule 7, the company concerned shall have such valuation made by its auditors appointed under section 224 of the Companies Act, 1956 (1 of 1956), and a certificate of the auditors relating to such valuation in the prescribed form shall be furnished to the Assessing Officer and the shareholders of the company; and the valuation made by the auditors shall be taken into account in the assessment of the shareholders of the company.

7.Unquoted equity shares in interlocked companies. — (*1*) The value of an unquoted equity share in one of the two interlocked companies held by the other interlocked company for the purposes of rule 6 shall be equal to the paid-up value of such share or the value determined under sub-rule (*2*), whichever is higher.

(*2*) For the purpose of sub-rule (*1*), the aggregate value of all the equity shares in an interlocked company shall be arrived at by multiplying the maintainable profits of such company by—

(*a*) the fraction 100/8.5, in a case where the gross total income of the company consists, to the extent of not less than 51 per cent. of income chargeable under the head "Income from house property" under the Income-tax Act ; or

(*b*) the fraction 100/10, in the case of any other interlocked company,

and the resultant amount divided by the number of such equity shares shall be the value of such an equity share in such company.

(*3*) The maintainable profits of the company, for the purpose of sub-rule (*2*), shall be computed in the following manner, namely :—

(*a*) the book profits of the company for the five accounting years of the company immediately preceding the date on which the gift was made shall first be ascertained ;

(*b*) adjustments shall be made to the book profits for each of the said five years for all non-recurring and extraordinary items of income and expenditure and losses ;

(*c*) adjustments shall be made to the book profits for expenditure which is not of a revenue nature but is debited in the accounts and for receipts which are in the nature of revenue receipts but are not accounted for in the profit and loss account ;

(*d*) any development rebate or investment allowance debited in the books of account shall be added back to the book profits ;

(*e*) the tax liability of the company on the book profits, arrived at after the adjustments at items (*a*), (*b*), (*c*) and (*d*), shall be deducted from such book profits ;

(*f*) amounts required for paying dividends on preference share or shares with prior rights shall be deducted from such book profits;

(*g*) the aggregate of the book profits for the five accounting years so arrived at, divided by 5, shall be the maintainable profits of the company.

Explanation.—For the purposes of this rule, "interlocked companies" means any two investment companies each of which holds shares in the other company.]

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