

THE GIFT-TAX (AMENDMENT) ACT, 1962

No. 53 OF 1962

[13th December, 1962]

An Act further to amend the Gift-tax Act, 1958.

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

1. (1) This Act may be called the Gift-tax (Amendment) Act, 1962. Short title
and com-
mencement.

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

In section 2 of the Gift-tax Act, 1958 (hereinafter referred to as the principal Act),— Amendment
of section 2.

(a) for clauses (ii), (iii) and (iv), the following clauses shall be substituted, namely,—

(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;

(iv) "assessment" includes re-assessment;

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

¹ 1st April, 1963, *vide* Notification No. S.O. 264, dated 21-1-1963, Gazette of India Pt. II, Sec. 3(ii), p. 353.

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

‘(va) “charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit;’

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

‘(viii) “Director of Inspection” includes an Additional Director of Inspection, a Deputy Director of Inspection and an Assistant Director of Inspection;’

(d) for clause (xiv), the following clause shall be substituted, namely:—

‘(xiv) “Income-tax Act” means the Income-tax Act, 43 of 1961, 1961;’

(e) after clause (xvi), the following clauses shall be inserted, namely:—

‘(xvii) “Inspector of Gift-tax” means an Inspector of Income-tax empowered to work as an Inspector of Gift-tax under section 11;

(xviii) “legal representative” has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;’

5 of 1908

(f) in clause (xx)—

(i) in sub-clause (b), for the words, brackets, letters and figures “under sub-clause (a) of clause (11) of section 2 of the Income-tax Act or such period determined as the previous year under sub-clause (b) of clause (11) of that section, whichever expired last”, the words, brackets, letters and figures “under sub-clause (a) or sub-clause (b), as the case may be, of sub-section (1) of section 3 of the Income-tax Act or such period determined as the previous year under clause (c) of that sub-section, whichever expired last” shall be substituted;

(ii) in sub-clause (c), for the words, brackets and figures “clause (11) of section 2”, the word and figure “section 3” shall be substituted.

Amendment of section 3. 3. In section 3 of the principal Act, for the words “financial year”, the words “assessment year” shall be substituted.

4. In section 5 of the principal Act,—

Amendment
of section 5.

(i) in sub-section (1), in clause (v), for the word, figures and letter "section 15B", the word and figures "section 88" shall be substituted;

(ii) in the *Explanation*, in clause (a), for the words "in the taxable territories within the meaning of the Income-tax Act", the following shall be substituted, namely:—

"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".

5. After section 7 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section 7A.

"7A. (1) Notwithstanding anything contained in section 7, the Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one Gift-tax Officer subordinate to him to another also subordinate to him, and the Board may similarly transfer any case from one Gift-tax Officer to another:

Power to
transfer
cases.

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from one Gift-tax Officer to another whose offices are situated in the same city, locality or place.

(2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Gift-tax Officer from whom the case is transferred.

Explanation.—In this section the word 'case' in relation to any person whose name is specified in any order issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order, or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year."

6. After section 9 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section 9A.

"9A. (1) The Board may empower as many persons as it thinks fit to exercise under this Act the functions of a Director of Inspection.

Directors
of Inspec-
tion.

(2) A Director of Inspection shall be competent to make any enquiry under this Act and for this purpose, shall have all the powers that a Gift-tax Officer has under this Act in relation to the making of enquiries.

(3) Without prejudice to the provisions of sub-section (2), a Director of Inspection shall exercise such other functions of any Gift-tax authority as may be assigned to him by the Board.”.

Substitu-
tion of new
sections for
section 11.

7. For section 11 of the principal Act, the following sections shall be substituted, namely:—

Inspector
of Gift-
tax.

‘11. A Commissioner of Gift-tax may empower any Inspector of Income-tax to work as an Inspector of Gift-tax under any Gift-tax authority, and when he is so empowered, he shall perform such functions in the execution of this Act as are assigned to him by the said Gift-tax authority.

Control of
Gift-tax
authorities

11A. (1) Inspecting Assistant Commissioners shall be subordinate to the Commissioner within whose jurisdiction they perform their functions and also to the Director of Inspection.

(2) Gift-tax Officers shall be subordinate to the Commissioner and the Inspecting Assistant Commissioner within whose jurisdiction they perform their functions and also to the Director of Inspection.

(3) Inspectors of Gift-tax shall be subordinate to the Gift-tax Officers or other Gift-tax authority under whom they are empowered to work and to any other Gift-tax authority to whom the said officer or other authority is subordinate.

Explanation.—For the purposes of sub-section (1), “Director of Inspection” does not include a Deputy Director of Inspection or an Assistant Director of Inspection and for the purposes of sub-section (2), “Director of Inspection” does not include an Assistant Director of Inspection.’

Amend-
ment of
section 12.

8. Section 12 of the principal Act shall be re-numbered as sub-section (1) thereof and after the sub-section so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Every Gift-tax Officer employed in the execution of this Act shall observe and follow such instructions as may be issued to him for his guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions.”.

9. In Chapter III of the principal Act, after section 12, the following section shall be inserted, namely:—

Insertion of new section 12A.

“12A. The Commissioner of Gift-tax and the Inspecting Assistant Commissioner of Gift-tax shall be competent to make any enquiry under this Act and for this purpose, shall have all the powers that a Gift-tax Officer has under this Act in relation to the making of enquiries.”.

Power of Commissioner of Gift-tax and of Inspecting Assistant Commissioner of Gift-tax to make enquiries under this Act.

10. In section 13 of the principal Act,—

Amendment of section 13.

(i) in sub-section (1), after the words “taxable gifts”, the words “or is assessable in respect of the taxable gifts made by any other person under this Act” shall be inserted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) In the case of any person who, in the Gift-tax Officer’s opinion, is assessable under this Act whether in respect of the gifts made by him or by any other person during the previous year, the Gift-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish within thirty days from the date of service of the notice a return of the gifts made by him or by such other person during the previous year in the prescribed manner and setting forth such other particulars as may be prescribed.”.

11. After section 14 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 14A.

“14A. The return made under section 13 or section 14 shall be signed and verified—

Return by whom to be signed.

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

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

(c) in the case of a company, by the principal officer thereof;

(d) in the case of a firm, 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."

Amend-
ment of
section 15.

12. In section 15 of the principal Act,—

(i) in sub-section (1),—

(a) for the words "is complete", the words "is correct and complete" shall be substituted;

(b) for the words "and determine the amount payable by him as gift-tax", the words "and determine the amount of gift-tax payable by him or the amount refundable to him on the basis of such return" shall be substituted;

(ii) in sub-section (3), after the words "any specified points", the words "and after taking into account all relevant material which the Gift-tax Officer has gathered" shall be inserted;

(iii) in sub-section (5), after the words "the Gift-tax Officer", the words "after taking into account all relevant material which he has gathered" shall be inserted.

Amend-
ment of
section 16

13. In section 16 of the principal Act, in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

"(a) has reason to believe that by reason of the omission or failure on the part of the assessee to make a return under section 13 of the gifts made by him or any other person in respect of which he is assessable under this Act for any assessment year, or to disclose fully and truly all material facts necessary for assessment of the gifts made by him or such other person for that year any taxable gift has escaped assessment for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise; or".

Substitu-
tion of new
section for
section 17.

14. For section 17 of the principal Act, the following section shall be substituted, namely:—

Penalty
for failure
to furnish
returns, &c

"17. (1) If the Gift-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return required to be furnished under sub-section (1) of section 13 or by notice given under sub-section (2) of section 13 or section 16 or has, without reasonable cause, failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 13 or by such notice, as the case may be; or

Comply notices and concealment of gifts, etc.

(b) has without reasonable cause 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—

(i) in the cases referred to in clause (a), in addition to the amount of gift-tax payable by him, a sum equal to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent. of the tax;

(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 ten per cent. but which shall not exceed fifty per cent. of the amount of the tax, if any, which would have been avoided if the return made by such person had been accepted as correct;

(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.

(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.

(3) Notwithstanding anything contained in clause (iii) of sub-section (1), if in a case falling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Gift-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this section for the imposition of penalty.

(4) An Appellate Assistant Commissioner, Commissioner or the Appellate Tribunal, on making an order under this section

imposing penalty, shall forthwith send a copy of the same to the Gift-tax Officer.”.

Insertion
of new sec-
tion 19A.

Assessment
of persons
leaving
India.

15. After section 19 of the principal Act, the following sections shall be inserted, namely:—

“19A. (1) Notwithstanding anything contained in section 3, when it appears to the Gift-tax 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, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) The Gift-tax 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 Gift-tax 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 a return under sub-section (2) 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 as if the notice were a notice issued under sub-section (2) of section 13.

(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 Gift-tax Officer under sub-section (2) of section 13 or under section 16 in respect of any gift-tax chargeable under any other provisions of this Act may, notwithstanding anything contained in sub-section (2) of section 13 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 Gift-tax Officer may think proper.”.

16. In Chapter V of the principal Act, after section 21, the following section shall be inserted, namely:—

Insertion
of new
section
21A.

“21A. (1) Where a Gift-tax Officer after using all due and reasonable diligence cannot find the donor who has made any taxable gifts, for the purpose of service of notice under sub-section (2) of section 13 or under section 16, the Gift-tax 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.

Assess-
ment of
donee
when
donor can-
not be
found.

(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.”

17. In section 22 of the principal Act,—

(i) in sub-section (1)—

(a) in clause (a), the word “his” shall be omitted;

(b) in clause (f)—

(1) for the words, brackets and figures “sub-section (1) of section 46 of the Income-tax Act”, the words, brackets and figures “sub-section (1) of section 221 of the Income-tax Act” shall be substituted;

(2) the word “or” shall be added at the end;

(c) after clause (f), the following clauses shall be inserted, namely:—

“(g) objecting to an order of the Gift-tax 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

Amend-
ment of
section 22.

(h) objecting to any fine imposed by the Gift-tax Officer under sub-section (2) of section 36;”;

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(5A) In disposing of an appeal, the Appellate Assistant Commissioner 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 Appellate Assistant Commissioner by the appellant.

(5B) The order of the Appellate Assistant Commissioner disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.”.

Amend-
ment of
section 23.

18. In section 23 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) An assessee, objecting to an order passed by the Appellate Assistant Commissioner under section 17 or section 22 or sub-section (2) of section 36 or to an order passed by the Inspecting Assistant Commissioner under sub-section (3) of section 17, may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.”;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The Gift-tax Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner 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 Appellate Assistant Commissioner and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1) or sub-section (2).”;

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(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.”;

(iv) in sub-section (11), for the words, brackets, figures and letter “sub-sections (5), (7) and (8) of section 5A of the Income-tax Act”, the words, brackets and figures “sub-sections (1), (4) and (5) of section 255 of the Income-tax Act” shall be substituted.

19. In section 24 of the principal Act, to sub-section (3), the following *Explanation* shall be added, namely:— Amendment of section 24.

“*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.”.

20. In section 25 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 25.

“(1) An assessee objecting to an order passed by the Commissioner under section 17 or to an order of enhancement passed by him under section 24 may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.”.

21. In section 26 of the principal Act,—

(i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:— Amendment of section 26.

“(1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 23 or section 25, by application in the prescribed form, accompanied, where the application is made by the assessee, by a fee of rupees one hundred 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.”;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

“(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.”;

(iii) in sub-sections (4), (5) and (6), after the words “High Court”, the words “or the Supreme Court” shall be inserted;

(iv) for sub-sections (7), (8) and (9), the following sub-section shall be substituted, namely:—

“(7) The cost 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.”.

22. In Chapter VI of the principal Act, after section 28, the following sections shall be inserted, namely:—

Insertion
of new
sections
28A and
28B.

Tax to be
paid not-
withstand-
ing refer-
ence, etc.

‘28A. 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.

Definition
of High
Court.

28B. In this Chapter, “High Court” means—

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

(ii) in relation to the Union territories of Delhi and Himachal Pradesh, the High Court of Punjab;

(iii) in relation to the Union territories of Manipur and Tripura, the High Court of Assam;

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

(v) in relation to the Union territory of Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala.’

23. For section 29 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 29.

“29. Subject to the provisions of this Act, gift-tax shall be payable by the donor but when in the opinion of the Gift-tax Officer the tax cannot be recovered from the donor, it may be recovered from the donee:

Gift-tax by whom payable.

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.”

24. For sections 31, 32 and 33 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 31, 32 and 33.

“31. When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Gift-tax Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

Notice of demand.

32. (1) Any amount specified as payable in a notice of demand under section 31 shall be paid within thirty-five days of the service of the notice at the place and to the person mentioned in the notice:

Recovery of tax and penalties.

Provided that, where the Gift-tax Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty-five days aforesaid is allowed, he may, with the previous approval of the Inspecting Assistant 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 thirty-five days aforesaid, as may be specified by him in the notice of demand.

(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 four per cent. per annum from the day commencing after the end of the period mentioned in sub-section (1).

(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 Gift-tax Officer may extend the time for payment or allow payment by instal-

ments 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 Gift-tax 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.

Mode of
recovery.

33. The provisions contained in sections 221 to 227, 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 and to Gift-tax Officer and Commissioner of Gift-tax instead of to Income-tax Officer and Commissioner of Income-tax.

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.

Explanation II.—The Tax Recovery Officer and the Tax Recovery Commissioner referred to in the Income-tax Act or the rules made thereunder shall be deemed to be the Tax Recovery Officer and the Tax Recovery Commissioner for the purposes of recovery of gift-tax and sums imposed by way of penalty, fine and interest under this Act.”

25. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion
of new
Chapter
VIIA.

"CHAPTER VIIA

REFUNDS

33A. (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 Gift-tax 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. Refunds.

(2) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Gift-tax Officer is of the opinion that the grant of refund is likely to adversely affect the revenue, the Gift-tax Officer may, with the previous approval of the Commissioner withhold the refund till such time as the Commissioner may determine.

(3) Where a refund is due to the assessee in pursuance of an order referred to in sub-section (1) and the Gift-tax Officer does not grant the refund with a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at four 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.

(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.

(5) Where under any of the provisions of this Act, a refund is found to be due to any person, the Gift-tax Officer, Appellate Assistant 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."

Substitu-
tion of new
section for
section 34.

26. For section 34 of the principal Act, the following section shall be substituted, namely:—

Rectifica-
tion of
mistakes.

“34. (1) With a view to rectifying any mistake apparent from the record—

(a) the Gift-tax Officer may amend any order of assessment or of refund or any other order passed by him;

(b) the Appellate Assistant Commissioner may amend any order passed by him under sub-section (1) of section 17 or under section 22;

(c) the Inspecting Assistant Commissioner may amend any order passed by him under sub-section (3) of section 17;

(d) the Commissioner may amend any order passed by him under sub-section (1) of section 17 or under section 24;

(e) the Appellate Tribunal may amend any order passed by it under sub-section (1) of section 17 or section 23 or section 25.

(2) Subject to 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 Appellate Assistant Commissioner or the Appellate Tribunal by the Gift-tax 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 section 33, where any such amendment has the effect of reducing the assessment, the Gift-tax 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 Gift-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 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 from the date of the order sought to be amended.”.

27. In section 35 of the principal Act,—

Amendment
of section 35.

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

“(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.”;

(ii) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

“*Explanation.*—For the purposes of this section, ‘Magistrate’ means a Presidency Magistrate or a Magistrate of the first class.”.

28. For section 36 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 36.

“36. (1) The Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

Power re-
garding
discovery,
production
of evidence
etc.

(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.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or document at the place or time, the authority empowered to issue such summons may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and fine so levied may be recovered in the manner provided in Chapter VII."

Amend-
ment of
section 38.

29. To section 38 of the principal Act, the following proviso shall be added, namely:—

"Provided that 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."

Substitu-
tion of new
section for
section 39.

30. For section 39 of the principal Act, the following section shall be substituted, namely:—

Computa-
tion of
period of
limitation.

"39. 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."

Amend-
ment of
section 40.

31. In section 40 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

"(3) After a finding of total partition has been recorded by the Gift-tax 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."

32. For section 41 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 41.

“41. The provisions of sections 137 and 280 of the Income-tax Act shall apply to the disclosure of particulars contained in all accounts or in relation to statements, documents, evidence or affidavits given, produced or obtained in connection with or in the course of any proceedings under this Act, as they apply to or in relation to similar particulars under that Act, subject to the modification that the reference to any income-tax authority in clause (iv) of sub-section (3) of section 137 of that Act shall be construed as a reference to any Gift-tax authority.”

Prohibition of disclosure of information.

33. In section 41A of the principal Act, in sub-section (3), after clause (i), the following clause shall be inserted, namely:—

Amendment of section 41A.

“(iu) in the case of an assessee mentioned in clause (a) of sub-section (1) or in clause (b) of sub-section (2), who presented an appeal under sub-section (1) of section 23 against the order of penalty passed by the Inspecting Assistant Commissioner under sub-section (3) of section 17, until the appeal is disposed of by the Appellate Tribunal;”

34. For section 43 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 43.

“43. 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.”

Appearance before Gift-tax authorities by authorised representatives.

35. In section 45 of the principal Act, in clause (e), for the words, brackets and figures “clause (i) of sub-section (3) of section 4”, the word and figure “section 11” shall be substituted.

Amendment of section 45.

36. In section 46 of the principal Act, for sub-section (4); the following sub-section shall be substituted, namely:—

Amendment of section 46.

“(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 or in two successive sessions, and, if, before the expiry of the session in

which it is so laid or the session immediately following, both Houses agree in making any modifications 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.”
