

CHAPTER II

CHARGE OF GIFT-TAX AND GIFTS SUBJECT TO SUCH CHARGE

Charge of gift-tax.

3. ³⁶ [(1)] Subject to the other provisions contained in this Act, there shall be charged for every ³⁷ [assessment] year commencing on and from the 1st day of April, 1958, ³⁸ [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 a person during the previous year (other than gifts made before the 1st day of April, 1957), at the rate or rates specified in ³⁹ [Schedule I].

⁴⁰ [(2) ⁴¹ [Subject to the other provisions 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.]

^{41a} [(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.]

Gifts to include certain transfers.

⁴² 4. ⁴³ [(1)] For the purposes of this Act,—

(a) where property is transferred otherwise than for adequate consideration, the amount by which the ⁴⁴ [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 :

⁴⁵ [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 ⁴⁶ [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;

⁴⁷[(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 by which such value exceeds the consideration received, shall be deemed to be a gift made by such person.]

⁴⁸ [(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.]

Section - 5, Gift-Tax Act, 1958

Exemption in respect of certain gifts.

⁴⁹ 5. (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;

⁵⁰[(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)⁵¹, 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;]

⁵²[(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 2⁵³ of the Foreign Exchange Regulation Act, 1973 (46 of 1973);]

⁵⁴[(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;
- (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 in India" shall have the meaning assigned to it in the Income-tax Act;]

⁵⁵[(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 ⁵⁶[any foreign exchange asset as defined in clause (b) of section 115C of the Income-tax Act];]

⁵⁷[(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 ⁵⁸ in the Official Gazette exempts from gift-tax;

(iiia) ⁵⁹ [***]

⁶⁰[(iiib) of property in the form of Special Bearer Bonds, 1991;]

⁶¹[(iiic) ⁶² [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;]

⁶³[(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;]

⁶⁴[(iiie) being an individual who is a non-resident Indian, ⁶⁵[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.

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

- (a) ⁶⁶ [***]
- (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 ⁶⁷ [or any authority referred to in clause (20A) of section 10 of the Income-tax Act ;]
- (v) to any institution or fund established ⁶⁸ [or deemed to be established] for a charitable purpose to which the provisions of ⁶⁹ [section 80G] of the Income-tax Act apply ;
- ⁷⁰ [(va) (i) to such temple, mosque, gurdwara, church or other place as has been notified by the Central Government for the purposes of ⁷¹ [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 ;]
- (vi) ⁷² [***]
- (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 ⁷³ [one hundred] thousand in value in respect of the marriage of each such relative ;
- (viii) ⁷⁴ [***]
- (ix) ⁷⁵ [***]
- (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 ⁷⁶ [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 ⁷⁶ [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 ;
- (xiv) ⁷⁷ [***]
- ⁷⁸ [(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.
- (xvi) ⁷⁹ [***]

⁸⁰ [(1A) Any reference in clause (v) ⁸¹ [***] 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 ⁸² [thirty] thousand in value.

(3) ⁸³[***]

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 ⁸⁴[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).

Section - 6, Gift-Tax Act, 1958

⁸⁵ [Value of gifts, how determined.

⁸⁶ 6. (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.

⁸⁷ (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.]

Section - 6A, Gift-Tax Act, 1958

Aggregation of gifts made during a certain period.

⁸⁸ 6A. [Omitted by the Finance Act, 1986, w.e.f. 1-4-1987. Section 6A was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976. Original section was introduced by the Finance Act, 1964, w.e.f. 1-4-1964 and was later omitted by the Finance Act, 1966, w.e.f. 1-4-1966.]