

CHAPTER VI
APPEALS, REVISIONS AND REFERENCES

^{95a} Appeal to the ⁹⁶[Deputy Commissioner (Appeals)] from orders of ⁹⁷[Assessing Officer].

⁹⁸ 22. (1) ⁹⁹ [Subject to the provisions of sub-section (1A), any person,]—

- (a) objecting to the value of ¹[* * *] 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
- ²[(d) objecting to any penalty imposed by the Assessing Officer under section 17 ³[* * *]]; or
- (e) objecting to any order of the ⁴[Assessing Officer] under sub-section (2) of section 20; or
- (f) objecting to any penalty imposed by the ⁴[Assessing Officer] under ⁵[sub-section (1) of section 221] of the Income-tax Act as applied under section 33 for the purposes of gift-tax; ⁶[or]
- ⁶[(g) objecting to an order of the ⁴[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
- (h) 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 ^{10a}[Joint] Commissioner in exercise of the powers or functions conferred on or assigned to him under section 7 or section 10; or
- ¹¹[(c) objecting to any penalty imposed under sub-section (1) of section 17 with the previous approval of the ^{10a}[Joint] Commissioner as specified in sub-section (3) of that section;]
- (d) objecting to any penalty imposed by the ^{10a}[Joint] Director or the ^{10a}[Joint] Commissioner under section 17A;]
- (e) objecting to any order made by an ¹²[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:

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.]

¹³ [(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 ¹⁴[Deputy Commissioner (Appeals)] ¹⁵[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 ¹⁶[Deputy Commissioner (Appeals)] ¹⁷[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 ¹⁸[Deputy Commissioner (Appeals)] ¹⁹[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 ²⁰[Assessing Officer].

(5) In disposing of an appeal, the ²¹[Deputy Commissioner (Appeals)] ²²[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.

²³ [(5A) In disposing of an appeal, the ²¹[Deputy Commissioner (Appeals)] ²²[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 ²¹[Deputy Commissioner (Appeals)] ²²[or, as the case may be, the Commissioner (Appeals)] by the appellant.]

²³ [(5B) The order of the ²¹[Deputy Commissioner (Appeals)] ²²[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.]

(6) A copy of every order passed by the ²⁴[Deputy Commissioner Appeals)] ²⁵[or, as the case may be, the Commissioner (Appeals) [under this section shall be forwarded to the appellant and the ²⁶[Chief Commissioner or Commissioner.]

Section - 22A, Gift-Tax Act, 1958

Application by the assessee in certain cases.

22A. [Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 revoking insertion by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.]

Section - 23, Gift-Tax Act, 1958

^{26a} Appeal to the Appellate Tribunal.

23. ²⁷ [(1) An assessee, objecting to an order passed by the ²⁸[Deputy Commissioner (Appeals)] ²⁹[or the Commissioner (Appeals)] under section 17 ³⁰[or section 17A] or section 22 ³¹[* * *] or sub-section (2) of section 36 ³²[* * *], 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 ³³[Deputy Commissioner (Appeals)] ³⁴[or a Commissioner (Appeals)] under section 22, direct the ³⁵[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.

³⁶ [(2A) ³⁷The ³⁸ [Assessing Officer] or the assessee, as the case may be, on receipt of the notice that an appeal against the order of the ³⁹[Deputy Commissioner (Appeals)] ⁴⁰[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 ³⁹[Deputy Commissioner (Appeals)] ⁴⁰[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).]

⁴¹ [(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.]

⁴² (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 ⁴³[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:

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.

(6), (7) and (8) ⁴⁴[* * *]

(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 ⁴⁵[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.

Section - 24, Gift-Tax Act, 1958

^{45a} **Powers of Commissioner to revise orders of subordinate authorities.**

24. (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 ⁴⁶ [Deputy Commissioner (Appeals)] ⁴⁷[or to the Commissioner (Appeals)] or to the Appellate Tribunal and the time within which such appeal can be made has not expired or, in the case of an appeal ⁴⁷[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 ⁴⁸ [Deputy Commissioner (Appeals)] or has been the subject of an appeal ⁴⁹[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.

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

- (a) the ⁵⁰[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 ⁵¹[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 enquiry 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.

⁵² [Explanation.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

- (a) an order passed ⁵³[on or before or after the 1st day of June, 1988] by the Assessing Officer shall include an order passed by the^{53a}[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" ⁵⁴[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,⁵⁵[filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this sub-section shall extend ⁵⁵[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 ⁵⁶[from the end of the financial year in which the order sought to be revised was passed.]

⁵⁷ [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.]

Section - 25, Gift-Tax Act, 1958

Appeal to the Appellate Tribunal from orders of enhancement by ⁵⁸[Chief Commissioner or Commissioner].

25. ⁵⁹ (1) An assessee objecting to an order passed by the ⁵⁸[Chief Commissioner or Commissioner] under section 17 ⁶⁰[or section 17A] or to an order of enhancement passed by him under section 24 ⁶¹[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.]

(2) ⁶²An 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 ⁶³[two hundred] rupees.

(3) The provisions of ⁶⁴[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.

64a Reference to High Court.

26. ⁶⁵ [(1) ⁶⁶The assessee or the ⁶⁷[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 25 ⁶⁸[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 ⁶⁹[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.

⁷⁰ [(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 ⁷¹[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.

(5) If the High Court ⁷¹[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 ⁷¹[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.

⁷² [(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.]

Section - 27, Gift-Tax Act, 1958

72a Hearing by High Court.

27. 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.

Section - 28, Gift-Tax Act, 1958

72a Appeal to Supreme Court.

28. (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.

Section - 28A, Gift-Tax Act, 1958

73 [Tax to be paid notwithstanding reference, 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.]

Section - 28B, Gift-Tax Act, 1958

74 [Definition of High Court.

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

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

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

(iii) 76 [* * *]

77[(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);]

(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 ⁷⁸[Lakshadweep], the High Court of Kerala;]
- ⁷⁹[(*va*) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana;]
- ⁸⁰[(*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.]