

CHAPTER VIII
MISCELLANEOUS

20 [Rectification of mistakes.

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

(a) the 21[Assessing Officer] may amend any order of assessment or of refund or any other order passed by him;

22[(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;]

23[(b) the 23a [Joint] Director or 23a[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 24[* * *];

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

(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 25[Deputy Commissioner (Appeals)] 26[or the Commissioner (Appeals)] or the Appellate Tribunal, by the 27[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 section 28 [33A], where any such amendment has the effect of reducing the assessment, the 29[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 30[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 31[from the end of the financial year in which the order sought to be amended was passed].]

Prosecution.

35. (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 ³²[* * *] sub-section (4) of section 15, such accounts, records and documents as are referred to in the notice;
- (c) ³³[* * *]

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.

³⁴ [(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.]

³⁵ [(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.]

³⁶ [³⁷ *Explanation 1*].—For the purposes of this section, "magistrate" means a presidency magistrate or a magistrate of the first class.]

³⁸ [*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.]

³⁹ [**Offences by companies.**

35A. (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,

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

Section - 35B, Gift-Tax Act, 1958

Offences by Hindu undivided families.

35B. (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 family 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 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.

Section - 35C, Gift-Tax Act, 1958

Section 360 of the Code of Criminal Procedure, 1973 and the Probation of Offenders Act, 1958, not to apply.

35C. 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.]

Section - 35D, Gift-Tax Act, 1958

[40-41](#) [**Presumption as to culpable mental state.**]

35D. (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.]

Section - 35E, Gift-Tax Act, 1958

[42](#) [**Proof of entries in records or documents.**]

35E. 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.]

Section - 36, Gift-Tax Act, 1958

[43](#) [**Power regarding discovery, production of evidence, etc.**]

36. (1) The [44](#)[Assessing Officer], the [45](#)[Deputy Commissioner (Appeals)] [46](#)[the Commissioner (Appeals)], the [47](#)[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 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.

[48](#) [(1A) If the Director General or Director or [48a](#)[Joint] Director or Assistant Director [48b](#)[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.]

(2) ⁴⁹[* * *]

Section - 37, Gift-Tax Act, 1958

Power to call for information.

37. ⁵⁰ [Where, for the purposes of this Act, it appears necessary for any gift-tax authority to obtain any statement or information from any person or banking company,] ⁵¹[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 ⁵¹[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).

Section - 38, Gift-Tax Act, 1958

Effect of transfer of authorities on pending proceedings.

38. 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:

⁵²⁻⁵³ [**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.]

Section - 39, Gift-Tax Act, 1958

⁵⁴ [**Computation 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.]

Section - 40, Gift-Tax Act, 1958

Service of notice.

40. (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.

⁵⁵ [(3) After a finding of total partition has been recorded by the ⁵⁶[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.]

Section - 41, Gift-Tax Act, 1958

Prohibition of disclosure of information.

41. *[Omitted by the Finance Act, 1964, w.e.f. 1-4-1964. Earlier, this section was substituted by the Gift-tax (Amendment) Act, 1962, w.e.f. 1-4-1963.]*

Section - 41A, Gift-Tax Act, 1958

⁵⁷ **[Publication of information respecting assesseees.**

41A. (1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any assesseees and any other particulars relating to any proceedings ⁵⁸[or prosecutions] under this Act in respect of such assesseees, it may cause to be published such names and particulars in such manner as it thinks fit.

⁵⁹ [(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 ⁶⁰[Deputy Commissioner (Appeals)] ⁶¹[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 Govern-ment, the circumstances of the case justify it.]

Section - 41B, Gift-Tax Act, 1958

⁶² **[Disclosure of information respecting assesseees.**

41B. ⁶³ Where a person makes an application to the ⁶⁴[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 ⁶⁵[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.

Section - 41C, Gift-Tax Act, 1958

⁶⁶ [Return of gifts, etc., not to be invalid on certain grounds.]

41C. 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.]

Section - 42, Gift-Tax Act, 1958

Bar of suits in civil court.

42. No suit shall lie in any civil court to set aside or modify any ⁶⁷[proceeding taken or] ⁶⁸[order] made under this Act, and no prosecution, suit or other legal proceedings shall lie against ⁶⁹[the Government or] any officer of the Government for anything in good faith done or intended to be done under this Act.

Section - 43, Gift-Tax Act, 1958

⁷⁰ [Appearance before gift-tax authorities by authorised representatives.]

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.]

Section - 43A, Gift-Tax Act, 1958

^{70a} [Appearance by registered valuer in certain matters.]

43A. 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).]

Agreement for avoidance or relief of double taxation with respect to gift-tax.

44. ⁷¹ [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 ⁷² 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.

⁷³ **[Rounding off of taxable gifts.**

44A. 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 amount so rounded off shall be deemed to be the value of all taxable gifts of the assessee for the purposes of this Act.]

⁷⁴ **[Rounding off of tax, etc.**

44B. 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.]

Act not to apply in certain cases.

45. ⁷⁵ [No tax shall be levied under this Act in respect of gifts made by]—

- ⁷⁶[(a) a company in which the public are substantially interested;
- (b) any company to an Indian company in a scheme of amalgamation;]

⁷⁷[(e) any institution or fund the income whereof is exempt from income-tax under ⁷⁸[section 11] ⁷⁹[or section 12] of the Income-tax Act.]

⁸⁰ [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.]

⁸¹ [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 section 11 ⁸²[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 section 11 ⁸³[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.]

Power to make rules.

46. (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) ⁸⁴the manner in which the value of any property may be determined;
- (b) ⁸⁵the form in which returns under this Act shall be made and the manner in which they shall be verified;
- (c) ⁸⁶the form in which appeals and applications under this Act may be made, and the manner in which they shall be verified;
- ⁸⁷[(cc) ⁸⁸ the circumstances in which, the conditions subject to which and the manner in which, the ⁸⁹[Deputy Commissioner (Appeals)]⁹⁰[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 ⁹¹[Assessing Officer];
- (d) ⁹²the 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;

⁹³[(ee) ⁹⁴ the procedure to be followed in calculating interest payable by assesseees or interest payable by the Government to assesseees 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 assesseees 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.

⁹⁵ [(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 assesseees.]

⁹⁶ [(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 ⁹⁷[or more] successive sessions, and if, before the expiry of the session ⁹⁸[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.]

Section - 46A, Gift-Tax Act, 1958

⁹⁹ [**Power to make exemption, etc., in relation to certain Union territories.**

46A.(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 assesseees :

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 [Power to remove difficulties.

47. (1) If any difficulty arises in giving effect to the provisions of this Act as amended by the Direct Tax Laws (Amendment) Act, 1987, 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.]