

## CHAPTER XXXVIII

### RULES RELATING TO REFERENCES AND APPLICATIONS UNDER SECTION 26 OF THE GIFT – TAX, ACT, 1958 (ACT No. 18 OF 1958)

**694. References to be sent to the Prothonotary and Senior Master**<sup>1</sup>*[at Bombay, or the additional Registrar of the respective Benches as the case may be]* – All references under section 26 of the Gift-Tax Act, 1958 (hereinafter in this chapter referred to as “the Act”) shall be forwarded to the Prothonotary and Senior Master<sup>1</sup>*[at Bombay, or the additional Registrar of the respective Benches as the case may be]* and shall be dealt with on the Original Side of the High Court.

<sup>1</sup>*[Provided that References and Applications falling within the jurisdiction of Nagpur/Aurangabad/Panaji-Goa Benches of Bombay High Court shall be presented to the Additional Registrar of the Bombay High Court at Nagpur/Aurangabad/Panaji-Goa as the case may be and shall be disposed of by the Judges sitting at Nagpur/Aurangabad/Panaji-Goa.*

Provided further that the Chief Justice may, in his discretion, order that, any case arising in the jurisdiction of the said Benches shall be heard at Bombay]

**695 Notice of reference to party at whose instance the reference is made** – When the Appellate Tribunal refers a case to the High Court, it shall give notice of that fact to the party at whose instance the reference has been made and shall call upon him to take such steps in the office of the Prothonotary and Senior Master<sup>1</sup>*[at Bombay, or the Additional Registrar of the respective Benches as the case may be]* as may be necessary for bringing the reference to a final conclusion.

**696. Filing statement of case, issuing notice and fixing date for the hearing** – The party at whose instance a reference has been made shall file the statement of the case in the office of the Prothonotary and Senior Master<sup>1</sup>*[at Bombay, or the additional Registrar of the respective Benches as the case may be]* and shall forthwith take steps to bring the reference to a final conclusion. Such party shall apply to the Prothonotary and Senior Master<sup>1</sup>*[at Bombay, or the Additional Registrar of the respective Benches as the*

*case may be*] to issue notice and to fix a date for the hearing of the reference and shall serve the notice on the opposite party. If such party fails to take such steps for two months from the receipt of the reference in the High Court, the Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] may set down the reference on board for orders. The Court may pass such order on the reference as it may deem fit.

**697. Preparation of Paper Book** – The party at whose instance a reference has been made shall prepare the paper book which shall contain the statement of the case and other papers forwarded by the Appellate Tribunal. The paper book shall be typed or cyclostyled, but the Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] may, on the application of any party, direct that the paper book be printed. Two copies of the paper book shall be filed in the office of the Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] within two months from the date of filing of the reference in the High Court.

**698. Failure to file Paper Books** – In the event of non-compliance with the last preceding rule, the Prothonotary and Senior Master <sup>1</sup>[*at Bombay or the Additional Registrar of the respective Benches as the case may be*] may set down the reference on board for orders. The Court may pass such order on the reference as it may deem fit.

**699. Application under section 26(3).** – An application under subsection (3) of section 26 of the Act shall be presented to the Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*]. Such application shall be by petition. There shall be annexed to such petition copies of the order and judgment, if any, of the Appellate Tribunal and also of the relevant documents on which the applicant wants to rely in support of his application.

**700. Placing of application before the Court.-** The Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] shall place such application before the Court on a day appointed by the Chief Justice. The Court may either reject the application summarily or order a rule *nisi* to issue to show cause why the

order applied for should not be made. The rule shall be made returnable on such date as the Court may direct.

**701. Service of rule nisi-** The rule *nisi* together with a copy of the application shall be served on the opposite party i.e. on the assessee or the Commissioner of Gift Tax, as the case may be, at least fourteen days before the returnable date of the rule.

**702. Time for furnishing copies of application –** On a rule *nisi* being issued, the applicant shall furnish to the office of the Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] two typewritten or cyclostyled or printed copies of such application with all its annexures at least one week before the day fixed for the hearing of the rule.

**703. Answer to rule nisi –** Answer to the rule *nisi* shall be made on affidavit and the same shall be filed at least four days before the returnable date of the rule *nisi*. Two copies of such affidavit shall be furnished to the office of the Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*].

**704. Copy of the Court's Order and Judgment to be sent to the Appellate Tribunal –** Where the rule *nisi* is made absolute, the Prothonotary and Senior Master <sup>1</sup>[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] shall send a copy of the Court's Order and Judgment, if any, to the Appellate Tribunal.

**705. References and applications to be heard by a bench -** All references and applications under section 26 of the Act shall be heard by a bench of not less than two Judges appointed by the Chief Justice.

<sup>2</sup>[**705A –** Subject to the provisions of section 26 of the Gift Tax Act, 1958 and section 27A of the Wealth Tax Act, 1957 ( as far as it is applicable to the matters under the Gift Tax Act)-

- (i) An appeal shall lie to the High Court from every Order passed in Appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.
- (ii) Rule 669-A shall apply to all Memoranda of Appeal preferred under section 26 of the Gift Tax Act, 1958 *mutatis mutandis*.

**705B** – The Memorandum of Appeal shall always been in duplicate, where the appeal is from Order of the Appellate Tribunal and shall contain such of the documents as specified in sub-rule (iii) or Rule 669-A.]

1. These words were inserted by G.N. of 11-02-2000, Pt. IV-C, p. 88, M.G.G. Pt. IV-C, dt 2.3.2000
2. Inserted by G.N. No. G/Amend/2407, dated 1-3-2001, M.G.G. Pt. IV-C, p. 29

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