

Finance Act, 1993

Section 42 - Amendment of Schedule II

In Schedule II to the Gift-tax Act, -

(a) in the opening portion, occurring after the heading "RULES FOR DETERMINING THE VALUE OF PROPERTY GIFTED", -

(i) for the words "the value of any property", the figures and words "1. Subject to the provisions of rules 2 to 7, the value of any property" shall be substituted;

(ii) for the words "the Wealth-tax Act", the words, figures and brackets "the Wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as the Wealth-tax Act)" shall be substituted;

(b) after rule 1 as so numbered, the following rules shall be inserted, namely :-

2. Quoted shares and debentures of companies. - The value of an equity share or a preference share in any company or a debenture of any company which is a quoted share or a quoted debenture shall be taken as the value quoted in respect of such share or debenture on the date on which the gift was made or where there is no such quotation on such date, the quotation on the date closest to such date and immediately preceding such date.

Explanation : The words and expressions used in this rule and rules 3 to 7 but not defined and defined in rule 2 of Schedule III to the Wealth-tax Act shall have the meanings respectively assigned to them in rule 2 of that Schedule.

3. Special provision for quoted shares of companies. - Notwithstanding anything in rule 2, the value of an equity share in any company which is a quoted share may, at the option of the assessee or a company, be taken on the basis of the average of the value quoted on the 31st day of March immediately preceding the assessment year and the values quoted in respect of such share on the said dates in relation to each of the immediately preceding nine assessment years, or where there is no such quotation on any of the aforesaid dates, the quotation on the date closest to the said date and immediately preceding such date :

Provided that where for any reason the value of such share is quoted in relation to lesser number of assessment years than the said nine assessment years, then the value or values so quoted shall be taken into account for the purposes of the aforesaid average :

Provided further that where the assessee opts for the average of the values so quoted, he shall get such values certified by an accountant and attach the certificate to the return of gifts in respect of the relevant assessment year.

Explanation : For the purposes of this rule, "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288 of the Income-tax Act.

4. Unquoted preference shares. - (1) Subject to the provisions of sub-rule (2), the value of an unquoted preference share in any company shall, -

(a) where the preference share is issued before the date on which the gift was made at a rate of dividend of not less than eight per cent., be the paid-up value of such share; and

(b) where the preference share is issued before the said date at a rate of dividend of less than eight per cent., be the adjusted paid-up value of such share.

(2) Where no dividend has been paid in respect of an unquoted preference share by any company continuously for not less than three accounting years ending on the date on

which the gift was made or, in a case where the accounting year of the company does not end on that date, for not less than three continuous accounting years ending on a date immediately before the date on which the gift was made, the paid-up value or, as the case may be, the adjusted paid-up value shall be reduced -

(a) in the case of a non-cumulative preference share, as indicated in the Table below :-

TABLE

Number of accounting years ending on	
the date on which the gift was made or,	
in a case where the accounting year	
does not end on that date, the number	
of accounting years ending on a	Rate of reduction
date immediately preceding the date	
on which the gift was made, for which	
no dividend has been paid	

(1)			(2)
Three years	10%	}	of the paid-up value or the adjusted paid-up value, as the case may be;
Four years	20%	}	
Five years	30%	}	
Six years and above	40%	}	

(b) in the case of a cumulative preference share, by one-half of the rates specified in the aforesaid Table.

Explanation : For the purposes of this rule, "adjusted paid-up value", in relation to a preference share, means an amount which bears to the paid-up value of the preference

share the same proportion as the stipulated rate of dividend [being the rate of dividend on the preference share specified in the terms of issue of such share, and in a case where such dividend is required to be increased under the provisions of section 3 of the Preference Shares (Regulation of Dividends) Act, 1960 (63 of 1960), the rate of dividend as so increased] on such share bears to the rate of eight per cent.

5. Unquoted equity shares in companies other than investment companies. - (1) The value of an unquoted equity share in any company, other than an investment company, shall be determined in the manner set out in sub-rule (2).

(2) The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet; the net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance-sheet; the result multiplied by the paid-up value of each equity share shall be the break-up value of each unquoted equity share, and an amount equal to eighty per cent. of the break-up value so determined shall be the value of the unquoted equity share for the purposes of this Act.

(3) For the purposes of sub-rule (2), -

(a) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely :-

(i) any amount paid as advance tax under the Income-tax Act;

(ii) any amount shown in the balance-sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset;

(b) the following amounts shown as liabilities in the balance-sheet shall not be treated as liabilities, namely :-

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date on which the gift was made at a general body meeting of the company;

(iii) reserves, by whatever name called, other than those set apart towards depreciation;

(iv) credit balance of the profit and loss account;

(v) any amount representing provision for taxation, other than the amount referred to in sub-clause (i) of clause (a), to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

Explanation : For the purposes of this rule, "balance-sheet", in relation to any company, means the balance-sheet of such company (including the Notes annexed thereto and forming part of the accounts) as drawn up on the date on which the gift was made and, where there is no such balance-sheet, the balance-sheet drawn up on a date immediately preceding that date, and, in the absence of both, the balance-sheet drawn up on a date immediately after the date on which the gift was made.

6. Unquoted equity shares in investment companies. - (1) Subject to rule 7, the value of an unquoted equity share in an investment company shall be determined in the manner specified in sub-rule (2).

(2) The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet; the net amount so arrived at shall be divided by the total paid-up equity share capital of the company as

shown in the balance-sheet, and the result multiplied by the paid-up value of each equity share shall be the value of the unquoted equity share in that investment company for the purposes of this Act.

(3) For the purposes of sub-rule (2), the value of an asset disclosed in the balance-sheet of the company shall be taken to be its value determined in accordance with the rules as applicable to that particular asset and, in the absence of any such rule, the value of such asset shall be its value as determined under rule 20 of Schedule III to the Wealth-tax Act.

(4) For the purposes of this rule, -

(a) "balance-sheet" has the same meaning as in rule 5;

(b) the amounts referred to in sub-rule (3) of rule 5 shall not be treated as assets or liabilities.

(5) For the purpose of facilitating the valuation of unquoted equity shares under this rule and rule 7, the company concerned shall have such valuation made by its auditors appointed under section 224 of the Companies Act, 1956 (1 of 1956), and a certificate of the auditors relating to such valuation in the prescribed form shall be furnished to the Assessing Officer and the shareholders of the company; and the valuation made by the auditors shall be taken into account in the assessment of the shareholders of the company.

7. Unquoted equity shares in interlocked companies. - (1) The value of an unquoted equity share in one of the two interlocked companies held by the other interlocked company for the purposes of rule 6 shall be equal to the paid-up value of such share or the value determined under sub-rule (2), whichever is higher.

(2) For the purpose of sub-rule (1), the aggregate value of all the equity shares in an interlocked company shall be arrived at by multiplying the maintainable profits of such company by -

(a) the fraction $100/8.5$, in a case where the gross total income of the company consists, to the extent of not less than 51 per cent. of income chargeable under the head "Income from house property" under the Income-tax Act; or

(b) the fraction $100/10$, in the case of any other interlocked company,

and the resultant amount divided by the number of such equity shares shall be the value of such of an equity share in such company.

(3) The maintainable profits of the company, for the purpose of sub-rule (2), shall be computed in the following manner, namely :-

(a) the book profits of the company for the five accounting years of the company immediately preceding the date on which the gift was made shall first be ascertained;

(b) adjustments shall be made to the book profits for each of the said five years for all non-recurring and extraordinary items of income and expenditure and losses;

(c) adjustments shall be made to the book profits for expenditure which is not of a revenue nature but is debited in the accounts and for receipts which are in the nature of revenue receipts but are not accounted for in the profit and loss account;

(d) any development rebate or investment allowance debited in the books of account shall be added back to the book profits;

(e) the tax liability of the company on the book profits, arrived at after the adjustments at items (a), (b), (c) and (d), shall be deducted from such book profits;

(f) amounts required for paying dividends on preference share or shares with prior rights shall be deducted from such book profits;

(g) the aggregate of the book profits for the five accounting years so arrived at, divided by 5, shall be the maintainable profits of the company.

Explanation : For the purposes of this rule, "interlocked companies" means any two investment companies each of which holds shares in the other company.

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