INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME

1. Mrs.G holds 7% equity shares in B Ltd., where her married sister, Mrs. N also holds 14% equity shares. Mr.G is employed with C Ltd., without holding technical professional qualification. The particulars of their income for the year 2008-2009 are given as follows:

	Income of Mr G Rs	Income of Mrs G Rs
(i) Gross salary from B Ltd.	1,02,000	—
(ii) Dividend from B Ltd.	—	6,000
(iii) Income from house property	90,000	—

Compute taxable income of Mr. G and Mrs. G for the assessment year 2009-2010

Particulars of Income	**Mr. G Rs**	**Mrs. Rs**
Gross salary		1,02,000
Taxable salary to be included in the total income of Mrs G [Sec. 64(1)(ii)]		
Add: Income from house property	90,000	
Add: Income from other sources : Dividends to Mrs G, but exempt under Sec. 10(34)	xxx	
Total income	90,000	1,02,000

Note:

1. In the instant case, Mrs G along with his sister, holds substantial interest in B Ltd., Mr. G does not hold professional qualification. Accordingly, remuneration of Mr.G has been included in the total income of Mrs. G.
2. If the requisite conditions of clubbing are satisfied, clubbing provision will apply even if their application results into lower incidence of tax.

2. Mrs. C, a law graduate, is legal advisor of L Ltd. She gets salary of Rs 1,80,000. Mr. C is holding 20% shares in L Ltd. His income from business, during the previous year 2007-2008 is Rs 4,00,000. Compute their taxable income.

Particulars of income	**MrL Rs**	**Mrs I Rs**
1. Gross salary		1,80,000
2. Business profits	4,00,000	—
Total income	4,00,000	1,80,000

Note: Since Mrs. C holds professional qualification, salary income is assessable in her hands.

3. Mr B holds 5% shares in A Ltd., where his brother and nephew hold 11% and 6% shares, respectively. Mrs B gets commission of Rs 1,00,000 from A Ltd. for canvassing orders. She holds no technical/professional qualification. Mr B earns income of Rs 5,00,000 from sugar business.

Compute their taxable income for the assessment year 2009-10

Computation of Taxable Income for the AY 2009-10

Particulars of income	Mr.B Rs	Mrs.B Rs
Income from sugar business Commission for canvassing orders from Z Ltd.: Income from other sources	2,00,000	90,000
	2,00,000	90,000

Note: In the instant case, Mr B holds 7% and his brother holds only 12% shares in A Ltd. The total of their shareholding is less than 20%. They have no substantial interest.

Therefore, commission income is assessable as income of Mrs B.

4. The shareholding of Mr K and Mrs K in S Ltd, is given as follows:

(i)	Shareholding of K	7%
(ii)	Shareholding of Mrs K	9%
(iii)	Shareholding of M, brother of K	8%
(iv)	Shareholding of F, father of Mrs K	5%

Mr K and Mrs K are employed with S Ltd. None of them hold technical qualification. Mr K gets salary @ Rs 10,000 p.m and Mrs K gets @ Rs 12,000 p.m.

Income from other sources:	Rs
Mr K	80,000
Mrs K	1,00,000

Compute taxable income for the assessment year 2009-2010

Computation of taxable income for the AY 2009-2010

	Particulars	**Mr.K**	**Mrs.K**
1.	Gross Salary	1,20,000	1,44,000
	Salary income of Mr.K to be included in the total income of Mrs.K as her income from other sources is greater and both of them have substantial interest alongwith their relative in s Ltd.		1,20,000
2.	Income from other sources	80,000	1,00,000
		80,000	3,64,000

5. Mr A gifts Rs 4,00,000 to Mrs A 1st February 2009. Mrs A starts crockery business and invests Rs 1,00,000 from her account also. She earns profit of Rs 60,000 during the period ending on 31 March 2009. How would you tax the business profits?

Answer: Proportionate profits, in proportion the gifted amount from the spouse on the first day of the previous year bears to the total investment in the business on the first day of the previous year, will be taxable in the income of the transferor spouse:

As Mrs A has started the new business, the first previous year will begin on the date of setting up and will end on 31 March, immediately following. Thus, the first previous year will consist a period of 2 months from 1 February 2009, to 31 March 2009. Therefore, proportionate profit of Rs 50,000, computed as below, will be included in the income of Mr A:

$$\frac{4,00,000}{5,00,000} \cdot 60,000 = 48,000$$

6. Mr A gifts Rs 3,00,000 to Mrs A on 1st February 2009. Mrs A invests the same in the existing crockery business where she has already invested Rs 5,00,000. Mrs A earns Rs 3,00,000 from the business during the year 2008-2009 ending on 31 March 2009 How would you assess the profits?

Answer: The previous year of the existing business is April to March. On the first day of the previous year (i.e. 1 April 2008), total investment has come from Mrs A account. As the proportion of the gifted amount from spouse on 1 April 2008 to the total investment in business on the same day is **NIL**, the whole of the profits of Rs 3,00,000 for the year 2008-2009 will be included in the total income of Mrs A.

From the previous year 2009-2010, 60% [= 3,00,000/5,00,000 × 100] of the business profits will be included in the total income of Mr A.

7. Mrs Z is the owner of the business units A and B. A unit has been started with capital contribution from Mr Z and B unit has been started out of capital contribution from Mrs.Z. The particulars of their income for the previous year 2008-2009 are as follows:

Particulars	Mrs Z	Mr Z
(i) Income from A unit	—	(–) 6,00,000
(ii) Income from B unit	4,00,000	—
(iii) Income from house property		2,50,000

How would you assess them for the assessment year 2009-2010?

Answer:

(a) Mrs Z is assessable on the profits from B unit. She cannot set-off the loss from A unit against the profits of B unit. Thus, she would be assessed on Rs 4,00,000.

(b) The loss from A unit will be included in the total income of Mr Z in view of Sec. 64(1)(iv). "Income" includes "loss" also. Mr Z is entitled to set-off business loss of A's unit against income from house property. Thus, loss of Rs 3,50,000 would be carried forward but could be set-off only against business profits.

8. Mr Goutam, out of his own funds, had taken a FDR for Rs 1,00,000 bearing interest @ 10% p.a. payable half-yearly in the name of his wife Latika. The interest earned for the year 2008-2009 of Rs 10,000, was invested by Mrs Latika in the business of packed spices which resulted in a net profit of Rs 55,000 for the year ended 31st March 2009. How shall the interest on FDR and income from business be taxed for the Assessment year 2009-2010?

Answer: Where an individual transfers an asset (excluding house property), directly or indirectly to his/her spouse, otherwise than for adequate consideration, or in connection with an agreement to live apart, income from such asset is included in the total income of such individual [Sec. 64(1)(iv)].

Accordingly, interest on FDR, accruing to wife, is included in the total income of her husband. However, business profits cannot be clubbed with total income of husband. Clubbing applies only to the income from assets transferred without adequate consideration. It does not apply to the income from accretion of the transferred assets. Hence, business profit is taxable as the income of wife.

9. Sawant is a fashion designer having lucrative business. His wife is a model. Sawant pays her a monthly salary of Rs 20,000. The Assessing Officer while admitting that the salary is an admissible deduction, in computing the total income of Sawant had applied the provisions of Sec. 64(1) and had clubbed the income (salary) of his wife in Sawant's hands.

Discuss the correctness of the action of the Assessing Officer.

Answer: Where an individual has got substantial interest in a concern and his spouse derives any income from such concern by way of salary, commission, fees or by any other mode, such income is clubbed with the total income of such individual [Sec. 64(1)(ii)].

However, clubbing provision does not apply if the earning spouse holds technical or professional qualification and the income is solely attributable to the application of such knowledge and experience.

Salary earned by wife as model from the concern where her husband holds substantial interest is assessable as her income.

10. Discuss whether the loss could be set-off in the following case:

Smt. Vatika carried on business with the gifted funds of her husband Mr.Dabuu. For the previous year ending 31.3.2009,Vatika incurred loss of Rs 5 lakh which loss Dabbu wants to set-off from his taxable income.

Answer: Funds for business were gifted by husband to wife*.* Accordingly, income from business should be clubbed with the income of husband [Sec. 64(1)(iv)].

"Income" includes "loss" also. Hence, husband is entitled to set-off the business loss of wife against his taxable income.

11. Karan held 12% shares in a private limited company. He gifted all the shares to his wife Neha on 1 October 2008. On 1 November 2007, Neha obtained loan of Rs 5,00,000 from the company, when the company's accumulated profit was Rs 1,20,000.

What are the income tax implications of the above transactions?

Answer: Where a closely held company, other than a money-lending company, grants any loan or advance to a shareholder, holding 10% or more equity shares, such loan or advance to the extent of accumulated profits (excluding capitalised profits) up to the date of distribution, is deemed to be dividend [Sec. 2(22)(e)]. Thus, the loan of Rs 5,00,000, taken by wife, is deemed to be dividend.

As the shares were transferred by husband to wife otherwise than for adequate consideration or in an agreement to live apart, dividend income from such shares will be included in the total income of her husband [Sec. 64(1)(iv)].

12. Ayan, an individual engaged in the business of finance, advances Rs 10 lakh to his HUF on interest at 14% p.a., which is the prevailing market rate. The HUF invests the amount in its business and earns profit of Rs 5 lakh from this money. Can the assessing officer add a sum of Rs 3,60,000 (that is, Rs 5,00,000-Rs 1,40,000) as income of Ayan under Sec. 64(2) of the Income-tax Act? Will the position remain the same, if Ayan does not charge any interest?

Answer: Section 64(2) is applicable only where an individual member of HUF converts his property into the property of HUF or throws it into the common stock of the HUF without adequate consideration. In this case, Ayan does not transfer money to his HUF but only lends an amount of Rs 10 lakh to his HUF at an interest of 14%, which is the prevailing market rate. This is a transaction of loan, which pre-supposes re-payment. Ayan continues to be the owner of the amount lent. Thus, there is no transfer of property from Ayan to the HUF. Therefore, the Assessing Officer cannot add the profit arising to HUF in the total income of Ayan by invoking Sec. 64(2).

Even if no interest is charged by Ayan, the nature of transaction does not change. It still remains a loan transaction. Therefore, the position will not change, even if Ayan does not charge any interest.