Income of other persons included in assessee's total income

Section 60 – Transfer of income without transfer of assets

Conditions

1	2	3	4	5
Taxpayer owns an asset	The ownership of asset is not transferred by him	The income from the asset is transferred to any person under a settlement, trust, covenant, agreement or arrangement	Transfer may be revocable or may not be revocable	Transfer may be affected at any time

Section 61 - Meaning of revocable transfer

Situations

1	2	3	4	5
If an asset is transferred under a trust and it is revocable during lifetime of the beneficiary	If an asset is transferred to a person and it is revocable during the lifetime of transferee	If an asset is transferred before 01-04-1961 and it is revocable within 6 years	If the transfer contains any provision to re-transfer asset	If the transferor has any right to reassume power over asset

Revocable transfer

If there is provision to reassume power, the transfer will be revocable; actual exercise of power is not necessary	Where the assessee can at any time reassume power over the assets or income by just cancelling or altering the terms of the deed, trust was revocable	Where no absolute right is given to transferee and asset can revert to transferor in certain circumstances, transfer is revocable

Section 64 (1) (ii) – When an individual is assessable in respect of remuneration of spouse

Taxpayer is a individual	He/she has a substantial interest in a concern	Spouse the taxpayer is employed in concern	Spouse is employed in concern without any technical or professional experience	Both husband and wife have a substantial interest in concern	Both are in receipt of remuneration	Remuneration is received without any technical and professional qualification	Remuneration will be included in total income of husband or wife whole total income excluding such remuneration is greater

Section 64 (1) (iv) – When an individual is assessable in respect of income from assets transferred to spouse

The taxpayer is an individual	He/she has transferred an asset (other than a House property)	The asset is transferred to his/her spouse and relationship of husband and wife should subsist both at the time of transfer of assets and at the time when income is accrued	The transfer may be direct or indirect	The asset is transferred otherwise than 1. For adequate consideration 2. In connection with an agreement to live apart	The asset may be held by transferee – spouse in the same form or in a different form

Capital gain on sale of transferred assets – If an individual transfers an asset without consideration to his wife who sells it at a profit, capital gain arising to wife on sale of asset is chargeable to tax in hands of transferor

Appropriation when transferred asset is invested in a business (Steps 1 to 4)

1	Find out total investment of transferred spouse in the business on first day of previous year
2	Find out amount invested by transferee –spouse out of assets transferred to her without adequate consideration by her husband on the first day of previous year in said business
3	Find out the taxable income of the transferee-spouse from the business. If the transferee-spouse becomes partner of a firm by investing asset then only interest income from firm is considered under step 3. Share of profit from the firm is not considered under step 3, as it is exempt under section 10(2A)
4	The amount which shall be included in the hands of transferor is determined as follows – step 3 * step 2/ step 1.

When transferred asset is invested in a firm – Rule is also applicable in case transferred asset is invested by spouse to become partner in a firm. From 1993-94, clubbing provisions are not attracted in respect of share of profit from a firm where the transferred assets are invested by way of contribution of capital. Proportionate interest on capital will continue to be clubbed if transferred asset is invested in a firm.

No Clubbing

If assets are transferred before marriage	If assets are transferred for adequate consideration	If assets are transferred in connection with an agreement to live apart	If on the date of accrual of income, transferee is not spouse of the transferor	If property is acquired by spouse out of pin money	If property is transferred by Karta of HUF, gifting copercenary property to his wife

Section 64 (1) (vi) – When individual is assessable in respect of income from assets transferred to son's wife

The taxpayer is an Individual	He/she has transferred an asset after 31-05-1973	The asset is transferred to his/her son's wife	Transfer may be direct or indirect	The asset is transferred otherwise than for adequate consideration	The asset may be held by transferee in the same form or in a different form

Section 64 (1) (vii) – When individual is assessable in respect of income from assets transferred to a person for the benefit of spouse

The taxpayer is an Individual	He/she has transferred an asset	The asset is transferred to a person or an association of persons	Transfer may be direct or indirect	The asset is transferred otherwise than for adequate consideration	It is transferred for immediate or for deferred benefit of his/her spouse

Section 64 (1) (vii) – When individual is assessable in respect of income from assets transferred to a person for the benefit of spouse

The taxpayer is an Individual	He/she has transferred an asset after 31-05-1973	The asset is transferred to a person or an association of persons	Transfer may be direct or indirect	The asset is transferred otherwise than for adequate consideration	It is transferred for immediate or for deferred benefit of his/her son's wife

Section 64 (1A) – Income of minor child – Rs. 1500 per child is exempt under section 10(32)

Income of minor will be included in income of that parent whose total income is greater	Where marriage is not subsist, income of minor will be included in income of parents who maintains minor child	If no parents alive, no clubbing is possible.

No clubbing of minor child income

Income of minor child suffering from any disability of nature specified under section 80U	Income of minor child on account of any manual work	Income of minor child on account of any activity involving application of his skill, talent or specialized knowledge and experience

Section 64(2) - Conversion of self-acquired property into joint family property and subsequent partition

1	Where an individual converts his self-acquired property into property belonging to family, it is done by impressing such property with character of joint family property or throwing such property into common stock of the family.
2	When such an individual transfers his self-acquired property, directly or indirectly to the family otherwise than for adequate consideration

Clubbing of income before partition	Income is chargeable to tax in the hands of transferor
Clubbing of income after partition	If property is converted or transferred by an individual is subsequently transferred amongst members of family, income derived from such converted property as received by spouse is included in income of transferor.
Clubbing of negative amount covered	Head of income under which clubbed income will be included

Tax planning tips

Spouse may be employed in a concern which is inter related with concern in which individual has substantial interest	Income of saving out of pin money is not clubbed and also income from property to live apart is not clubbed	Exchange of asset between one spouse and another is outside the clubbing provisions if such exchange of asset is for adequate consideration	Provisions of section 64(1)(vi) are not attracted if property is transferred by an individual to his son-in law or daughter-in-law of his brother	If trust is created for benefit of minor child and income during minority of child is being accumulated and added to corpus and income from corpus given to child after his attaining majority, the clubbing will not attracted.	If a trust is created by a male member to settle his separate property for the benefit of his HUF, with a stipulation that income shall accrue for a specified period and corpus going to trust, clubbing will not be attracted.

If gifts are made by HUF to wife, minor child or daughter in law of any of its male or female members, no clubbing is possible	If Individual transfer property with adequate consideration to son's wife, income from the property is not clubbed	Income arising from accretion of such transferred assets or from accumulated income cannot be clubbed in the hands of transferor	A loan is not a transfer for the purpose of section 64	Where the assessee withdraw funds lying in capital account of firm in which he is a partner and advance the same to HUF which deposits funds back into firm, loan by the assessee to his HUF cannot be treated as transfer and no clubbing.