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CLUBBING OF INCOME

Section		
60	**Transfer of Income without transfer of assets.**	- Transfer can be revocable or irrevocable. - Income shall be clubbed in the hands of transferor.
61	**Revocable transfer of assets**	- Income arising from the assets shall be clubbed in the hands of the transferor.
62	**Irrevocable transfer of assets**	- Asset is transferred to any person - **not revocable during the life time** of the beneficiary or transferee, - Income arising from the assets shall be taxable in the hands of the transferee. - Provided transferor derives no benefit from such income or assets. **<u>Exception:</u>** - Income shall be clubbed in the income of the transferor, **as and when the power to revoke the transfer arises**. - Actual revocation is not relevant.
63	**"Transfer" and "Revocable Transfer" Defined**	Transfer shall be **deemed to be revocable** if – - it contains **provision of re-transfer**, or - it gives the transferor a **right to re-assume power**, **during the lifetime of the beneficiary/transferee.**
64(1)(ii)	**Income of individual to include income of Spouse**	- In the income of **Individual** there shall be included, - income of **spouse** by way of salary, commission, fees or any form of remuneration, - in cash or in kind, - from a concern in which the individual has **substantial interest** (20% voting power/share in profit at any time during the previous year), **<u>Exception:</u>** - No clubbing if spouse possesses technical or professional qualification, and - income is attributable to his or her technical knowledge. **<u>Note:</u>** - In case **both have substantial interest**, remuneration will be clubbed in the hands of the individual whose **income** excluding such remuneration is **greater.** - Once included in hand of either person can not be changed in subsequent year, unless A.O. is satisfied.

64(1)(iv)	**Income of individual to include income of Spouse**	- Assets transferred by one spouse to another spouse without adequate consideration. (Except where transfer is in connection with an agreement to live apart) - Income from such asset shall be clubbed in the hands of transferor. - The relation ship must exist both at the time of transfer of asset and at the time when income accrues. - **Section 64(1)(iv) applies to all assets except House Property.** - If House property is transferred to spouse otherwise than for adequate consideration, then section 64(1)(iv) shall not apply but section 27 shall apply.
64(1)(vi)	**Income of individual to include income of son's wife**	- Assets transferred by an individual to son's wife without adequate consideration. - Income from such asset shall be clubbed in the hands of transferor. - The relation ship must exist both at the time of transfer of asset and at the time when income accrues.
64(1)(vii)	**Income of individual to include income of AOP to which assets are transferred for the benefit of spouse**	- Asset transferred to a person or an AOP - without adequate consideration - for the benefit of his/her spouse.
64(1)(viii)	**Income of individual to include income of AOP to which assets are transferred for the benefit of son's wife**	- Asset transferred to a person or an AOP - without adequate consideration - for the benefit of his son's wife.
64(1A)	**Income of Minor Child**	- Income of minor child including minor married daughter. **<u>Exceptions:</u>** - Minor child suffering from disability specified under section 80U of the Income-tax Act. - Income earned by minor child, on account of manual work or activity involving application of his skill, talent, specialized knowledge and experience. **<u>Notes:</u>** 1. The income of the minor child shall be included, - - where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includible under this sub-section) is greater, or - where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year. 2. Once included in hand of either parent, can not be changed in subsequent year, unless A.O. is satisfied. 3. If none of the parent is alive, minor shall file the return through legal guardian.

		4. If the income which was not clubbed is invested, and income is earned thereon, such investment income shall be clubbed. 5. If the minor child becomes major during the previous year, then the incomes which have accrued to him till the date he attains majority shall be clubbed.
64(2)	**Conversion into HUF Property**	- Where separate property of the individual - converted by the individual into property belonging to the family - otherwise than for adequate consideration - income derived from the converted property shall be deemed to be the income of the individual. - And where the converted property has been the subject-matter of a partition, the income derived from such converted property as is received by the spouse on partition shall be clubbed with the income of the individual.

GENERAL LAW APPLICABLE TO CLUBBING OF INCOME

1. The clubbing shall continue to apply even if the transferee has converted the transferred assets to some other form.

2. Income shall include loss also. Therefore, losses are also to be clubbed.

3. If the transferee sells the transferred assets, then capital gains shall also be clubbed with the income of the transferor.

4. Income arising out of income earned on transferred assets has not to be clubbed.

5. The Supreme Court in the case of J.H. Gotla held that the clubbed income shall be retained under the same head in which it is earned. Therefore, business income of a minor child shall be clubbed in the hands of the parent under the head "Profits and gains of a Business or Profession". The business losses of the parent can be set off against such income.

6. While clubbing the income, the deductions available under the five heads of income shall be allowed and the income after such deductions shall be clubbed.

7. Clubbing will take place even if the assets are indirectly transferred or transferred through cross transfers.

SECTION 65: LIABILITY OF THE TRANSFEREE IN RESPECT OF CLUBBED INCOME

Where, by reason of the provisions contained in section 60 to 64 or section 27, the income from any asset is to be clubbed with the income of the transferor, then the transferee shall on the service of a notice of demand by the Assessing Officer, shall be liable to pay that portion of the tax levied on the transferor which is attributable to the income so clubbed.

SECTION 27: “OWNER OF HOUSE PROPERTY” DEFINED

Section 27 defines the "owner of house property" for the purposes of section 22 to 26 as under:

(a) an **individual who transfer any house property to his/her spouse otherwise than for adequate consideration or to a minor child** not being a minor married daughter **otherwise than for adequate consideration,** shall be deemed to be the owner of the house property so transferred. (This shall not apply where house is transferred in connection with an agreement to live apart).

(a) the **holder of impartible estate** shall be deemed to be the owner of the properties comprised in the estate.

(c) a **member of the cooperative society, company or other AOP to whom building is allotted or leased** under the house building scheme of the society, company or AOP shall be deemed to be the owner of such building.

(d) any person who is allowed to take possession of any building in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, shall be deemed to be the owner of such building.

(e) a person who acquires any right (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in respect of any building by virtue of a transaction referred to in section 269UA(f) of the Income Tax Act shall be deemed to be the owner of such building.

Note: As per **section 10(32)** any income includible in the total income of the assessee **under section 64(1A)** shall be exempt from tax to the extent that such income does not exceed Rs.1,500 in respect of each minor child whose income is so includible.

LATEST IN JUDICIARY

Om Dutt v. CIT [2005] 144 Taxman 824/ 277 ITR 63 (Punj. & Har.)

Where the daughter- in- law of existing partners were inducted in firm and they invested like amounts out of cross gifts made by existing partners to them, gifts made by the existing partners being part of same transactions, section 64(1)(vi) was clearly applicable.