

Chapter 8 - Clubbing of Income / Income Of Other Persons Included In Assessee's Total Income

Income transferred without transfer of assets Section 60

If a person transfers income to another person, without transfer of the asset from which the income arises, then such income shall be taxable in the hands of transferor.

- Mr. N transferred his interest income on FD to Mr. Sharang without transferring the FD. Interest shall be taxable in the hands of N
- Mr. X is owner of a house property from which he is getting a rent of Rs. 10,000 per month. After sometime he transferred his right to receive rent to his wife. Discuss the tax implications.
- Mr. Vatsan has transferred, through a duly registered document, the income arising from a godown to his son, without transferring the godown. In whose hands will the rental income from godown be charged?

Revocable transfer of assets Section 61

- Revocable transfer – A transfer is revocable under the following circumstances
 - If whole or any part of income or assets can be re-transferred to transferor.
 - If the transferor can re-assume power over the whole or any part of income or assets.
- If there is revocable transfer of an asset by one person to another, then Income from such assets shall be taxable in the hands of the transferor.

Lifetime transfer is NOT a revocable transfer

If the asset will come back after the death of the transferee then income shall not be clubbed in the hands of transfer till the death of the transferee. In this case actual revocation is irrelevant.

- Mr. A transferred a House property to his friend Mr. S with the condition that House property can be taken back by him anytime. In case, clubbing provision shall be applicable.
- Even if property is transferred for some specific time, for example 7 years, in that case also clubbing provisions shall be applicable. If transferred for lifetime no clubbing shall be there.
- Mr. Saurabh Arora has transferred one asset to Mr. Nishant Tandon with the condition that the asset shall be retained by Mr. Nishant Tandon as long as he is alive and after that the asset shall be taken back by Mr. Saurabh Arora. In this case, clubbing provision shall not apply. It will be considered as irrevocable transfer.

Remuneration of spouse Section 64(1)(ii)

Spouse having Substantial Interest in the concern then remuneration shall be clubbed.

If the spouse of an individual is receiving **salary, commission, fees or any other remuneration** from any concern in which the individual is having substantial interest then such salary etc. shall be included in the income of the individual.

No clubbing

- If salary etc. of spouse which is due to application of technical or professional Knowledge or experience shall not be clubbed
- Technical or professional qualification shall include not only degree or membership but also any experience or expertise or any natural talent.

Both having SI and both are receiving remuneration clubbing in the hands of Spouse with greater income.

- If husband and wife both have substantial interest in the concern and
- Both are receiving remuneration from the concern,

- Then the remuneration of both shall be clubbed in the hands of that spouse whose total income is greater, before clubbing such income.
- Substantial interest = 20% (spouse + relatives).
- A person is said to have substantial interest in any concern if he is the owner of at least 20% voting power/profits of the concern. For this ownership of his relatives shall also be included.
 - Relative means the husband, wife, brother or sister or any lineal ascendant or descendant of the individual. (S,B,S,LA,LD)
- If any person has substantial interest in the holding company, but the spouse is employed in the subsidiary company, in that case clubbing provision shall not apply.

X is a 50% partner in XY and Co., a partnership firm, from which his wife Mrs. X is earning Rs. 15,000 p.m. The Total Income of X (before clubbing) is Rs. 2,60,000 while the Total Income of Mrs. X (exclusive of such salary), is Rs. 6,00,000.

The clubbing provisions will be applicable and Total Income of X and Mrs. X will be determined as under

Particulars	Mr. X	Mrs. X
Other Income	2,60,000	6,00,000
Salary income of Mrs. X to be clubbed in the hands of Mr. X (1,80,000 - 50,000)	1,30,000	-
Total Income	4,40,000	6,00,000

It may be noted the clubbing in the above case is mandatory, even if such clubbing in some case results into benefit to the assessee and loss to revenue.

Income from assets transferred to spouse Section 64(1)(iv)

- Any income arising from any asset (other than house property) transferred to spouse for inadequate consideration shall be taxable in the hands of the transferor.
- Capital gains are also taxable in the hands of the transferor.
- Exceptions - However, clubbing shall not be done if:
 - Asset is sold for adequate consideration (natural love and affection does not constitute adequate consideration) or
 - If the relationship of husband and wife does not exist either at the time of transfer or at the time of accrual of income.
 - Transfer is under an agreement to live apart.
 - If any property is acquired by the wife out of an allowance given by her husband for her personal expenses.
 - Live-in relationships do not constitute marriage.

Asset Transferred invested in business

- Income generating out of the assets invested in business which were transferred by the spouse shall be clubbed in the hands of the transferor. For calculating the income which has to be clubbed one has to check the value of assets transferred and invested in business as **on 1st day of the previous year for which income is to be clubbed.**

Mr. Gaurav Goel has gifted Rs. 5,00,000 to his wife Mrs. Shruti Goel on the first day of the previous year. She invested it in the proprietary business on the same day and there were profits of Rs. 2,00,000. In this case, the entire income of Rs. 2,00,000 shall be clubbed in the income of Mr. Gaurav Goel.

- For calculating the amount to be clubbed we have to check investment made in the business as on the first day of the previous year.

For example, there is an existing business and as on 1/4/20XX total amount invested in business in Rs. 10,00,000 the entire amount is invested by the wife herself her husband gave him Rs. 4,00,000 on 1/08/20 XX , now the total investment is Rs. 14,00,000. The profit for the year XX - YY is Rs. 2,50,000.

- In this no clubbing will be done because investment on the 1st day of the previous year out the amount given by the husband is NIL.
- Now as on 01/04/20YY total investment in the business is Rs. 16,50,000 (Rs. 10 lakh wife, Rs. 4 Lakh Husband and Rs. 2.5 lakh profit)
- In this clubbing provision shall apply income which is proportionate to Rs. 4,00,000 will be clubbed in the hands of the husband.

Income from assets transferred to son's wife without adequate consideration

- Any income arising from any asset transferred to the son's wife for inadequate consideration shall be taxable in the hands of the transferor.
- Indirect transfer to daughter in law
 - Income from assets transferred to a person for the benefit of son's wife shall be taxable in the hands of the transferor.

Income of the Minor Child to clubbed with income of parent with higher income

Income of a minor child is clubbed in hands of the parent whose income is higher before clubbing minor's income
Exception: In the following 3 cases minor's income is taxable in the hands of minor only.

1. Income is due to manual work.
2. Income is due to skill & talent.
3. Minor child suffering from disability.

Notes

- If the marriage of mother, father doesn't subsist, in that case, income shall be clubbed in the income of mother or father whosoever maintains the minor child.
- Once clubbing of a minor's income is done with that of one parent, it will continue to be clubbed with that parent only, in subsequent years. The Assessing Officer, may, however, club the minor's income with that of the other parent, only if he is satisfied that it is necessary to do so after giving an opportunity of being heard to concerned persons.
- Minor includes adopted, step child and minor married daughter.
- If the minor attains majority during the year then income till the date of majority shall be clubbed in the hands of the parents.

Exemption to parent – Section 10(32)

If the income of the child is clubbed in the income of the parent, the parent shall be entitled to an exemption of maximum Rs 1,500 in respect of each minor child. **Exemption under section 10(32) would be available to the parent only if he/she exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).**

Cross Transfers

In the case of cross transfers also (e.g., A making gift of Rs. 50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth Rs. 50,000 owned by him),

- the income from the assets transferred would be assessed in the hands of the deemed transferor
- if the transfers are so intimately connected
- as to form part of a single transaction,
- and each transfer constitutes consideration for the other.

Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the provisions of this section, showing that such transfers constituted consideration for each other.

Income of Mrs B will be taxed in the hands of Mr. B and Income of A's Minor son will be taxable in the hands of Mr. A.

Clubbing provisions will be applicable only to the extent of income on the matching amount of cross gifts.

Suppose A gifted ₹ 10,00,000 to his brother's (Mr B) wife. Mr. B gifted ₹ 7,00,000 to A's Wife
Let us say, both earned 10%p.a. Interest on the said amounts
Mrs. A got 10% of ₹7,00,000 = ₹70,000
Mrs B got 10% of ₹10,00,000 = ₹1,00,000
Clubbing will be done for ₹70,000 only

Income from self-acquired property converted into joint-family property - Section 64(2)

At the time of conversion

If an individual, who is a member of the Hindu undivided family, converts his self-acquired property as the property of the HUF, then income derived by HUF from such property shall be included in the income of transferor.

After Partition

If partition in the family takes place then income from any asset received by the spouse and minor child shall be clubbed in the hands of the transferor.

Notes

Any income arising from the accumulated income of such property is not includible in the income of the transferor. Income on original transfer only has to be clubbed.

Example: X transfers a sum of 1000000 to his wife without any consideration. Mrs. X deposits the money in bank. Interest received from the bank on such deposit is taxable in the hands of X. if however, Mrs. X purchases a house from the accumulated interest income; rental income received by Mrs. X is taxable in her hands and won't be clubbed with income of X.

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

Mr. X gifted Debentures to Mrs. X worth Rs. 1,00,000. Mrs. X converted these debentures into shares and received dividend on the same in this case dividend shall be clubbed in the hands of Mr. X.

- Under the above provisions, if income of one person is to be clubbed in the hands of another person, then in the case of loss, the loss shall also be clubbed.
- Under the above provisions, if income of one person is clubbed in the hands of transferor, then tax on income from such assets can also be demanded from the transferee.
- Clubbing is compulsory even if it results in losses.