

Chapter Name :- Clubbing of Income

Sections to be covered in this Chapter :-

- Section 60 :- Transfer of income without transfer of assets
- Section 61 :- Revocable transfer of assets
- Section 62 :- Exceptions to Section 61
- Section 63 :- Definition of revocable transfer
- Section 64(1)(ii) :- Remuneration to Spouse from a concern where assessee has substantial interest but the spouse is not eligible to get such remuneration
- Section 64(1)(iv) :- Income earned by spouse from an asset transferred to him/her by the assessee without adequate consideration or without an agreement to live apart
- Section 64(1)(vi) :- Income earned by son's wife from an asset transferred to her by the assessee without adequate consideration
- Section 64(1)(vii)* & Section 64(1)(viii)* :- Income from an asset transferred to any person without adequate consideration for the benefit of spouse* or for the benefit of son's wife*
- Section 64(1A) :- Income earned by a minor child
- Section 64(2) :- Conversion of self acquired property of a member into the property of HUF
- Section 65 :- liability of the transferee in case of clubbed income

Income of Other Persons to be includible in Assessee's Total Income i.e. clubbing of Income:-

⇓
(Section 60 to Section 65)
⇓

* Under the Income Tax Act, 1961; an assessee is generally taxed in respect of his own income. However, there are certain cases where the assessee has to pay tax on the incomes earned by other persons also and the provisions regarding this are known as clubbing provisions.

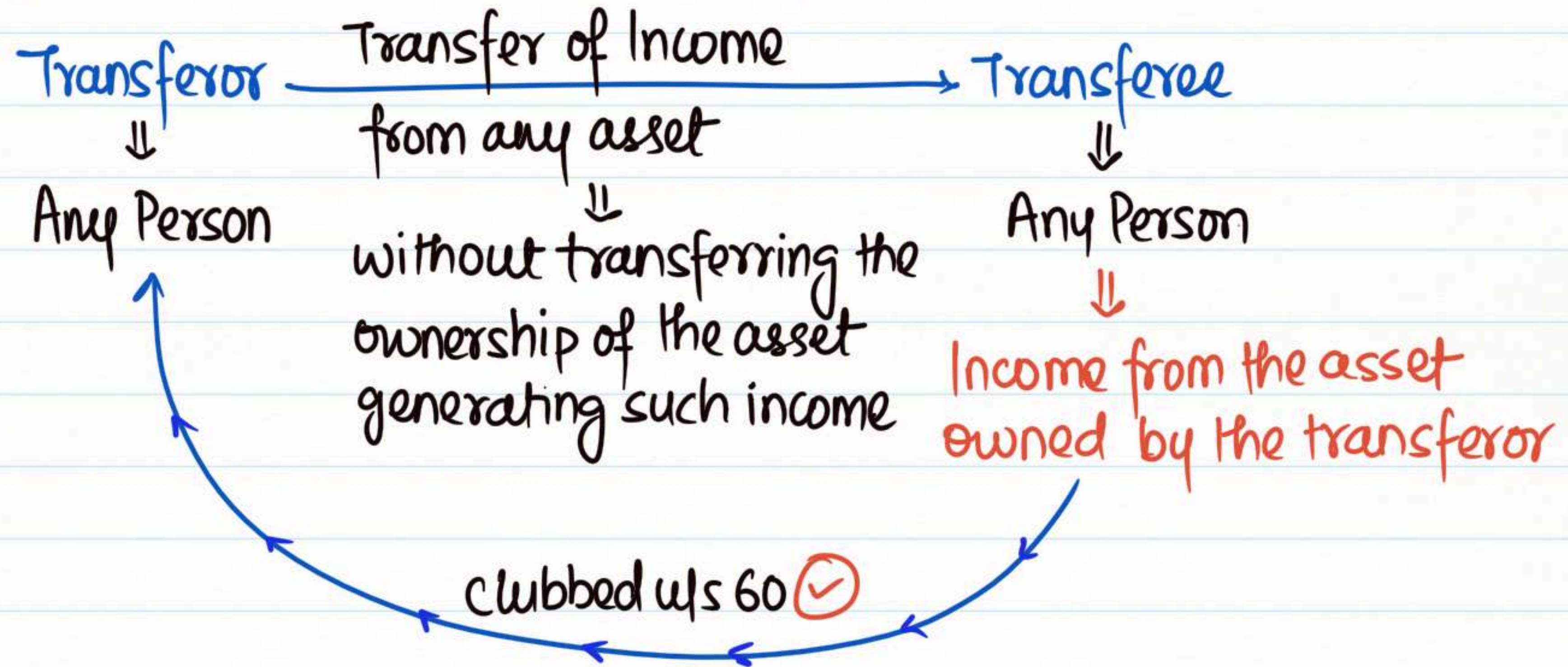
* The provisions of clubbing are enacted to counteract the tendency on the part of tax-payers to dispose-off their properties or shift their incomes in such a way that their tax liability can be avoided or reduced.

⇓

* For example; in case of individuals, as the income increases, applicable tax rate also increases (because rates of tax for them are progressive due to slab system of determining tax rates). Hence, some individuals in higher tax brackets may divert their incomes to their spouse, minor child etc. who either don't earn any income or if at all earning, are covered in lower tax brackets. This is done to minimize the tax burden & to avoid the payment of tax. Hence, in order to prevent such tax avoidance tactics & to assure proper recovery of taxes, clubbing provisions are introduced.

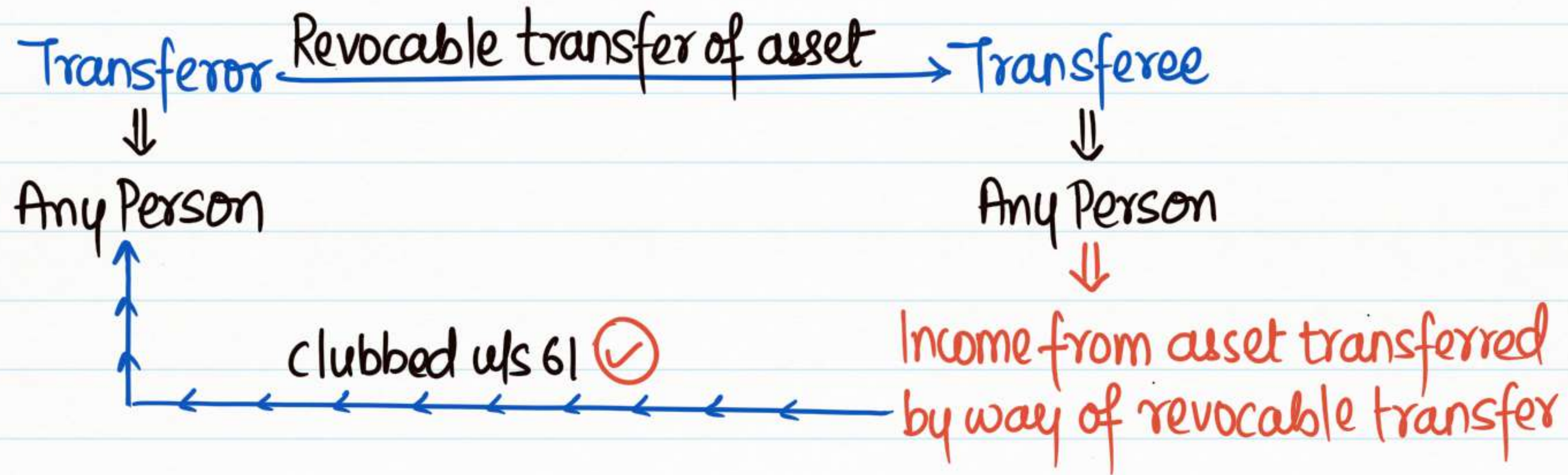
Hence, the income which arises to the transferee spouse or minor child etc. shall be included (i.e. clubbed) in the total income of the assessee i.e. transferor or the person who has diverted his income.

Section 60:- Transfer of Income without transfer of asset :-



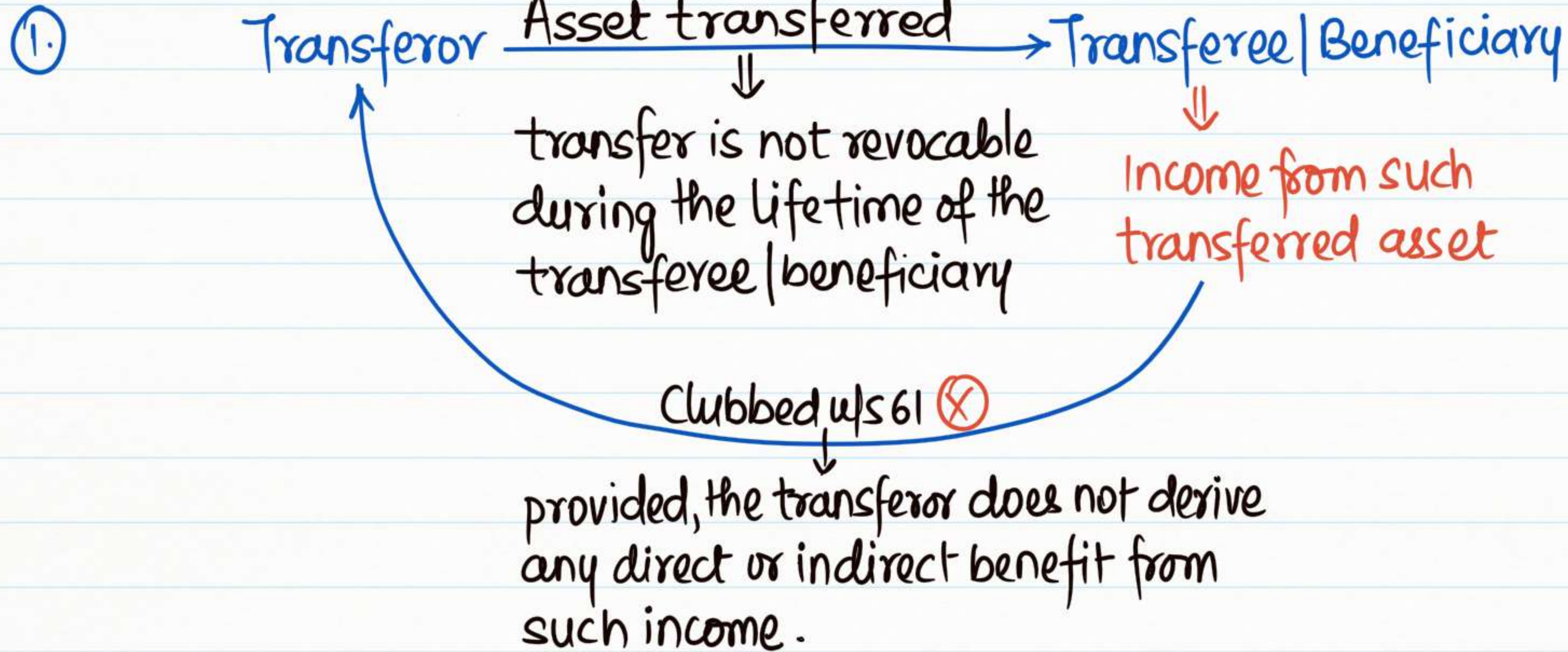
Example :- Mr. X confers the right to receive the rent in respect of his property on his wife Mrs. X, without transferring the ownership of such property to her. In this case, the rent received by Mrs. X shall be clubbed in the hands of Mr. X as per section 60.

Section 61 :- Revocable transfer of assets :-

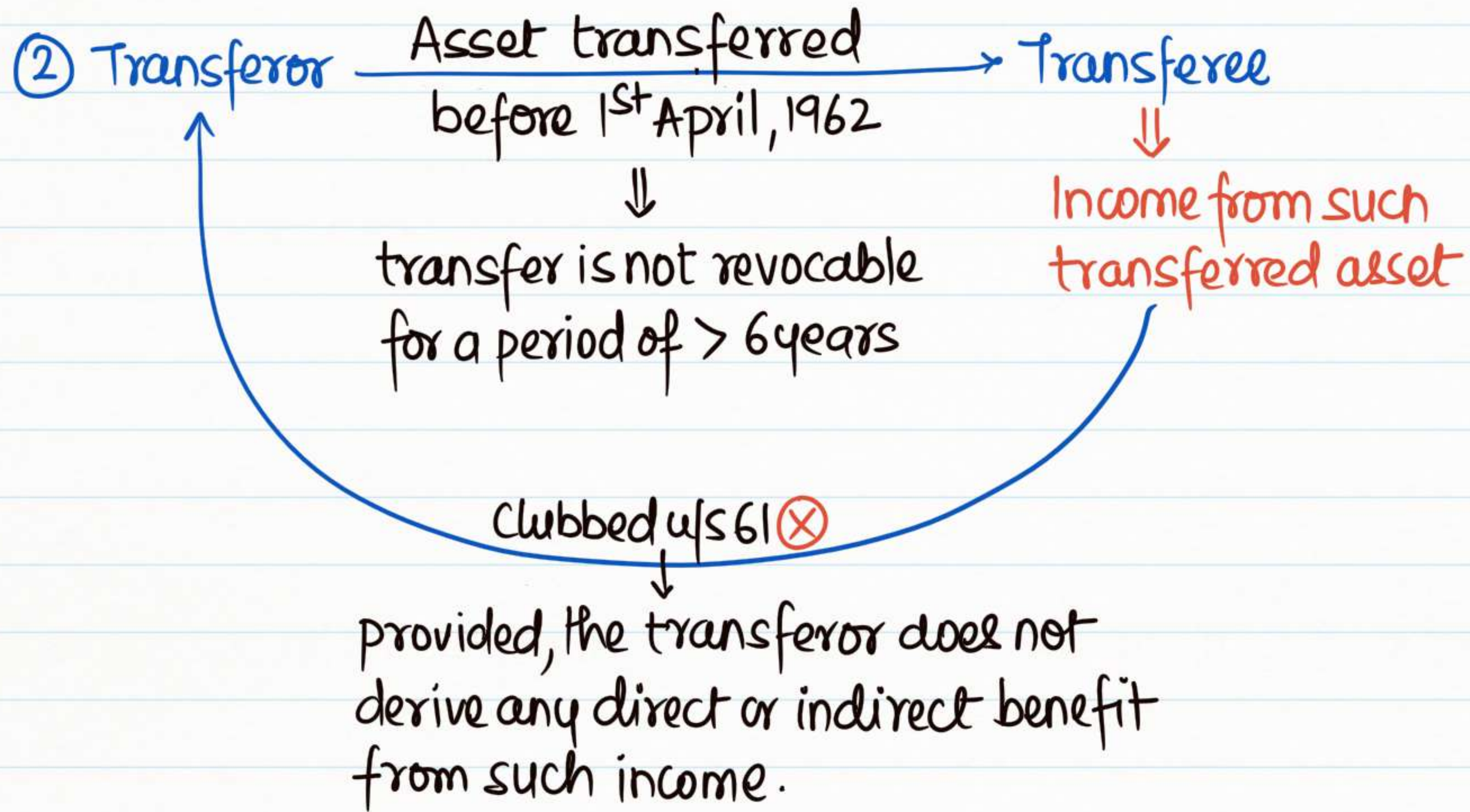


Note :- Clubbing provisions of section 61 shall be attracted even if the part of the income from transferred asset is applied for the benefit of the transferor. Once, the transfer is revocable, the entire income of the transferred asset shall be liable to be clubbed in the total income of the transferor.

Section 62 :- Exceptions to Section 61 :-



Note :- If the transferor derives any direct or indirect benefit from such income; then, such income shall be liable to be clubbed in his total even though the transfer was not revocable during the life time of the transferee / beneficiary.



Important Note :-

In point no. 1 & 2 above; as and when the power to revoke the transfer arises to the transferor; the income arising by virtue of such transferred asset shall be included in the total income of the transferor.

Section 63:- Definition of revocable transfer :-

Transferor $\xrightarrow{\text{Transfer of Asset}}$ Transferee

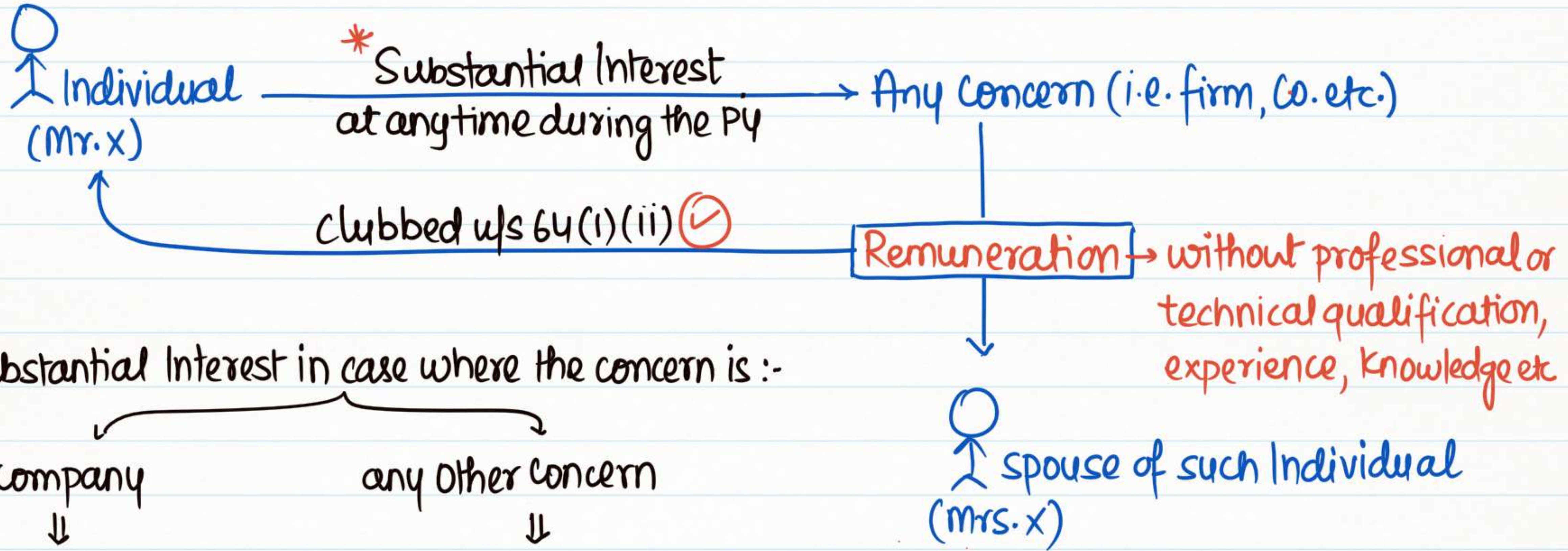


Shall be treated as revocable transfer; if :-

it contains any provision for retransfer, directly or indirectly of the whole or part of income or transferred asset, to the transferor

it gives, in any way, to the transferor, a right to re-assume power, directly or indirectly over the whole or any part of income or transferred asset

Section 64(i)(ii) :- Remuneration to the Spouse from a concern where the assessee has a substantial interest but spouse is not eligible to get such remuneration :-



* Substantial Interest in case where the concern is :-

a company

any other concern



≥ 20% Voting rights

≥ 20% profit sharing

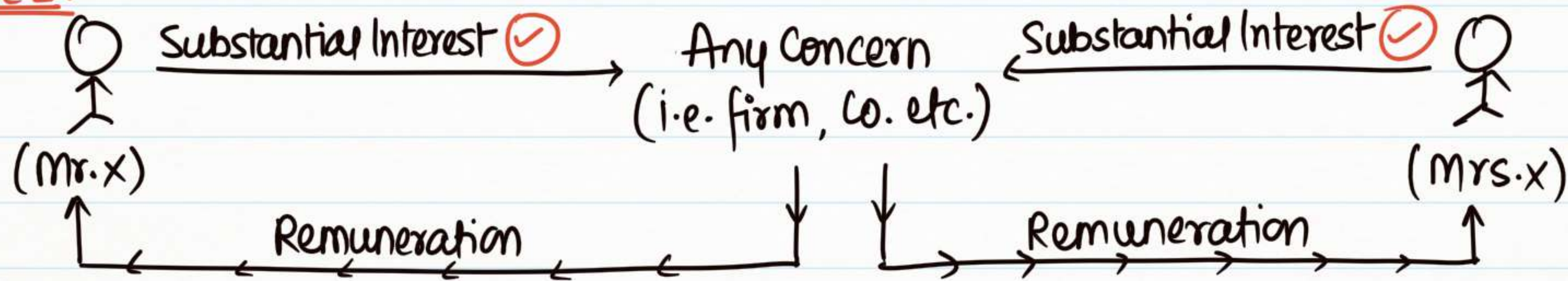
can be held alone by the individual or along with relatives

spouse of such Individual (Mrs. X)

Spouse, brother, sister, lineal ascendant, lineal descendant of such individual.

Note 1:- If the remuneration received/receivable by the spouse from such concern becomes due as a result of professional or technical qualification, experience, knowledge etc. of the spouse; then, such remuneration shall not be clubbed in the total income of the individual (assessee).

Note 2:-



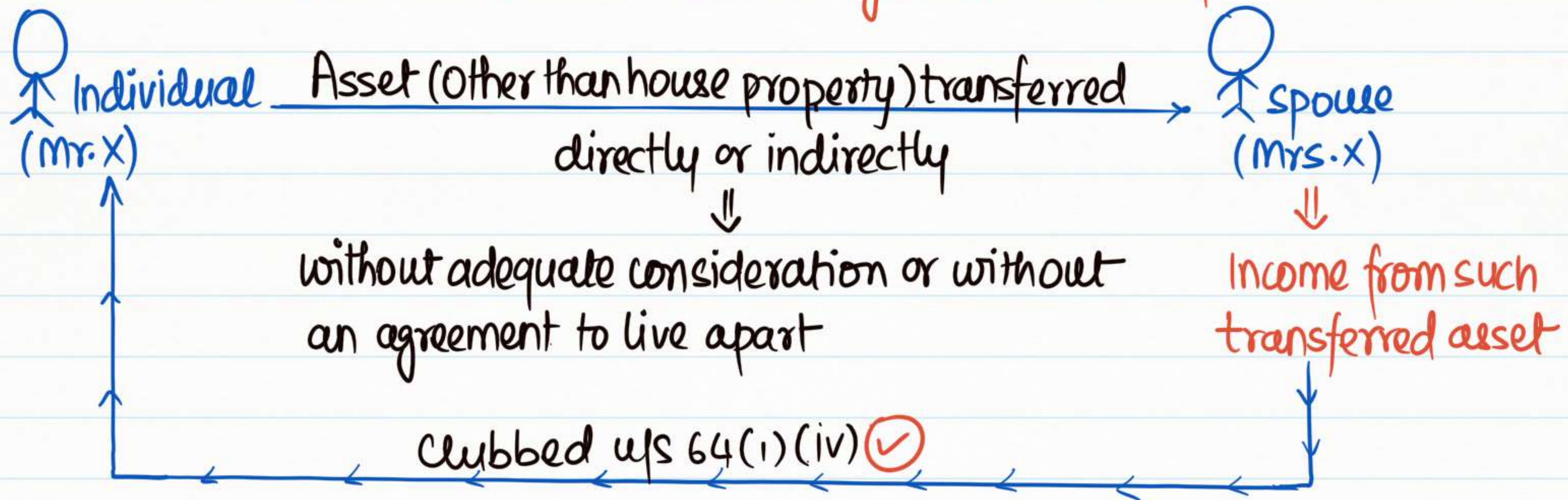
In the above case, remuneration of Mrs. X shall be clubbed in the total income of Mr. X if the total income of Mr. X before applying the clubbing provisions of Section 64(1)(ii) is higher than the total income of Mrs. X.

Conversely, if the total income of Mrs. X before applying the provisions of Section 64(1)(ii) is higher than the total income of Mr. X; then, remuneration of Mr. X shall be clubbed in the total income of Mrs. X.

(Since the individual with higher total income would have shifted his/her income to his/her spouse).

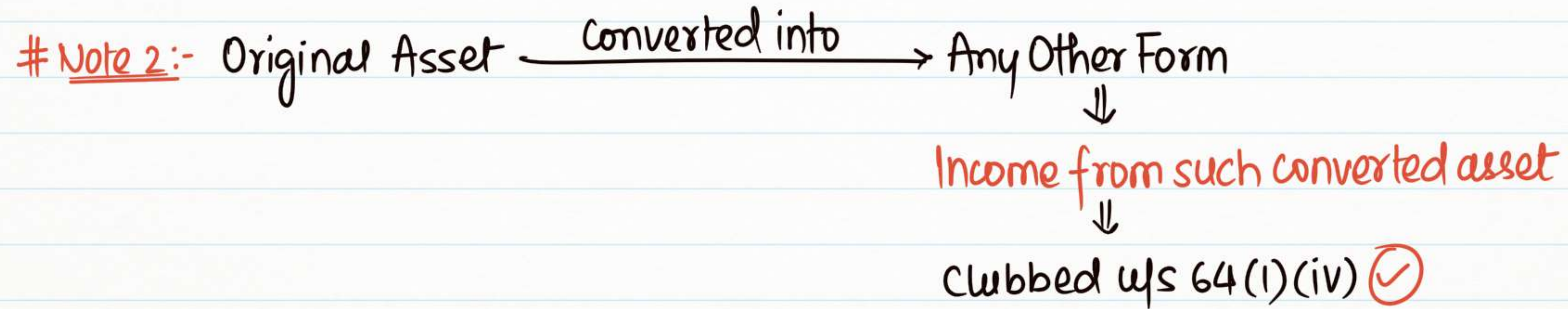
where any such income is once included in the total income of either spouse; income arising in subsequent years shall not be included in the total income of the other spouse unless the A.O. is satisfied, after giving an opportunity of being heard; that it is necessary to do so.

Section 64(1)(iv) :- Income arising to the spouse from an asset transferred without adequate consideration or without an agreement to live apart :-

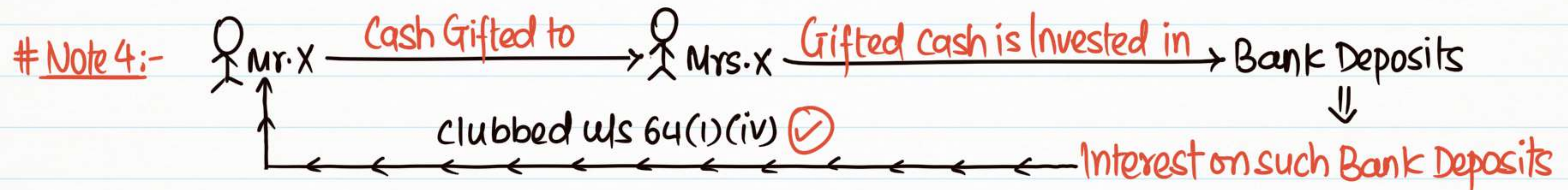


Note 1 :- If an individual transfers a house property to his/her spouse without adequate consideration or without an agreement to live apart; then, in such case; provisions of section 27 are applicable.

i.e. the transferor individual is treated as deemed owner of such property and its annual value is charged to tax in the hands of such individual only and not in the hands of the spouse to whom such property was transferred.
Hence, in such cases clubbing provisions of section 64(1)(iv) are not applicable.



Note 3:- In order to attract the provisions of clubbing; the relationship of husband and wife must exist at the time of transfer as well as at the time of accrual of income.



Note 8:- If the property has been acquired by the spouse out of the pin money or household savings; then, income from such property shall not be liable to be clubbed.

Note 9:- Income arising from the transferred asset alone needs to be clubbed. However, income earned by investing such income (i.e. income from transferred asset) shall not be made liable for clubbing.



Note 10:- Where the asset/cash transferred directly or indirectly, by an individual to his/her spouse, is invested by such spouse in any business; then, proportionate business income arising from such investment is to be included in the total income of such individual. If the investment is in the nature of contribution of capital; then, interest on such capital shall be clubbed.

Such proportion has to be computed by taking into account the value of aforesaid investment as on the 1st day of relevant PY to the total investment in such business by the spouse as on that day.

* Example :- Mrs. X started the proprietary business on 01.04.2021 with a capital of ₹10,00,000. She incurred a loss of ₹4,00,000 in the said business for the PY 2021-22. To overcome the financial position Mr. X gave a gift of ₹10,00,000 to Mrs. X on 01.04.2022 which was invested in the said business by Mrs. X immediately on the same day. Mrs. X earned a profit of ₹8,00,000 from such business during the PY 2022-23. Compute the amount which is to be clubbed in the hands of Mr. X for the PY 2022-23.

* Solution :- Total Investment / capital contribution in the business of Mrs. X as on 01.04.2022 = ₹16,00,000 = (10,00,000 - 4,00,000 + 10,00,000)

Investment / capital contribution
out of the gift from Mr. X

↓
₹10,00,000

Investment / capital contribution
of Mrs. X

↓
₹6,00,000

Total Profits in the business of Mrs. X for the PY 2022-23
= ₹ 8,00,000

Profit on the amount of investment/
capital contribution out of gift
from Mr. X

$$\Downarrow$$
$$₹ 8,00,000 \times \frac{₹ 10,00,000}{₹ 16,00,000}$$

$$\Downarrow$$
$$\underline{₹ 5,00,000}$$

clubbed in the total income of Mr. X ✓

Profit on the amount of investment/
capital contribution of Mrs. X

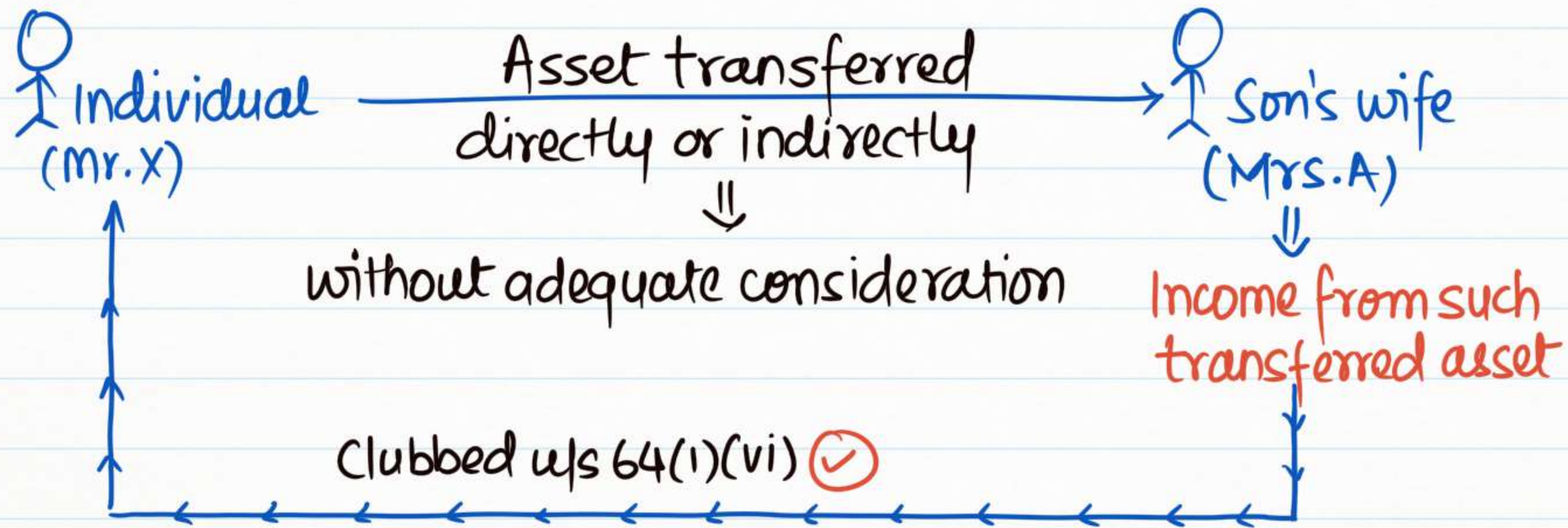
$$\Downarrow$$
$$₹ 8,00,000 \times \frac{₹ 6,00,000}{₹ 16,00,000}$$

$$\Downarrow$$
$$\underline{₹ 3,00,000}$$

Taxable in the hands of Mrs. X ✓

* If Mr. X would have given the amount of ₹ 10,00,000 as a bonafide loan instead of gift, then the provisions of clubbing would not have been applicable.

Section 64(1)(iv) :- Income arising to son's wife from an asset transferred without adequate consideration :-

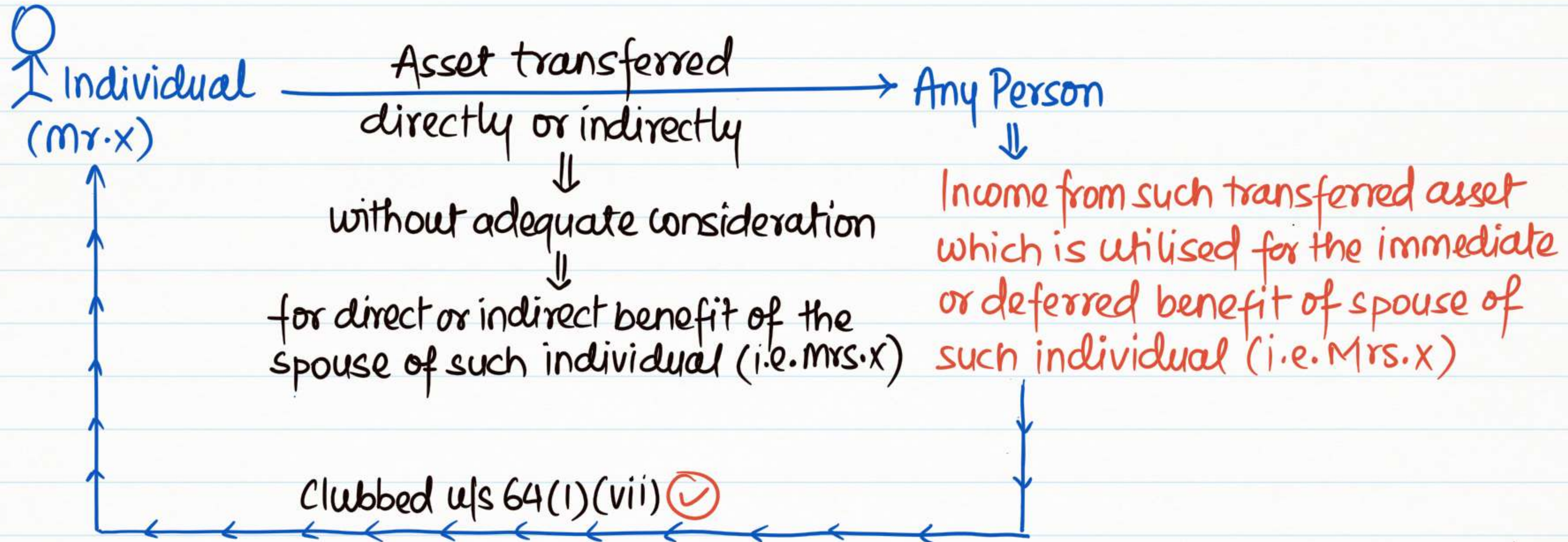


Note :- where the asset/cash is transferred directly or indirectly by an individual to his/her son's wife, is invested by such son's wife in any business; then, proportionate business income arising from such investment is to be included in the total income of such individual.

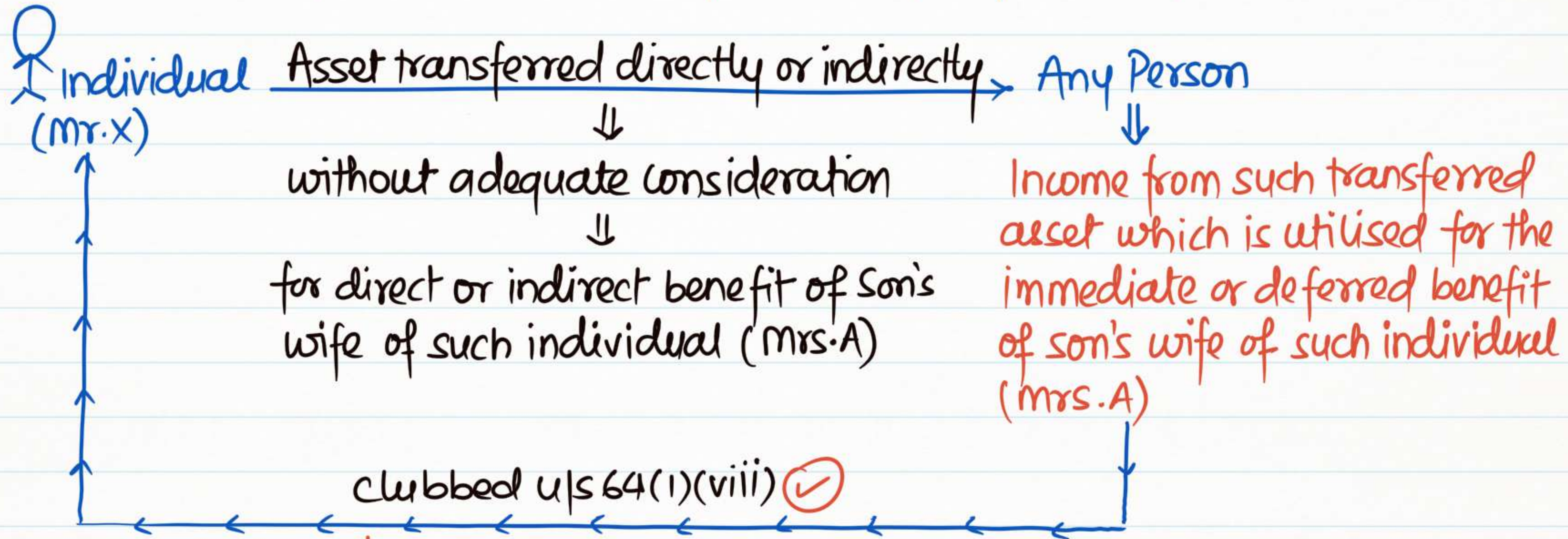
If the investment is in the nature of contribution of capital; then proportionate interest on such capital shall be clubbed.

Such proportion has to be computed by taking into account the value of aforesaid investment as on the 1st day of relevant PY to the total investment in such business by son's wife as on that date.

Section 64(1)(vii) :- Income arising from any asset transferred to any person without adequate consideration for the benefit of spouse :-



Section 64(1)(viii) :- Income arising from any asset transferred to any person without adequate consideration for the benefit of son's wife :-



Example on Section 64(1)(vii)/(viii) :-

Mr. X has transferred his immovable property to PQR Ltd; subject to a condition that, out of the rental income of such property; a sum of ₹ 48,000 p.a. shall be utilised for the benefit of his spouse (Mrs. X) / son's wife (Mrs. A).

Hence, in such case; the rental income amounting to ₹ 48,000; meant for the benefit of Mrs. X / Mrs. A shall be liable to be clubbed in the hands of Mr. X.

* Moreover; the provisions of Section 56(2)(x) shall also get attracted in the hands of PQR Ltd. if the SDV of the immovable property transferred by Mr. X is $> ₹ 50,000$.

Section 64(1A) :- Income earned by a Minor child :-

from his/her special skills, knowledge or talent or his/her manual labour etc.

↓
Clubbed w/s 64(1A) (X)

in any other case (All other incomes)

↓
Clubbed w/s 64(1A) (✓)

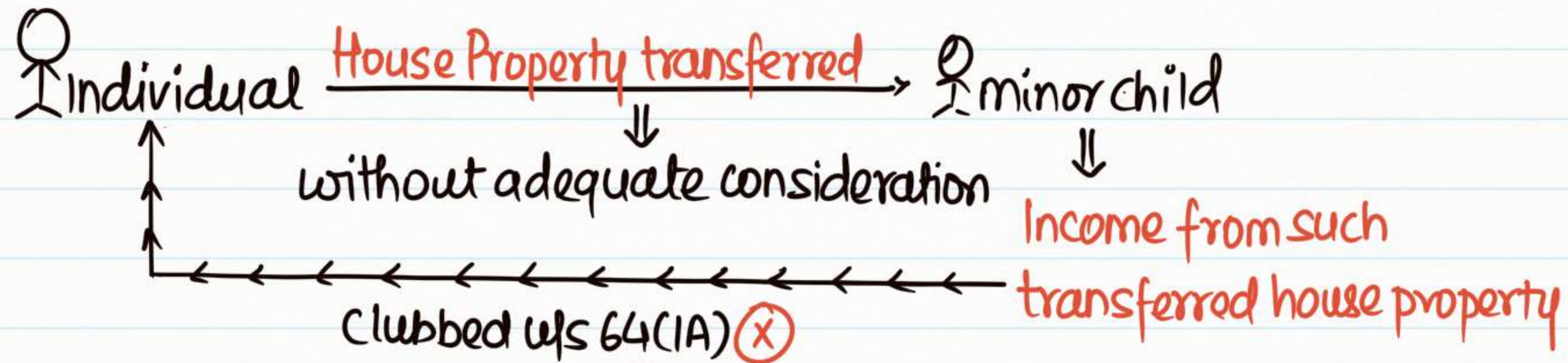
In the hands of that parent whose total income, before giving effect to the clubbing provisions of section 64(1A), is higher.

In the hands of that parent who maintains such minor child (where the marriage of the parents does not subsist)

Note 1 :- Any income earned by a minor suffering from any disability as specified w/s 80U i.e. income earned by a handicap minor → clubbing w/s 64(1A) (X)

Note 2:- Income of Minor Married Daughter \Rightarrow Clubbing u/s 64(1A) ✓

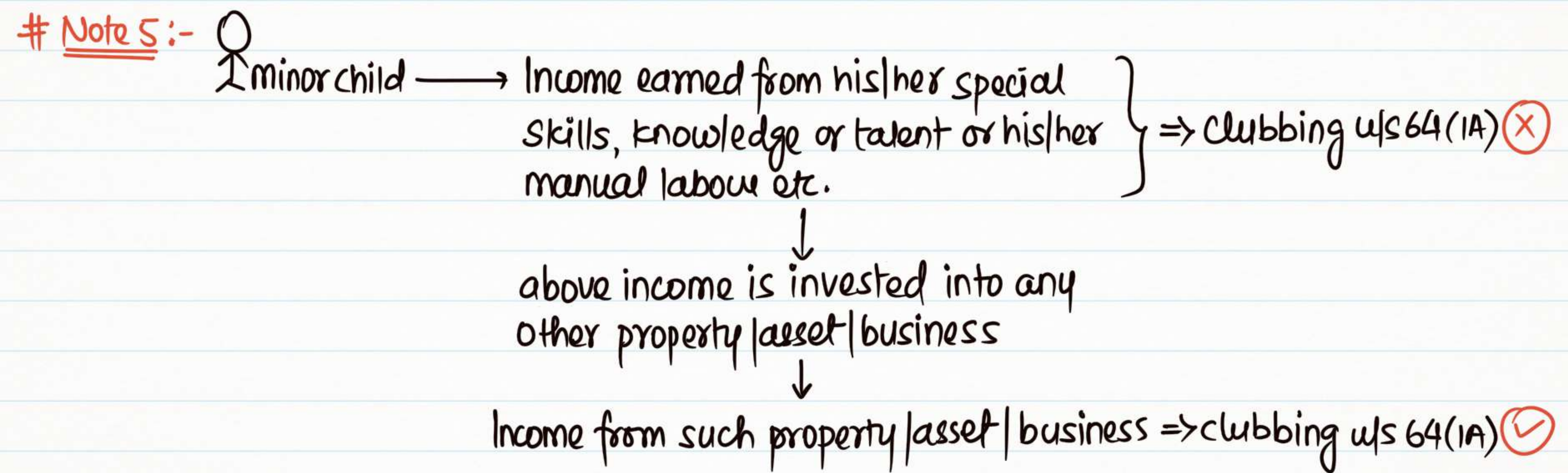
Note 3:-



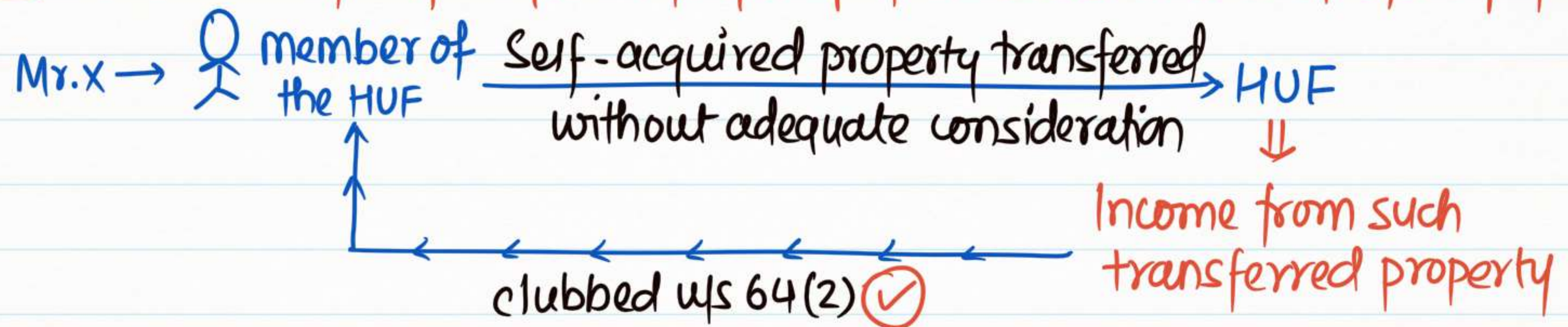
* since such individual is already assessed in respect of income from such house property as a deemed owner u/s 27.

Note 4:- The assessee shall be allowed an exemption u/s 10(32) upto a maximum of ₹1,500 p.a. in respect of clubbed income of each minor child.

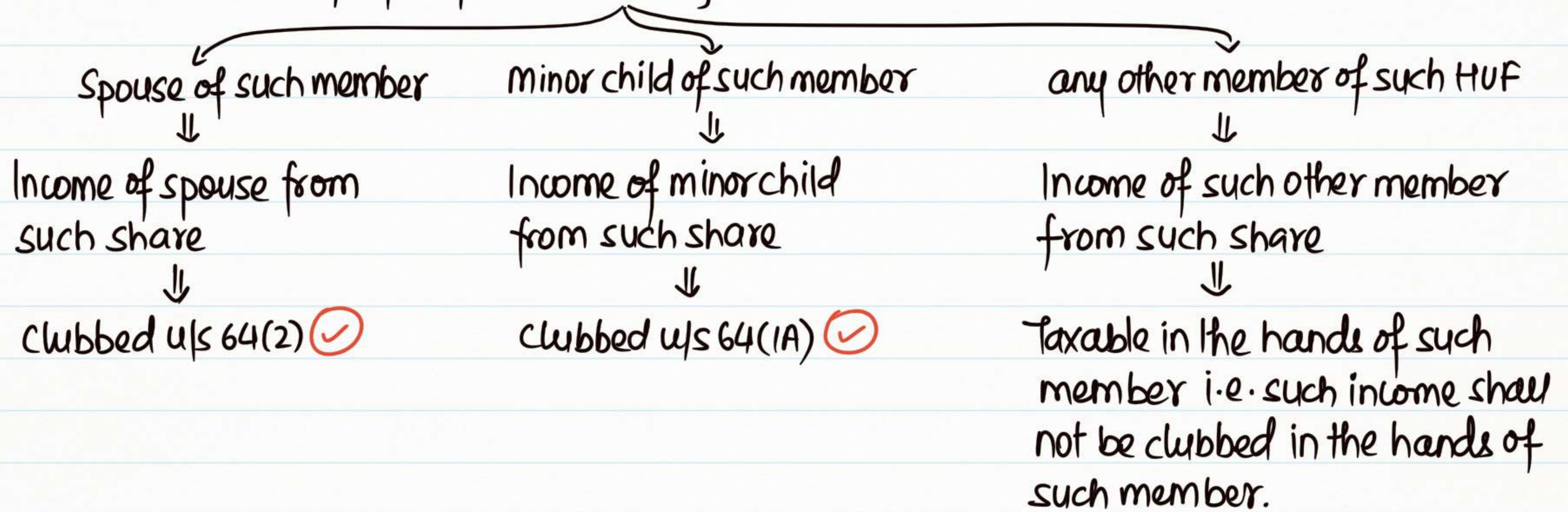
In other words; if the clubbed income of each minor child is more than ₹1,500 p.a.; then, such income to the extent of maximum ₹1,500 shall be exempt u/s 10(32) and balance income shall be taxable. However, if such income is upto ₹1,500 p.a.; then, such entire income shall be exempt u/s 10(32).



Section 64(2) :- Conversion of Self-acquired property of a member into the property of HUF :-



Note :- If the above property is later on made the subject matter of partition by the HUF; then, share in such property is received by :-



Clubbing of Negative (-ve) Incomes :-

Since the term "income" also includes "losses" i.e. negative (-ve) incomes; hence, such -ve incomes are also eligible for clubbing. In other words, if the income to be included in the total income of an individual is a loss; then, such loss shall be taken into account to determine the total income of such individual.

Indirect or Cross Transfers :-

∴ Mr. A 9% Debentures → Mrs. B = Interest on such debentures → Clubbed in the total income of Mr. B ✓

↓

∴ Mr. B Shares of Foreign Co. → Minor Son of Mr. A = Dividend on such shares → Clubbed in the total income of Mr. A ✓

Since the above transfers are so intimately connected that they form part of a single transaction and each transfer constitutes consideration for the other so as to avoid the applicability of clubbing provisions and escape the tax liability

Hence, the income arising to the transferee from such transferred asset shall be liable to be clubbed even if there are no specific provisions of clubbing in respect of such situations.

Section 65 :- Liability of the transferee in case of clubbed Income :-

Where, by the reasons of the provisions contained u/s 60 to 64 or section 27; if the income from any asset is to be included in the total income of the transferor; then, the transferee; on service of notice of demand by the A.O.; shall be liable to pay that portion of the tax levied on the transferor, which is attributable to the income so included.

————— END OF NOTES —————