

# CLUBBING OF INCOME

UNDER INCOME TAX ACT, 1961



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# SECTION 4- CHARGE OF INCOME TAX

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## Income Tax shall be charged-

- For any assessment year
- At any rate or rates
- Income tax at that rate or those rates shall be charged for that year in accordance with provisions of this alt(including provisions for levy of additional income tax)
- In respect of total income
- Of the previous year
- Of every person

# SECTION 2(31)- PERSON

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- An individual
- A HUF
- A Company
- A firm
- An AOP/BOI(whether incorporated or not)
- A local authority
- Every artificial juridical person not falling above

# SECTION 5-SCOPE OF TOTAL INCOME

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Resident person includes all incomes of any previous year.

- Is received or deemed to be received in India by or on behalf of such person or
- Accrues or arises or is deemed to accrue or arise to be herein in India during such year or
- Accrues or arises to be herein outside India during such year

**Provided** that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

## SECTION- 60

Section 60 is applicable if the following conditions are satisfied:-

- The 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, or agreement

If the above conditions are satisfied, the income from the asset would be taxable in the hands of the transferor

## SECTION 61

### Revocable Transfer of an Asset

- If transfer of an asset is revocable , income from such asset is taxable in the hands of transferor
- If there is provision to reassume the power, the transfer will be revocable. Actual exercise of power is not necessary.

CIT v/s S. Ragubir Singh, { 57 ITR 408 (SC) }  
{ 67 ITR 102 (SC) }

- Where no absolute rights are given to transferee and asset can go back to the transferor in some circumstances, transfer is revocable

## SECTION 62-

### Transfer Irrevocable for a specified period

- (I) Provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer-
- By way of a trust which is not revocable during the lifetime of beneficiary and in case of any other transfer , which is not revocable during the lifetime of transferee, or
  - Made before the first day of April 1961, which is not revocable for a period of exceeding six years

Provided that the transferor derives no direct or indirect benefit from such income in either case.

- (II) Income of transferor when power to revoke arises.

# SECTION 63

## Definition of Transfer & Revocable Transfer for the purpose of Section 60,61&62

(a) A transfer shall be deemed to be revocable if:-

- it contains any provision for the retransfer directly or indirectly of the whole or any part of the income or assets to the transferor, or
- It, in any way gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets

(b) Transfer includes any settlement, trust, covenant, agreement or arrangement



## SECTION 64(1)

In computing the total income of any individual, there shall be included all such income as arises directly or indirectly --

(ii) To the spouse of such individual, by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest:

**Provided** that nothing contained in this clause shall apply in relation to any income arising to the spouse where the spouse possesses technical or professional qualifications and that income is solely attributable to the application of his or her technical or professional knowledge & experience.

- Remuneration- Salary, Commission, fees or any other remuneration received whether in cash or in kinds
- Concerns- covers professional concern also
- Substantial Interest- If an individual beneficially holds 20% or more equity shares in a company/ 20% or more share in profit of concern at any time during the previous year.
- Individual- includes his relatives as defined u/s 2(41) of the act

- Technical or Professional Qualification- Technical or professional qualifications do not necessarily relate to technical qualifications acquired by obtaining a certificate, diploma or a degree or in any other form from a recognized body like a university or an institute.  
“[Batta Kalyani v/s CIT, 20 Taxman 378(AP) 1985]
- **Applicable** even if resulting tax liability is lower.  
[circular no. 258 dated June 14,1979]
- Relationship of Husband and wife- should be subsist at the time of transfer of asset and at the time when income is accrued.  
[Philip john v/s CIT 49 ITR 97(SC)]

## SECTION 64(1) →

In computing the total income of any individual, there shall be included all such income as arises directly or indirectly --

When both the husband and wife have substantial interest-

If both the husband and wife have substantial interest in a concern and both are employed and getting remuneration without having any technical/professional qualification than such remuneration will be included in the total income of husband or wife whose total income, excluding such remuneration is greater.

If once clubbing is done in the hands of one of the person, it will be included in his/her income in subsequent years also even if income has lowered.

## SECTION 64(1) →

In computing the total income of any individual, there shall be included all such income as arises directly or indirectly --

(IV) Subject to the provisions of clause(i) of section 27, if any income accrues/arise to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart, shall be income of such individual transferor.

### Basic Conditions-

- Tax payer is an individual
- Such individual has transferred some asset (other than house property)
- Transfer is without adequate consideration
- Transfer may be directly or indirectly
- Form of asset may be changed subsequently.

(VI) To the son's wife of such individual from assets transferred directly or indirectly or after 1.6.1973 to the son's wife of such individual otherwise than for adequate consideration.

- Good consideration and Adequate Consideration are two different things.
- Natural love and affection may be good consideration but that would not adequate consideration for the purpose of section 64(1) [Tulsidas Kailash Chand v/s CIT 42 ITR 1(SC)]
- If Consideration is not equal to the value of asset transferred , section 64(I)(iv) attracted.

**CONSIDERATION**

INDIRECT  
TRANSFERS

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graph LR; A["INDIRECT TRANSFERS"] --> B["If two transactions are inter connected and part of some transaction adopting circuitous method, section 64(1) attracts"]; B --> C["SECTION 64(1) ATTRACTS"]
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SECTION 64(1)  
ATTRACTS

# IDENTITY CHANGE OF TRANSFERRED ASSET COVERED U/S 64(I)(iv)

**(i) Cash is gifted to wife, who later made FD of same amount**

Interest income is includible in the assessee's total income. [Mohini Thaper v/s CIT, 83 ITR 208(SC)]

**(ii) If gifted money is invested by wife in House Property**

Rental Income if any is taxable in the income of Husband, [58 ITR 411 (Madras) R. Ganeshan v/s CIT]



# IDENTITY CHANGE OF TRANSFERRED ASSET COVERED U/S 64(I)(iv)

(iii) If any such property is sold



Capital Gain if any shall be taxable in the hands of transferor.

(iv) Transferred asset is invested into business



Taxable Income x  
*Gifted amount at first day of previous year*  

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*Total Capital at first day of previous year*

## SECTION 64(1) →

In computing the total income of any individual, there shall be included all such income as arises directly or indirectly --

(VII) To any person or AOP from assets transferred directly or indirectly otherwise than for adequate consideration to the extent to which the income from such assets is for the immediate benefit or deferred benefit of spouse.

(VIII) To any person or AOP from assets transferred directly or indirectly otherwise than for adequate consideration to the extent to which the income from such assets is for the immediate benefit or deferred benefit of son's wife after 1.6.1973

# SECTION 64(1A) - INCOME OF MINOR CHILD

- Income of minor will be included in the income of that parent whose income (excluding this income) is greater.
- Where the marriage of parent doesn't subsist, income will be assessed in the hands of that parent who maintains the child in that relevant previous year.
- If both the parent dies, income of the minor child can not be assessed in the hands of Grand parents/any other relative or even in the hands of minor child.
- Once included in the hands of one parent, it will continue to do so except assessing order is satisfied to do so by an opportunity.
- Certain income taxed in the hands of minor child only-
  - a) Any income earned by a minor child who is suffering from any Disability specified in section 80 of the Income Tax Act like physically disabled, totally blind ,etc.
  - b) Income earned on the account of any Manual Work.
  - c) Income earned on the account of any activity involving application of his skills, talent or specialized knowledge and experience.
- Deduction of Rs.1500/- per minor child.

## SECTION(2) →

Conversion of Self acquired property into joint family property and subsequent partition.