

CHAPTER 14

Clubbing

Transfer of Income Without Transfer of Asset [Sec 60]

If any person transfers the income from any asset without transferring the asset, such transferred Income is included in Total Income of the transferor.

Transfer can be Revocable or Irrevocable.

Ex: Mr. A confers the right to receive rent in respect of his house property on his wife, Mrs. A, without transferring the house itself to her. In this case, the rent received by Mrs. A will be clubbed with the income of Mr. A.

Income Arising from Revocable Transfer of Assets [Sec 61]

If any Asset is transferred under "Revocable Trust", Income from such asset is included in Total Income of the transferor.

Meaning of Revocable Transfer: A transfer shall be deemed to be Revocable if:

- Transfer deed contains a provision that asset/income from asset can be transferred to the transferor during the life time of the beneficiary.
- Transfer deed allow the transferor to re-assume power of the asset/income from asset (actual exercise of power is not necessary).

Exceptions [Section 62] → Income will NOT be clubbed even in case of revocable Transfer

If the Transfer is not revocable during Life-Time of Beneficiary/Transferee. In such cases, Income shall be taxable in the hands of transferee provided transferor derives no benefit.

Ex: R transfers his house property to a trust for the benefit of G till his death. In this case, this transfer is irrevocable till the death of G. Thus, till the death of G, Income from house property is taxable in the hands of Transferee (trust). However, on death of G, income from such house shall be included in total income of R since on that date the transfer has become revocable. In the above case, if R had reserved a right to get back house property or its income from G during lifetime of G, then, such transfer shall be revocable & Income from such house shall be taxable in hands of R from the beginning.

Note: Income arising from revocable transfer of the asset/income is taxable when the power to revoke the transfer arises even if the power to revoke has not been exercised by transferor.

Clubbing of Income Arising to Spouse [Sec 64(1)(ii)]

A. Remuneration to Spouse

Any Remuneration received by Spouse from a Concern in which other Spouse has Substantial Interest, shall be clubbed in the hands of the spouse who has Substantial Interest.

No Clubbing → If Remuneration is received by Spouse due to his/her Qualifications. Qualifications does not include only degree but also include experience, expertise, or natural talent without any professional degree. Case law SC CIT Vs. Batta Kalyani.

Substantial Interest: Individual is deemed to have substantial interest in concern if Individual or along with his relatives beneficially holds 20 % or more equity shares at any time during PY.

Relative = Husband, wife, brother or sister or Lineal Ascendant or Descendant of the individual.

Ex: X is a partner in a partnership concern & is entitled to 50% share of the profit of the firm. Mrs. X is employed as the General Manager of the firm & is getting a salary of 25,000 p.m. The taxable salary of Mrs. X will be clubbed with the total income of X u/h 'Income from salaries'. However, if Mrs. X is receiving the salary on account of her technical or professional knowledge or experience, then the salary would not be clubbed.

Note:

1. Clubbing is Mandatory, even if such clubbing in some case results into benefit to the assessee.
2. If both Husband & Wife have Substantial Interest & both are in Receipt of Remuneration without qualification from the Same Concern → Remuneration of other spouse will be clubbed in total income of Husband/Wife whose Total Income excluding such remuneration is Greater.
3. Once the clubbing is done in the hands any spouse (Say X) since his Income was greater in 1st year of clubbing than Income of other spouse (Mrs. X), Income of Mrs. X shall be clubbed

in the hands of X in subsequent years also even if Income of Mrs. X is greater in subsequent year.

B. INCOME FROM ASSETS TRANSFERRED TO THE SPOUSE [SECTION 64(1)(iv)]

✚ If Individual transfer any Asset (other than House Property) to his/her spouse for Without / Inadequate Consideration, Income from such Asset shall be included in Total Income of the transferor.

Ex: Mr. JK transfers debentures of X Ltd to his wife for inadequate consideration. Interest income on such debentures shall be clubbed in the hands of Mr. JK.

✚ Without Consideration: - Pure Gift, Entire income shall be clubbed to the transferor.

✚ Inadequate Consideration: - Only that portion of the income from the asset shall be clubbed which relates to the amount of Inadequate Consideration.

Points to Remember:

1. Transfer of House Property by Individual to Spouse for Inadequate Consideration → Transferor shall be deemed as Owner of House Property u/s 27 & Income from such House Property is taxed in the hands of the transferor.

Note: CAPITAL GAIN on Transfer of such HP → Clubbed in hands of Transferor.

2. Clubbing provision shall not be applicable where any person has given loan to his/her spouse.

3. Marriage should exist both at the time of Transfer & when Income is Accrued.

[Transfer before Marriage & After Divorce → No Clubbing]

4. If Any Property is acquired by the Wife out of the Pin Money → No Clubbing.

5. Transfer should be for inadequate Consideration. [Adequate Consideration → No Clubbing].

6. Transfer of Asset in connection with Agreement to Live Apart (Divorce) → Deemed to be transfer with Adequate Consideration & thus No Clubbing.

(If Consideration is Payable in Parts → Only Proportionate Income shall be clubbed)

7. Change in Identity of Transferred Asset: If transferred asset has changed the shape & Identification, then Income from such Changed Asset shall be Clubbed.

Ex: Mr. JK gifted shares to his wife. His wife sold the shares & acquired a house which was let out, the income from house property shall be clubbed in the hands of Mr. JK.

8. **No Clubbing on Accretion of Income** Income from Transferred Asset is to be Clubbed. But Income on Income is Not Clubbed: Income derived on the accretion of transferred property cannot be clubbed except in case of Minor Child.
- Ex: X transfer 10,000 bonds of IDBI to his wife Mrs. X. Mrs. X receive interest of 70,000 p.a on the bonds. ₹ 70,000 is to be clubbed in the hands of Mr. X. However, if Mrs. X accumulates 50,000 out of the interest income & deposits it with the company at an interest of 10% p.a, then interest of ₹5,000 p.a received by her on the deposit will not be clubbed in Income of Mr. X.

Appropriation When Transferred Asset is Invested in a Business

1. **For Proprietorship**

Amount which shall be included in the hands of Transferor is determined as follows:

Clubbed income =

$\frac{\text{Total income of business} \times \text{Amt invested by transferee in the business as on 1}^{\text{st}} \text{ April of PY}}{\text{Total amount invested in the business (1}^{\text{st}} \text{ April of PY)}}$
out of the asset received from spouse for Inadequate consideration.

2. **For Partnership Firm**

Clubbed income =

$\frac{\text{Interest On Capital} \times \text{Amt invested by transferee in the firm as on 1}^{\text{st}} \text{ April of PY}}{\text{Total capital contribution of transferee (1}^{\text{st}} \text{ April of PY)}}$
out of the asset received from spouse for Inadequate consideration.

- ✓ Salary received by the spouse from partnership firm is not to be clubbed.
- ✓ Share of profit in a partnership firm is exempt in the hands of partners u/s 10(2A).
- ✓ If profit / interest is further invested to earn fresh profit / interest, then such fresh profit / interest shall not be clubbed.

C.	<u>Income from Asset Transferred to Son's Wife for Inadequate Consideration [Sec 64(1)(vi)]</u>
✚	Transfers any asset to his/her son's wife for Inadequate Consideration → Income from such Asset shall be clubbed in Total Income of the Transferor.
	<u>Ex:</u> Mr. JK transfers debentures of X Ltd to his son's wife for inadequate consideration. Interest income on such debentures shall be clubbed in the hands of Mr. JK.
	<u>Note:</u> All Provisions relating to Transfer of Asset to Spouse shall also apply to Son's Spouse.
D.	<u>Income from Assets Transferred to Any Person for Benefit of Spouse/Son's Wife: [Sec 64(1)(vii)/(viii)]</u>
✚	When Individual transfers any assets to Any Person/AOP for Inadequate consideration, Income from such transferred Assets shall be clubbed in the Income of the transferor (to the extent of benefit which accrues to the spouse/son's wife).
	<u>Ex:</u> X transfers a house to Y with a direction that 50% of Rental Income is to be used for the benefit of his wife Mrs. X & 50% for others, then Rental Income to the extent of 50% shall be included in the total income of X.
	Clubbing of Income of a Minor Child [Sec 64(1A)]
✚	All Income which accrues to Minor Child → Clubbed in the hands of Either of his Parents whose Total Income is Greater before such clubbing.
✚	If Marriage of his Parents does not Subsist: Income shall be clubbed in the hands of that Parent who maintains the minor child in the PY.
✚	If Both Parents are Dead: Income of Minor cannot be assessed in hands of his guardian / grandparents.
✚	Exemption to Minor's Parent u/s 10(32): The income of Minor is clubbed will get Exemption of Upto ₹ 1,500 in respect of each minor child. (No limit on number of minor children).
	<u>No Clubbing</u>
	1. Income has been earned by the Minor due to his own Skills & Talent. However, if such income further invested and fresh income is received, then such fresh income would be clubbed in the hands of parent.

2. Minor is suffering from disabilities referred in Section 80U / Blindness / mentally retarded.

3. Income out of manual work done.

Points to Remember:

1. Income arising to Minor Married Daughter would also be clubbed.
2. If Minor attains Majority during PY → Income till the date he was minor in that PY is clubbed.
3. If in respect of a particular year, income of a minor child has been clubbed in the income of one parent (ex. Mother), then in the next year such income can not be clubbed in the income of other parent (ex. Father) unless AO is satisfied that it is necessary to do so.
4. Minor child include adopted child as well as step child.

Income from Self-Acquired Property Converted to HUF Property [Sec 64(2)]

- ✚ If Self-Acquired Property of Individual is converted into HUF Property for Inadequate Consideration → Income derived by HUF from such property is Clubbed in Income of transferor.

Ex: X to be the individual & income of X shall be included in computation of his total income u/h 'Income owns a house property from which he derives an income of ₹ 6,00,000 p.a. If he converts this property as the property of an HUF of which he is a member, h the income shall henceforth be received by the HUF but it shall be deemed from House Property'.

- ✚ **Clubbing After Partition:** If converted property is subsequently transferred amongst the members of the family, Income from such converted property which is received by Spouse of Transferor + Minor Child (subject to T&C) shall be clubbed in the hands of the transferor.

Ex: In the example given above, if there is partition in the family & there are 5 members entitled to a share in the HUF property i.e. Mr. X, Mrs. X, a minor child of X & two major sons of X assuming they decide to share the property equally then the income from the property shall be treated as follows:

- a) Income from 1/5th share of X ₹ 120000;
- b) Income from 1/5th share of Mrs. X ₹ 1,20,000 (to be clubbed with the income of X);

- c) Income from 1/5th share of minor child of X ₹ 1,20,000 (to be clubbed with the income of X or Mrs. X, whose income is higher u/s 64(1A). However, X can claim exemption upto ₹ 1,500);
- d) Income from 2/5th share of other members shall be taxable in the hands of the major sons individually.

Relevant Head for Clubbing

- ✚ Firstly, Income will be computed in the hands of Actual Recipient under applicable head as if Actual recipient is liable to pay the tax on such Income.
- ✚ Then after Computation of Income in the hands of Actual Recipient, it will be clubbed under the same head in the hands of other person in whose hands such income is to be clubbed.

Section 61 Vis-À-Vis Section 64

- ✚ SECTION 61: Section 61 applies only to Revocable transfer made by ANY Person.
- ✚ SECTION 64: It applies to Revocable & Irrevocable Transfers made only by Individuals.

CROSS TRANSFERS

- ✚ Instances: Two transactions are Inter-connected in such a way that they seem to be two different transactions but in reality, they are the parts of the same transaction.

Ex: A making gift of ₹ 50,000 to the wife of his brother B for the purchase of a house by her & a simultaneous gift by B to A's Minor son of shares in a foreign company of ₹ 50,000.

- ✚ In case of Cross Transfers → Income from transferred assets 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 above case, transfers have been made by A & B to persons who are not their spouse or minor child so as to evade the provisions of this section, showing that such transfers constituted consideration for each other.

- ✚ CIT v. Keshavji Morarji [1967] 66 ITR 142: The Supreme Court observed that if two transactions are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of Clubbing provisions would be attracted. Thus, Income arising to Mrs. B from the house property should be clubbed in Income of B & Dividend from shares transferred

to A's Minor son would be taxable in the hands of A. This is because A and B are the indirect transferors to their minor child and spouse, respectively, of income-yielding assets, so as to reduce their burden of taxation.

Section 65

If any particular income of one person has been clubbed in the income of a second person but tax cannot be recovered from the second person, then the income tax authorities can demand the tax from the first person only to the extent his income was clubbed in the income of the second person.

Points To Be Remember

- ✓ Clubbing of income will also include clubbing of losses.
- ✓ Set-off & carry forward of losses shall apply in the normal manner.
- ✓ Deduction u/s 80C- 80U shall also be allowed in the normal manner.