- Provided the transferor derives no direct or indirect benefit from such income.

Exception

- If the transferor receives direct or indirect benefit from such income, such income is to be included in his total income of transferor even though the transfer may not be revocable during the life time of the transferee.
- Income shall be clubbed in the income of the transferor, as and when power to revoke arises (i.e on the date of the beneficiary/transferee.
- Actual revocation of asset is not relevant.

•> Section 64(1)(ii): Remuneration of Spouse

If spouse of an individual is receiving;
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 shall be included in income of individual.

FOCUS AREA

1: Where spouse possesses technical or professional qualifications and the income to the spouse is solely attributable to the application of his/her technical or professional knowledge or experience, the income shall not be clubbed.

2: Substantial Interest : A person is said to have substantial interest in a concern if he is owner of at least 20% of the concern. Ownership of his relatives shall also be included.

NOTE: Relative means husband, wife, brother or sister or any lineal ascendant or descendant of the individual.

3. Technical or professional qualification shall include not only degree or membership but also experience or expertise or natural talent.

4. Where both husband and wife have substantial interest in a concern and both are in receipt of income by way of salary etc. from the said concern, such income will be includible in hands of that spouse whose total income excluding such income is higher.

5. Where such income is once included in the total income of either spouse, any such income arising in any subsequent year will not be included in the total income of the other spouse unless the assessing officer is satisfied after giving that spouse an opportunity of being heard that it is necessary to do so.

• **Section 64(1)(iv): Income from assets transferred to Spouse.**

When any assets is gifted by an individual to his/her spouse any income from such assets shall be deemed to be income of transferor (This section applies to all assets except house property.)

→ EXCEPTION

(i) If relationship of husband and wife doesn't exist either at the time of transfer or of accrual of income.

(ii) Transfer is under an agreement to live apart.

• **Section 64(1)(vi): Income from assets transferred to son's wife without inadequate consideration by Father-in-law or Mother-in-law.**

Asset transferred by an individual to son's wife without adequate consideration. Income from such asset shall be clubbed in the hands of transferor. The relationship must exist at both time i.e at the time of transfer and at the time of accrual.

• **Section 64(1)(vii & viii): Income of individual to include income of AOP to which assets are transferred for the benefit of spouse & son's wife**

Assets transferred to a person or an AOP (Trust) without inadequate consideration for immediate or deferred benefit of his/her spouse or son's wife. Income from such asset to be clubbed in the hands of the transferor.

•) Section 64(1A) : Income of Minor Child

1. All income of a minor is to be included in the income of his parent whose total income is greater before clubbing the income of minor child.
2. If marriage of the parents does not subsist the income of the minor will be includible in the income of that parent who maintains the minor child.
3. Where such income is once included in the total income of either parent, any such income arising in any subsequent year will not be included in the total income of the other parents unless the A.O is satisfied after giving that parent an opportunity of being heard that it is necessary to do so.
4. If none of the parent is alive minor shall file return through legal guardian. There shall be no clubbing even if grand parents are alive or not.
5. If the minor child become major during the P.Y. then the incomes which have accrued to him till date he attains majority shall be clubbed.
6. In the following cases income of minor child shall not be included.
   a) Child suffering from any disability of the nature specified in section 80U shall not be included in the hands of the parent but assessed

in the hands of the child.

b.) Income of child on account of manual work or activity involving skill, talent or specialized knowledge or experience etc. But if such income is further invested, any such income shall be clubbed in the income of mother or father.

7. Minor includes adopted, step and minor married daughter.

Section 10(32): If income of an individual includes the income of his minor child, the individual shall be entitled to exemption upto ₹ 1500 per child.

This provision is to provide relief to the individuals in whose total income, the income of minor child is included.

Example: Mr. D has three minor children - 2 twin daughters and one son. Income of twin daughters is 2000 p.a each and that of son is 1200 p.a.

Compute the income, in respect of minor children to be clubbed in the hands of Mr. D.

Solution: Taxable income, in respect of minor children, in the hands of Mr. A is

	Particulars	Amount	Amount
	Twin minor daughter (2000x2)	4000	
Less:	Exempt u/s 10(32) (1500 x2)	3000	
	Minor son	1200	1000
Less:	Exempt u/s 10(32)	1200	Nil
	Income to be clubbed in the hands of Mr. A		1000

Cross Transfers

As per SC judgement, such cross transfers shall be subjected to clubbing provisions, considering the same as tax evasion device.

Section 64(2) : Conversion into HUF Property

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

Section 65 : Liability of the transferee in respect of Clubbed income

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 1st person only to the extent of his income was clubbed in the income of 2nd person.

•) Rules for clubbing of Income / How to club Income

Clubbing of income will also include clubbing of losses. Income shall be clubbed in the following manner:

STEP-1 Calculate the income/loss in the hands of the recepient as if it is the income of the recipient. All deductions under the relevant head will be allowed while calculating the income.

STEP-2 The income or losses calculated as above will then be clubbed with the income of the transferor under the same head (i.e. the head from which such income belongs.) Exemption upto Rs. 1500 p.a. per child is available u/s 10(32) in respect of clubbing of income of a minor child.

STEP-3 Such clubbed income is the income of transferor and the provisions relating to set-off & carry forward of losses shall apply in the normal manner Deduction u/s 80C to 80U shall also be allowed in the normal manner.

•) 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 gain shall also be clubbed with the income of transferor.

4. Income arising out of the income earned on transferred assets shall not be clubbed except in case of minor.

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 parents under the head "PGBP". The business losses of the parent can be set off against such income.

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

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

8. If interest free Loan is given by husband to wife / individual to HUF and the person to whom the loan is given purchase an asset out of the loan, then income from such asset shall not be clubbed in the hands of the person who has given the loan. This is because giving a loan is not a transfer of assets. Clubbing applies when assets are transferred for without / inadequate consideration.

9. The HUF is a partner in firm XYZ though its Karta Mr. A and has 25% share in the profits of firm. Wife of Mr. A is employed by firm XYZ. In this case clubbing shall not apply because Mr. A is partner in

representative capacity and not in his individual capacity. Clubbing applies where an individual is a partner in his individual capacity and has substantial interest in the firm and his spouse get remuneration from the firm.

10. If a trust is created for the benefit of a minor child then the income of trust shall be clubbed with the income of parent u/s 64(1A). This shall apply even if the trust deed provides that the income shall be accumulated by trust and shall be given to minor child when he attains majority. Clubbing provisions u/s 64(1A) shall apply since the income accrues for the benefit of minor child although it may be given on attaining majority.

CHAPTER-10

SET OFF AND CARRY FORWARD OF LOSSES

•) Steps For Set Off

STEP-1 Loss should be set off from the same source. For example if there is loss from STCL then first it should be set off from STCG.

STEP-2 If after setting off loss from same source still there is loss, then it has to be set off from different source under same head.

STEP-3 After inter-source adjustment only inter-head adj. can be made No order of inter-head adjustment is given by the Act. So, if inter head adjustment is allowed then losses should be set off in any way which is most beneficial to the assessee.

•) Order of set-off of Losses

As per section 72(2), Brought forward business Loss is to be set-off before setting off unabsorbed depreciation. Therefore, the order in which carry forward and set off will be affected, is as follows:

1. Current year business Expenses.
2. Current year depreciation/current year capital expenditure on scientific resarch and family planning
3. Brought Forward business loss. (section 72)
4. Unabsorbed Depriciation (section 32(2) / family planning (section 36)