

# Chapter 9 : Clubbing of Income (Section 61 to 64)

Advance Direct Tax and Service Tax  
[Sub code : 441]

# Learning Objectives

- Transfer of Income Where There is no Transfer of Assets
- Transfer – Revocable & Irrevocable
- Income of Individual to Include Income of Spouse, Minor Child etc.
- Treatment of Income of Spouse

## TRANSFER OF INCOME WHERE THERE IS NO TRANSFER OF ASSETS [Section 60]

- All income arising to any person by virtue of a transfer shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.
- Only where the income is transferred but not the asset, then Section 60 is applicable.
- Section 60 has no application in a case where the corpus or the asset itself is transferred.

Example –

Where Mr. A transfer income from the asset belonging to him to Mr. B without transferring that asset, in this case the income is still taxable in hands of Mr. A only.

# Transfer

- Here the meaning of “transfer” is not limited to the strict meaning as given in the Transfer of Property Act or other Acts.
- A beneficial transfer would be just sufficient.
- The transfer may be here revocable or irrevocable and it may be effected before or after the commencement of this Act.
- All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income. (Section 61)
- A revocable transfer is revocable upon happening of some event (it may be mere wish of the transferor).

## Transfer irrevocable for a specified period [Section 62]

- The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer –
  - ✓ by way of trust which is not revocable during the lifetime of the beneficiary, and,
  - ✓ in the case of any other transfer, which is not revocable during the lifetime of the transferee;

In such a case as above, the transferor shall not derive any direct or indirect benefit from such income in either case and therefore the income is not taxable in the hands of transferor.

- ❑ However, notwithstanding anything contained above, all income arising to any person by virtue of any such transfer shall be chargeable to tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

## What is "Transfer" and "Revocable Transfer" Section 63]

- ❖ A transfer shall be deemed to be revocable if –
  - ✓ it contains any provision for re-transfer 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 re-assume power directly or indirectly over the whole or any part of the income or assets;
- ❖ "Transfer" includes any settlement, trust, covenant, agreement or arrangement.

# INCOME OF INDIVIDUAL TO INCLUDE INCOME OF SPOUSE, MINOR CHILD, ETC. [Section 64]

Income Received by -	Nature of Income	Income from	Ultimately Taxable in the Hands of -
Spouse of any Individual	Salary, Commission, fees or any other remuneration in cash or kind	A concern in which the individual has a substantial interest	No clubbing, if spouse possess technical or professional qualification and the income is arise only for application of that technical or professional qualification
Spouse of any Individual	Salary, Commission, fees or any other remuneration in cash or kind	A concern in which the individual has a substantial interest	If NO technical or professional qualification then in the hands of that Individual.
Spouse of any Individual	Income from the asset transferred directly or indirectly to the spouse without Adequate Consideration or in agreement to live apart	Payer may be any of the spouse	In the hands of Transferor

# Contd...

Income Received by -	Nature of Income	Income from	Ultimately Taxable in the Hands of -
Son's Wife of any Individual (Daughter-in-Law)	Income from the asset transferred directly or indirectly to the spouse without Adequate Consideration	Payer may be any one	In the hands of Transferor
Any Person or AOP – Who received the income for the immediate or deferred benefit of his/her spouse OR his son's wife	Income from the asset transferred directly or indirectly to the spouse without Adequate Consideration to the Person or AOP	Payer may be any one But the income must be arise only from asset so transfer	In the hands of Transferor
Income accrue or arise to Minor Child (Not being suffered by decease as specified under section 80U)	Any income arising through transfer of the Asset by Parents	Payer may be any one	To be clubbed with that Parent's income whose income is higher.



# Contd...

Income Received by -	Nature of Income	Income from	Ultimately Taxable in the Hands of -
Income accrue or arise to Minor Child (Not being suffered by decease as specified under section 80U)	Any income to Minor from – Manual work done by him OR Any activity involving application of his skill, talent or specialized knowledge	Payer may be any one	NO Clubbing of such income received by Minor
Income to HUF: Where an individual transfer his separate asset to the HUF	Income from such converted / transferred property	Payer may be any one	In the hands of Transferor

# Conclusion

- For the purposes of clubbing under section 64, the term “Income” includes “Loss”.
- Therefore, just as the income is to be clubbed, the losses arising to the transferee are also to be clubbed in the hands of the transferor.
- If income is transferred without transfer of asset, income is chargeable at the hands of Transferor.
- Income of spouse or minor child from assets transferred by a person continues to be that person's income.