

Income of other persons included in Assessee's Total Income

(Clubbing of Income)

(Section 60 to 65)

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Income of other persons included in an **assessee's** total income [Section 60 to 63]

- Transfer of income without transfer of assets
- Revocable transfer of assets
- Irrevocable transfer for a specified period

Income of other person included only in the **individual's** total income [Section 64]

- Spouse
- Son's wife
- Minor child
- HUF
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Income of other person included in the Assessee's total income

Transfer of income without transfer of assets – Sec 60:

Where there is a transfer of an income by a person to another person, without the transfer of the asset from which the income arises, such income shall be included in the total income of the transferor, whether such transfer is revocable or not and whether the transfer is effected before or after the commencement of the Income tax Act 1961.

For e.g., X who owns a house which fetches a rent of Rs.10,000 per month, declares that henceforth the rent shall belong to his friend Y but the house shall remain the property of X. In this case, because there is only a transfer of income without the transfer of the asset, the rental income shall be included in the income of X for the purpose of computing his total income.

Revocable transfer of assets – Sec 61:

Where there is a revocable transfer of an asset by a person to another person, any income arising or derived from such asset shall be included in the total income of the transferor.

Irrevocable transfer for a specified period – Sec 62:

As per Sec 62, the provisions of revocable transfer shall not apply in the following circumstances-

- a. In the case of transfer by way of trust, the transfer is not revocable during the life time of the beneficiary.
- b. In the case of any other transfer, the transfer is not revocable during the life time of the transferee.
- c. In the case of the transfer made before 1.4.1961, the transfer is not revocable for a period exceeding 6 years.

Definition of Transfer & Revocable Transfer – Sec63:

Transfer for Sec 60, 61 and 62 includes any settlement, trust, covenant, agreement or arrangement.

A transfer shall be deemed to be revocable if:

- a. It contains any provision for the **re-transfer**, directly or indirectly of the whole or any part of the **income or assets** to the transferor, during the life time of the beneficiary or the transferee as the case may be, or
- b. It gives the transferor a **right to re-assume power** directly or indirectly over the whole or any part of the **income or assets** during the life time of the beneficiary or the transferee as the case may be.

Additional points:

1. If there is provision to reassume power, the transfer will be revocable, Actual exercise of power is not necessary

2. Where the assessee can at any time reassume power over the assets or the income by just cancelling or altering the terms of deed, trust was revocable – ***C.T. Senthilnathan Chettiar V. State of Madras [1968] 67 ITR 102 (SC).***
3. Where no absolute right is given to transferee and the asset can revert back to transferor in certain circumstances, transfer is revocable. – ***V. Venugopala Varma Rajah v. CIT [1972] 84 ITR 466 (SC)***

Income of other persons included only in the Individual' s total income- Sec 64

Income of individuals to include income of -

- a. Spouse & Son's wife
- b. Minor child
- c. HUF

Income of Individual to include income of spouse and sons wife –Sec 64(1)

Remuneration of spouse from a concern in which the other spouse has substantial interest - Sec64(1)(ii)

In computing the total income of an individual, there shall be included all such sums as arises directly or indirectly 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 the individual has substantial interest.***

1. However, the remuneration arises to the spouse is solely attributable to the application of technical or professional qualification, knowledge and experience of the spouse, such remuneration will not be clubbed – ***Yashwant Chhajta v. CIT [2013] 214 Taxman 280 (HP)***
2. 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 shall be included in the case of the husband or wife, whose total income excluding such income is greater.
3. For the purpose of this clause, An individual shall be deemed to have substantial interest in a concern –

- If the concern is a company, he by himself or together with his relatives **beneficially** holds equity shares carrying not less than 20% of voting power at any time during the previous year.
- In any other case, he by himself or together with his relatives is entitled to atleast 20% of the profits of such concern at any time during the previous year.

Relative means the husband, wife, brother or sister or any lineal ascendant or descendent of the individual.

4. "Professional qualification" means fitness to do job or undertake an occupation or vocation requiring intellectual skill or requiring manual skill as controlled by intellectual skill and which is such that a person should be able to take out a living therefrom independently, though the salary does not cease to be product of professional skill merely because particular employment is accepted.

It is not necessary to confine the word "technical" to qualifications having technical subjects. Technical qualification may take within its fold everything connected with specialisation in particular subject, be it science, technology or commerce or business management.

The word "technical or professional qualification" do not necessarily relate to technical or professional qualifications acquired by obtaining a certificate, diploma or a degree or in any other form from a recognised body like a university or an institute. – **Batta Kalyani v. CIT [1985]20 taxman 378 (AP)**. However , contrary opinion expressed by some other courts, it is respectfully submitted , requires reconsideration.

The words " technical or professional" must receive a liberal construction as that term is not defined in the section itself or elsewhere in the Act. The word "technical" is a term of wide import . Any task required to be performed on an orderly and methodical manner which require some skill and knowledge for performance and which also involves some degree of complexity, can be regarded as "technical". The fact that ordinarily the term "technical" is used in relation to things mechanical or electrical or anything associated with machinery does not warrant limiting the scope of the term in Section 64. Similarly, the word "profession" is again a term of wide import. The varieties of profession are endless.

It is therefore, necessary to consider the term "technical and professional qualifications and experience" in the context of the facts which are required to be considered in a given case. Regard must , therefore, be had to the nature of the business carried on by the concern and the mind of technical or professional qualifications, knowledge and experience possessed by the spouse to whom the payment is made from the concern for the services rendered by that person - **CIT v. R. Jayalakshmi [1998]101 Taxman 350(Mad.)**.

Income accruing or arising from the assets transferred by one spouse to another without adequate consideration – Sec 64(1)(iv)

In computing the total income of an individual, there shall be included all such income as arises directly or indirectly , *subject to the provisions of Section 27(i)*, to the spouse of such individual from assets transferred directly or indirectly to the spouse of such individual ***otherwise than for adequate consideration or in connection with an agreement to live apart.***

1. **Natural love and affection** : Natural love and affection may be a good consideration but that would not be adequate consideration for the purpose of this section 64 (1) - ***Tulsidas Kilachand v. CIT [1961]42 ITR 1 (SC)***
2. The relationship of husband and wife should subsist both at the time of transfer of asset and at the time when income is accrued in order to attract clubbing provision. It means that transfer of asset before marriage is outside the scope of this section. Similarly , if transferor– spouse dies, the income , though continued to be enjoyed by the transferee, cannot be included in the income of deceased transferor, heir, administrator or executor , as widow or widower is not a spouse – ***Vinodkumar Ratilal v. CIT [1975] 100 ITR 564 (Guj).***

The word “spouse “ does not include illegal wife - ***Executors of will of T.V. Krishna Iyer v. CIT [1966] 38 ITR 144(Ker).***

Wife , in these provisions , means a lawfully wedded wife and child, a legitimate child. Income of a prospective wife or an illegitimate child is not affected by these provisions – ***Thomas (P.J.P)v. Cit [1962] 44ITR 897 (Cal).***

3. **Pin money**: If any property is acquired by the wife out of an allowance given by her husband for her personal expenses (called pin money), the clubbing provisions shall not apply - ***R. Dalmia v. CIT {1982} 133 ITR 169 (Del).***
4. Where the assessee made payments of premium on policy taken in the name of his wife, the maturity proceeds were invested and income earned thereon in the name of his wife. The assessing officer clubbed such income in the hands of the assessee. The Gujarat high court upheld such action. The court held that proximity between asset and income had to be considered irrespective of time lag between transfer of asset and actual income derived - ***Damodar K.Shah v. CIT [2001] 119 Taxman 882 (Guj).***
5. **Transfer by Non-resident**: Income from assets transferred by a non resident individual to his wife is subject to clubbing provisions of Section 64 only if income from such asset accrues and is received in India - ***CIT v. F.Y.Khambaty [1986] 159 ITR 203 (Bom).***

6. **Deemed owner u/s 27 (i)** : Where a house property is transferred without an adequate consideration by an individual to his or her spouse, the transferor shall be deemed owner of the house property and shall be subject to tax under the head Income from house property.

Capital gains: If there is any capital gain on the transfer of such house property, such capital gain shall, first be computed in the hands of the transferee and thereafter the same will be clubbed with the income of the transferor as per the provisions of this section 64(1)(iv).

Income from assets transferred to son's wife without adequate consideration - Sec64(1)(vi):

In computing the total income of an individual, there shall be included any income which arises from assets transferred directly or indirectly by an individual to the son's wife after 1st June 1973, otherwise than for adequate consideration.

Common issues in Sec 64(1) (iv) and (vi) :

- 1 **Pre – marital transfers:** The relationship of Husband and wife / Father in law, mother in law and daughter in law for the purpose of Sec 64 should subsist both at the time of transfer and at the time of accrual of income – ***Philip John Plasket Thomas v. CIT {1963}49 ITR 97(SC).***

As per Section 56(2)(vi), any sum of money , the aggregate value of which exceeds Rs.50000, received without consideration by an individual or HUF in any previous year from any person or persons on or after 01-04-2006, subject to certain exceptions is taxable under the head Income from other sources. In this case transferee spouse is taxable.

As per Section 56(2)(vii), Any sum of money, the aggregate value of which exceeds Rs.50000 is received without consideration or property (whether movable or immovable) is received without consideration or movable property is received for an inadequate consideration by an individual or HUF on or after 01-10-2009, if the amount of such gift or inadequate consideration exceeds Rs.50000 subject to certain exceptions is taxable under the head Income from other sources. In this case transferee spouse is taxable.

- 2 ***When asset transferred without adequate consideration is invested in business by the transferee:***

Where the assets transferred by an individual to the spouse or son's wife are invested by the transferee-

- In any business , (not being as capital contribution in a firm), proportionate income arising to the transferee attributable to the investment ; and

- In the nature of capital contribution in a firm, any interest receivable by the transferee attributable to such investment. Shall be included in the total income of the individual.

For this purpose, the proportion shall be with reference to the value of investment aforesaid as on the first day of the previous year to the total investment in the business by the transferee as on that day..

3. Income for clubbing purpose includes losses.
4. **Whether income from accretion to asset be clubbed** : Income on the asset transferred is clubbed but not the income on the accretion to the asset.
For e.g, If debentures are gifted by the husband to the wife, interest income on those debentures shall be clubbed. If the interest on debenture is deposited , the interest on deposit shall not be clubbed in the hands of the husband. It is taxable in the hands of the wife.
5. ***When asset transferred without adequate consideration has changed the shape and identification*** : Where an asset transferred by spouse is converted in to another form, income derived from such converted asset shall be clubbed.

For e.g., Mr.A gifts a sum of Rs.50,00,000 to Mrs.A on the occasion of wedding anniversary . Mrs.A invest this sum in a fixed deposit , which derives interest income of Rs.25,000 p.m. The interest income so derived shall be clubbed in the hands of Mr.A, despite the fact that it is the income from converted asset.

Income from assets transferred to any person / persons or AOP for the immediate or deferred benefit of spouse /son's wife without adequate consideration – Section 64(1)(vii) / 64(1)(viii):

In computing the total income of an individual, there shall be included all such income arising directly or indirectly to any person or association of persons from the assets transferred by that individual otherwise than for adequate consideration to the extent to which the income from such asset is for the immediate or deferred benefit of his/her spouse or son's wife.

Income of Individual to include income of Minor child – Sec 64(1A)

1. In computing the total income of an individual, there shall be included all such income arises or accrues to his minor child.
2. However, income shall not be included if it arises or accrues to a Minor child on account of any

- Manual work done by him ; or
 - Activity involving application of his skill , talent or specialized knowledge and experience.
3. If the minor child is suffering from any disability of the nature specified in Sec 80 U , the income of such child shall not be included in the hands of the parent but shall be assessed in the hands of the child.
 4. The income of the minor child shall be included-
 - Where the marriage of his parent subsists, in the income of that parent whose total income (excluding this income) is greater.
 - Where the marriage of his parent does not subsist, in the income of that parent who maintains the minor child in the previous year.
 5. Child includes a step child and an adopted child of that individual.
 6. Income of the minor married daughter is clubbed in the hands of the parent. However , where Sec 27 applies, clubbing of income from property gifted by the parent does not arise.
 7. Even though income derived by the minor from the manual work or from activity involving skill and talent can not be clubbed, there is no provision to avoid clubbing of income earned on investment made out of such income.
 8. Where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent , unless the assessing officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary to do so.
 9. **Exemption u/s 10(32)** : If the income is included in the hands of the parent under Sec64(1A), then the assessee is entitled to claim exemption under Sec 10(32) to the extent of Rs.1500 per child.

Income of Individual to include income of HUF – Sec 64(2)

1. Where a member of a Hindu undivided Family has converted or transferred self acquired property in to Joint family property without any adequate consideration, the income arising there from is taxable as the income of the transferor member.
2. If the converted property is subsequently partitioned among the members of the family, the income derived from such converted property as is received by the spouse of the transferor will be taxable as the income of the transferor.

Property for this purpose includes any interest in property, movable or immovable.

Liability of person in respect of income included in the income of another person – Sec 64(5)

1. According to Sec 65, wherever clubbing provision is attracted, the person in whose name assets stands shall be liable , on the service of a notice of demand by the assessing officer, to pay that portion of the tax levied on the assessee which is attributable to the income so clubbed.
2. Where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax on the income from such assets.