

SES'S L.S.RAHEJA COLLEGE OF ARTS AND COMMERCE

Course: SYBAF - TAXATION

Unit: 1

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CLUBBING OF INCOME**SECTION 60 TRANSFER OF INCOME WITHOUT TRANSFER OF ASSET**

- 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 ASSETS

'Revocable transfer' means the transferor of asset assumes a right to re-acquire asset or income from such an asset, either whole or in parts at any time in future, during the lifetime of transferee.

- An asset is transferred under a "revocable transfer",
- The transfer for this purpose includes any settlement, or agreement
- Then any income from such an asset is taxable in the hands of the transferor and not the transferee (owner).

SECTION 64(1)(ii) INCOME OF SPOUSE REMUNERATION FROM A CONCERN IN WHICH SPOUSE HAS SUBSTANTIAL INTEREST

- If spouse of an individual gets any salary, commission, fees etc (remuneration) from a concern.
- The individual has a substantial interest in such a concern.
- The remuneration paid to the spouse is not due to technical or professional knowledge of the spouse.
- Then such salary, commission, fees, etc shall be considered as income of the individual and not of the spouse.

Substantial interest - An individual is deemed to have substantial interest, if he /she (individually or along with his relatives) beneficially holds equity shares carrying not less than 20 per cent voting power in the case of a company or is entitled to not less than 20 percent of the profits in the case of a concern other than a company at any time during the previous year.

SECTION 64(1)(IV) INCOME FROM ASSET TRANSFERRED TO SPOUSE

- The taxpayer has transferred an asset (other than a house property)
- The asset is transferred to his/her spouse
- The asset is transferred without adequate consideration. Moreover there is no agreement to live apart.
- If the above conditions are satisfied, any income from such asset shall be deemed to be the income of the taxpayer who has transferred the asset.

SECTION 64(1)(VI) INCOME FROM ASSETS TRANSFERRED TO SON'S WIFE

- The taxpayer has transferred an asset.
- The asset is transferred to son's wife.
- The asset is transferred without adequate consideration.
- In the case of such individuals, the income from the asset is included in the income of the taxpayer who has transferred the asset.

SEC.64(1)(VII) INCOME FROM ASSETS TRANSFERRED TO A PERSON FOR THE BENEFIT OF SPOUSE

- The taxpayer transferred an asset to a person or an association of persons.
- Asset is transferred for the benefit of spouse.
- The transfer of asset is without adequate consideration.
- In case of such individual income from such an asset is taxable in the hands of the taxpayer who has transferred the asset.

SEC.64(1)(VIII) INCOME FROM ASSETS TRANSFERRED TO A PERSON FOR THE BENEFIT OF SON'S WIFE

- The taxpayer has transferred an asset.
- The asset is transferred to any person or an association of persons.
- The asset is transferred for the benefit of son's wife.
- The asset is transferred without adequate consideration.
- In case of such individual, the income from the asset is included in the income of the person who has transferred the asset.

SECTION 64(1A) INCOME OF MINOR CHILD

All income which arises or accrues to the minor child shall be clubbed in the income of his parent (Sec. 64(1A), whose total income (excluding Minor's income) is greater. However, in case parents are separated, the income of minor will be included in the income of that parent who maintains the minor child in the relevant previous year.

In case of income of minor child from following sources, the income of minor child is not clubbed with the income of his parent.

- Income of minor child on account of any manual work.
- Income of minor child on account of any activity involving application of his skill, talent or specialized knowledge and experience.
- Income of minor child (from all sources) suffering from any disability of the nature specified under section 80U.
- SEC 10(32) Exemption to parent. An individual shall be entitled to exemption of Rs. 1,500 per annum(p.a.) in respect of each minor child if the income of such minor as included under section 64 (1A) exceeds that amount.

SECTION 64 CONVERSION OF SELF-ACQUIRED PROPERTY INTO HUF PROPERTY

- Individual taxpayer, being a member of a HUF converts property without receiving adequate consideration into property of HUF
- Income from converted property is treated as income of the transferor until partition of property
- After the partition of converted property amongst members, income generated from portion received by transferor as well as spouse, such income should be clubbed into the income of transferor.

SECTION 64 – EXPLANATION 2 CLUBBING OF LOSS

- If clubbing provisions are applicable and income from such a source is negative it will still be clubbed in the income of assessee.

SET-OFF AND CARRY FORWARD OF LOSSES

SECTION 70 INTRA-HEAD (OR) INTER-SOURCE ADJUSTMENT

Setting off loss of one source against income from other source within the same head.

Rules of adjustment

- Loss from speculation business can be only set off only against profit of a speculation business.
- Loss from activity of owning and maintaining race horses can only be set off against income from same business. That is, it can be set off against profit of a business of owning and maintaining race horses only.
- NO loss can be set off against winnings from lotteries, races etc. that is casual winnings is not available for set off against any type of loss, irrespective of under which head such loss has occurred.
- Long term capital loss can only be set off against long term capital gain that is, Long term capital loss can be set off only against gain on sale of any other long-term capital asset. It cannot be set off against short term capital gain.
- Loss from an exempt source of income cannot be set off against profit of a taxable source.

SECTION 71 INTER HEAD ADJUSTMENT

Loss of one head can be set off against income under other heads.

Rules of adjustment

- Loss from a speculation business cannot be set off against income of any other head.
- Loss under the head “profits and gains of business (or) profession” cannot be set off against income from salary.
- Loss from activity of owning and maintaining race horses can be set off against income from the same business.
- Any loss under the head capital gains cannot be set off against any other head. Long term (or) short term capital loss cannot adjust against income of any other head. In short, provisions of section 71 shall not be available for losses under the head “capital gains”. However, this doesn't preclude income under the head “capital gains” for being available for adjustment against losses under other heads.
- No loss can be set off against winnings from lotteries, cross word puzzles, card games, horse races, betting etc.

CARRY FORWARD OF LOSSES

- Losses which could not be set off against income of the assessment year, do not lapse, but are allowed to be carried forward to be set off against income of subsequent years.
- Carry forward of losses for each head is governed by different sections which define the number of years it can be carried forward for, against which income it can be set off etc.

TYPE OF LOSS	CARRY FORWARD FOR NO. OF YEARS	AGAINST WHICH INCOME TO BE SET-OFF
House Property loss	8 AYS	House property income
Business loss	8 AYS	Business Income (speculative and Non-speculative Profits)
Speculation loss	4 AYS	Speculative income only
STCL	8 AYS	Capital gains (LTCG & STCG)
LTCL	8 AYS	LTCG only
Loss on Maintenance of race-horses	4 AYS	Same income – i.e., income from such activity.
Unabsorbed depreciation	No time limit	Any Income (Except salaries)