

CHAPTER 10: CLUBBING, SET-OFF & CARRY FORWARD

CLUBBING OF INCOME

Section 60: Transfer of Income without transferring Assets	<ul style="list-style-type: none"> Income is Transferred Asset is still with the transferor of Income. Then such income will be taxed in the hands of Transferor.
Section 61: Revocable transfer of Asset.	<ul style="list-style-type: none"> Income is Transferred Such transfer is Revocable. Then such income will be taxed in the hands of Transferor.
Section 62: Transfer irrevocable for a specified period.	<p>Section 61 shall not be applicable in the following cases:</p> <ul style="list-style-type: none"> In case of the transfer by any way, the transfer is not revocable during the life time of the beneficiary. In the case of any other transfer, the transfer is not revocable during the life time of the transferee. In case the transfer is made before 01.04.1961, the transfer is not revocable for the period exceeding 6 year. <p>The above exemptions are applicable only if transferor derives no direct or indirect benefit from such Income.</p> <p>For the purpose of Section 60, 61 & 62 Transfer includes Settlement, trust, covenant agreement or arrangement.</p>
Section 63: Transfer & revocable transfer defined.	<p>A transfer shall be deemed to be revocable if:</p> <ul style="list-style-type: none"> 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 It gives the transferor a right to re-assume power directly over the whole or any part of the income or asset during the life time of the beneficiary or the transferee as the case may be.
Section 64: Income of an individual to include income of Spouse, Minor Child etc.	
Section 64 (1)(ii): Remuneration of a Spouse from a concern in which the other spouse has substantial interest.	<ul style="list-style-type: none"> Any Sum (Salary, Commission, fees or any remuneration) arises directly or indirectly to the Spouse of an Individual from a CONCERN. In such CONCERN individual has substantial interest. Then such income shall be clubbed in the hands of the Individual who has substantial interest. <p>Meaning of SUBSTANTIAL INTEREST:</p> <ul style="list-style-type: none"> Company: he alone or along with his relative at any time during the previous year owns beneficially, shares (not being fixed rate dividend whether with or without a future right to participate in profits) carrying not less than 20% of the voting power (i.e. equity share). (Relative = husband, wife, brother or sister or any lineal ascendant or descendent). Other Entity: entitlement of 20% of profits of that concern at any time during that previous year. <p>EXCEPTION:</p> <ul style="list-style-type: none"> When spouse is technically or professionally qualified. Income is solely attributable to the application of his or her technical or professional knowledge.

A.Y. 2013-14

Chapter 10: Clubbing, Set off & Carry Forward of Income

	<p>BOTH HAVE SUBSTANTIAL INTEREST:</p> <p>In the 1st year of determination of such substantial interest & both receives Remuneration from the concern then both the remuneration shall be clubbed in the hands of the spouse having GREATER income before clubbing such remuneration on fulfillment of the following condition:</p> <ul style="list-style-type: none"> • Both the husband & wife have a substantial interest in the concern. • Both the husband & wife get remuneration from such concern. • The relationship of husband & wife subsist at the time of accrual of such income. <p>Once the income is clubbed then it will continue to be clubbed in the hand of that spouse & not in the hands other unless the assessing officer is satisfied & give reasonable opportunity.</p>
Section 64 (1)(iv): Income from assets transferred to the spouse.	<ul style="list-style-type: none"> • There is a asset (except house property see section 27) • Such asset is transferred to the spouse. • Income shall be clubbed in the hands transferor. <p>EXCEPTION:</p> <ul style="list-style-type: none"> • Transfer is for adequate consideration. • Transfer is in agreement to live apart. • The relation of husband or wife does not exist either at the time of transfer or at the time of accrual of Income.
Section 64 (1)(vi): Income from assets transferred to the son's wife.	<ul style="list-style-type: none"> • Asset transfer directly or indirectly • To son's wife • For inadequate consideration.
Section 64 (1)(vii): Income from assets transferred to the any person for the benefit of the spouse of the transferor.	<ul style="list-style-type: none"> • Asset transfer directly or indirectly to any Person Or Association of person • For inadequate consideration. • And such transfer is for the benefit of the spouse. • Then the income arising from such asset shall be clubbed in the hand of the transferor. • To the extent it is for the benefit of his/ her spouse.
Section 64 (1)(viii): Income from assets transferred to the any person for the benefit of the son's wife of the transferor.	<ul style="list-style-type: none"> • Asset transfer directly or indirectly to any Person Or Association of person • For inadequate consideration. • And such transfer is for the benefit of the son's wife. • Then the income arising from such asset shall be clubbed in the hand of the transferor. • To the extent it is for the benefit of son's wife.
Section 64 (1A): Clubbing of income of a minor child.	<ul style="list-style-type: none"> • Income should arise in the hand of Minor Child. • That income should be clubbed in the hand of that parent whose total income (excluding income of the minor) is greater. • Once the clubbing is made it shall continue in all the coming here. • Section 10(32) ₹ 1500/- or income to be clubbed whichever is lower shall be allowed as deduction while computing the income of that parent. • Exception:

	<ul style="list-style-type: none"> ○ Income of a minor referred under section 80U (disability.) ○ Income from a manual work done by the Minor. ○ Income from application of skills, talent or specified knowledge and experience.
Section 64 (2): Income from Self acquired property converted to Joint Family Property.	<ul style="list-style-type: none"> ● Individual being a member of HUF: <ul style="list-style-type: none"> ○ Converts, his separate property as the property of HUF, or ○ Throws the property into the common stock of the family or ○ Otherwise transfer his individual property to the family. ● Then the income of such property shall be clubbed in the hands of Individual. ● But the same is subject matter of partition. Eg. Mr. X transfer his property to his own HUF having member himself, his wife, two son, & a minor son. And on partition everyone is of equal right.
Section 65: Liability of person in respect of income included in the income of another person.	<ul style="list-style-type: none"> ● When the asset is transferred to any other person. ● And the income is clubbed in the hands of transferor ● Then the transferor can claim the tax levied on the transferor which is attributable to the income so clubbed from transferee.
As per the provision income of another person is to be included in the total income of the individual. However, such income will be first computed in the hands of the recipient as if it was his income and such recipient will compute this income under the relevant head after claiming exemptions/ allowances/ deductions permissible under the relevant head in which it falls. Such income computed, under the relevant head, will be included in the total income of the individual under the same head of Income.	

Illustration 1

Determine the Gross Total Income of Armaan and his wife from the following particulars for the year ending 31.3.2013:

1. Armaan and his wife are partners in a firm carrying on cloth business, their respective shares of profit being ₹ 78,000 and ₹ 60,000.
2. Their 16 years old son has been admitted to the benefits of another firm, from which he received 80,000 as his share of profit in the firm and ₹ 90,000 as interest on capital. The capital was invested out of the minor's own funds amounting to ₹ 90,000.
3. A house property in the name of Armaan was transferred to his wife on 1.12.2012 for adequate consideration. The property has been let at rent of ₹ 30,000 p.m.
4. Debentures of a company of ₹ 1,40,000 and ₹ 1,20,000 purchased two years ago are in the names of Armaan and his wife respectively, on which interest is receivable at 10% p.a. His wife had a interest in the past transferred ₹ 70,000 out of her income to Armaan for the purchase of the debentures in Armaan's name.
5. Armaan had transferred ₹ 50,000 to his wife in the year 2009 without any consideration which was given as a loan by her to Rizwan. She earned ₹ 20,000 as interest during the earlier previous year which was also given on loan to Rizwan. During the financial year 2012-13, she received interest at 10% p.a. on ₹ 70,000.
6. Armaan transferred ₹ 75,000 to a trust, the income accruing from its investment as interest amounted to ₹ 7,500, out of which ₹ 5,000 shall be utilized for the benefit of his son's wife and ₹ 2,500 for the benefits of his son's minor child.

Illustration 2

Mrs. Suresh Basu received the following amounts during the financial year 2012-13:

Gross salary	₹ 5,30,000
Family pension ₹ 10,000 × 12	₹ 1,20,000
Income of a minor child	₹ 49,000
Accumulated balance in PF of her husband after his death	₹ 1,00,000
Gratuity received after the death of husband	₹ 1,00,000

Calculate taxable income of Suresh Basu and tax liability for the assessment year 2013-14.

SET OFF OF LOSSES

Section 70: Set off loss from one source against income from another source under the same head of income (Intra Head Set off).	<ul style="list-style-type: none"> • First set off is to be done within the same head of income. • PGBP: <ol style="list-style-type: none"> a. Loss from Speculation Business can't be set off against Normal Business Income. b. Loss from Specified Business referred in section 35AD can't be set off against Normal Business Income. • Capital Gain: Loss from Long term Capital Gain can't be set off against short term but short term can be set off against long term. • Other Source: <ol style="list-style-type: none"> a. Loss arising on account of Owning & Maintenance of Race Horses can't be set off against other nature of income. b. Loss from Lottery, crossword puzzles, card game can't be set off against themselves or any other income. • Loss from exempt income can't be set off. • Loss arising on Bonus Stripping 94(8) & Purchase & sale of securities referred under 94(7)
Section 71: Set off of income from one head against income from another head (Inter Head Set off).	<ul style="list-style-type: none"> • After intra head set off we have to do inter head set off. • Loss under the Head Capital Gain cannot be set off against any other Head of Income. • Loss under the Head business or Profession cannot be set off against Income under the Head Salary. • Others are same as discussed in Intra head set off.

Illustration 3

Ankit carries two businesses A and B. Business A is a manufacturing business while business B is a speculative business. State whether the loss can be set off in the following two situations:

	Situation 1	Situation 2
Manufacturing business	(+) ₹ 3,00,000	(-) ₹ 15,00,000
Speculation business	(+) ₹ 1,40,000	(+) ₹ 2,00,000

Illustration 4

	Situation 1	Situation 2
Short term capital gain	(-) ₹ 5,00,000	(+) ₹ 3,00,000
Long term capital gain	(+) ₹ 7,00,000	(-) ₹ 2,00,000

Illustration 5

From the following information submitted to you, compute the taxable income in the following situation.

	Situation 1	Situation 2
Long term capital gain/loss	(+) ₹ 1,70,000	(-) ₹ 3,00,000
Short term capital gain/loss	(-) ₹ 50,000	(+) ₹ 1,10,000
business income/loss	(-) ₹ 80,000	(-) ₹ 90,000

Illustration 6

From the following information submitted to you, compute the total income of A for the assessment year 2013-14 and calculate his tax liability assuming he is not allowed any deduction under section 80C to 80U.

Income from salary	₹ 1,80,000
Income from house property	₹ 40,000
Business loss	(-) ₹ 1,90,000
Loss from specified business referred to in section 35AD	(-) ₹ 60,000
Short-term capital loss	(-) ₹ 60,000
Long-term capital gain	₹ 2,40,000

CARRY FORWARD OF LOSSES

INCOME	INCOME AGAINST WHICH IT CAN BE SET OFF	PERIOD OF CARRY FORWARD (Years)	OTHER CONDITION
House Property	House Property	8	
<u>Profits & Gains of Business or Profession:</u>			
Normal Business	Business	8	1. Business may or may not be continued of which the loss is carried forward.
		Unabsorbed Capital expenditure on Scientific Research, Unabsorbed expenditure on Family Planning (Indefinite period.)	2. Losses can be set only by the person who has incurred the losses.
Unabsorbed Depreciation Section 35AD	Any income	Indefinite period	Order of Set off See below
	Income under section 35AD	Indefinite period	
Speculation Business	Speculation Business	4	
<u>Capital Gain:</u>			
Long Term	Long term Capital Gain	8	
Short Term	Capital Gain	8	
<u>Other Sources:</u>			
Income from owing & Maintenance of Race Horses	Income from owing & Maintenance of Race Horses	4	
Normal other source Income		N.A.	

Section 78: Carry forward & set off of losses in case of change in constitution of firm or on succession.	<p>In the following Case loss of one person can be set off by other:</p> <ul style="list-style-type: none"> • Inheritance of business • Amalgamation • Succession of proprietary concern or firm by a company. • Demerger. • In case of constitution of firm
Section 79: Carry forward & set off of losses in case of Certain Companies.	<ul style="list-style-type: none"> • In case of closely held Company. • There is a change in Share Holding in a previous year. • The loss of the year prior to previous year shall be carried forward only when: <ul style="list-style-type: none"> ○ On the 1st day of & last day of the P.Y. the share of the company carrying not less than 51% of voting power were beneficially held by the same persons. • Exception: <ul style="list-style-type: none"> ○ Death of the shareholder ○ On account of transfer of share by way of gifts to any relative or the shareholder making such gift. ○ Any change in the shareholding of an Indian company which is subsidiary of a foreign company arising as a result of amalgamation or demerger of a foreign company subject to the condition that 51% of the shareholding of the amalgamating or demerged foreign company continue to remain the shareholders of the amalgamated or the resulting company.
Section 80: Compulsory filing of loss return.	<ul style="list-style-type: none"> • For carry forward of loss it is compulsory to file return before the due date as in 139(3) but due date are mentioned in 139(1). • The following loss can be carried forward even when return are not filed before due date: <ul style="list-style-type: none"> ○ Depreciation loss (covered by section 32) ○ House property loss ○ Loss under section 35AD.

Illustration 7

Atlanta Pvt. Ltd. has three share holders i.e. Akshay, Shadab and Darshan. All the three shareholders have equal shareholding of the company. During the previous year 2011-12 the company incurred a loss of ₹ 1,20,000. On 25.3.2013 Akshay and Shadab transferred their shareholding to Imran. On 31.3.2013 the shareholders were.

Darshan - 1/3rd shareholding.

Imran - 2/3rd shareholding.

Will the company be able to carry forward and set off the loss of ₹ 1,20,000 to subsequent year?

Illustration 8

Ranjeet furnishes the following particulars of income for the previous year 2012-13:

Income from salary (computed)	₹ 68,000
Income from house A	₹ 36,000

Loss from house B	₹ 24,000
Loss from house C	₹ 22,000
Profit from business A	₹ 60,000
Profit from business B	₹ 70,000
Profit from share business (speculative)	₹ 82,000
Loss from silver business (speculative)	₹ 94,000
Long-term capital gain on sale of shares on which transaction tax has been paid	₹ 22,000
Short-term capital loss on sale of land	₹ 44,000
Income from card games	₹ 22,000
Winnings from lotteries (gross)	₹ 60,000
Income from horse races in Delhi (gross)	₹ 40,000
Loss from horse races in Bangalore	₹ 21,000

Compute the Gross Total Income of Ranjeet for the assessment year 2013-14.