

## 9

## CLUBBING OF INCOME

## Introduction

- Normally, an Assessee is taxed in respect of his own income only, but in some exceptional cases this principle is deviated by Income Tax Act
- Under **Section 60 to 64** of the Act an assessee may be taxed in respect of an income which legally belongs to someone else
- Inclusion of an income of one person in the income of another person is known as 'Clubbing of Income'

## Why Clubbing?

- Assessee tries to reduce his/her own tax liability by transferring either an asset or an income to his family members or tries to make such arrangements, wherein the ultimate benefit of such transferred asset or income is received back by him/her
- **Applicable to** – Transactions governed by Section 60 to Section 64
- **What if the clubbing is beneficial to the assessee** - if application of clubbing provisions result in reduction of tax liability of the assessee, then also they shall be made applicable, whether they are prejudicial to the interest of the Income Tax Department or not

## Clubbable incomes

## 1. Transfer of an Income without transferring the Asset: (Section 60):



- Asset owned by an assessee and an income is generated out of that asset and that income is transferred by that assessee to **ANY PERSON**,
  - **without transferring the ownership** of that asset,
  - then such transferred income will be clubbed back in the income of the Transferor Assessee
2. **Revocable Transfer of an Income generating Asset (Section 61)**
- When an Income generating Asset is being transferred by the assessee, under a Revocable Transfer (Reversible Transfer, wherein the ownership of the asset can be taken back by the Transferor) to any person,
  - then income generated out of that asset will be clubbed in the income of the Transferor assessee,
  - **ONLY IF the transfer of the asset is revocable.**

## 3. Remuneration of Spouse [Section 64(1)(ii)]

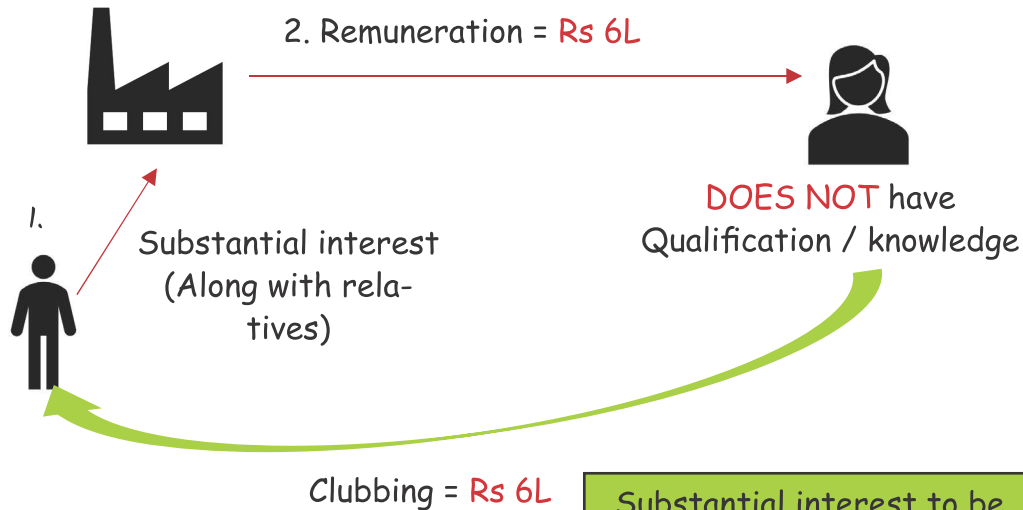


- Where, a taxpayer being an Individual, has a 'Substantial Interest' (> 20% of voting power / PSR) in a concern at any time during the FY,
- whether individually on his/her own + jointly with relatives and
- **Spouse** of that individual taxpayer, is **employed** by that concern,
- **Without that spouse having any Technical or Professional Qualification, Knowledge or Experience in the related field,**
- **THEN** the remuneration received by that spouse from that concern shall be clubbed in the hands of that individual taxpayer having a substantial interest that concern.



1.

Example for better understanding

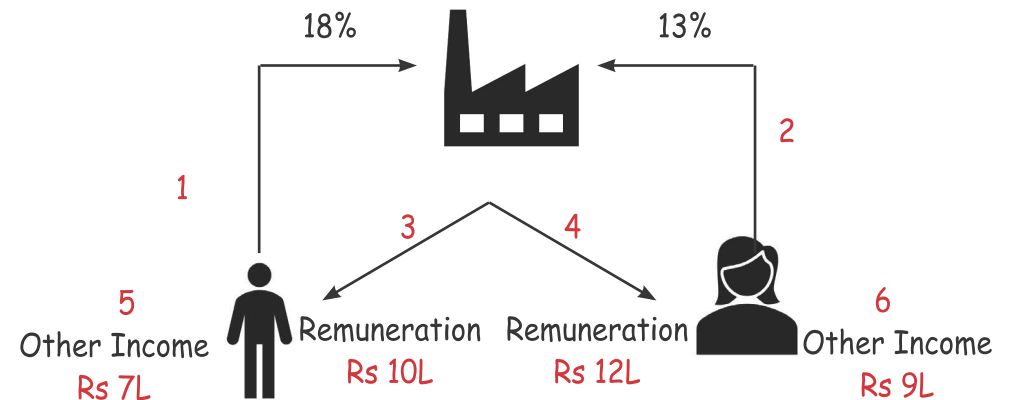


If the spouse has qualification / knowledge / experience

- Provision **NOT** applicable
- Taxed in the hands of **Spouse**
- BECAUSE she has earned that income on her skills and experience

Sr No	Individual (has substantial interest)	Spouse (Qualification)	Clubbing
1	X	X	X
2	X	YES	X
3	YES	YES	X
4	YES	NO	YES

2.

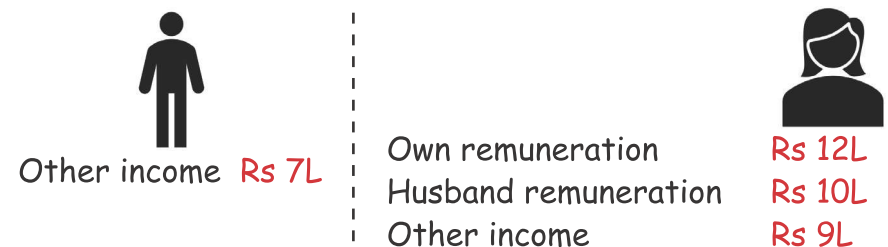


**Husband's perspective**, he is holding more than 20% of holding along with his wife i.e. 31% (18% + 13%) and Spouse does not have qualification - HENCE whatever amount earned by her would be clubbed in the hands of the Husband.

**Wife's perspective**, she is holding more than 20% of holding along with her husband i.e. 31% (18% + 13%) and the husband also does not have any qualification - HENCE whatever amount earned by her would be clubbed in the hands of the wife.

NOW WHAT TO DO?

Check other incomes of the husband and wife - club the remuneration in that person's hands whose **OTHER INCOME** is more



#### 4. Transfer of an Income yielding Asset, other than a House Property to Spouse, without adequate consideration: [Section 61(1)(iv)]

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- When an income yielding asset belonging to the assessee, other than a House Property
- is being transferred by an assessee to his/her Spouse,
- without an adequate consideration
- otherwise than for an agreement to live apart,
- THEN the income yielded by that asset shall be clubbed in the hands of the transferor assessee



- Relationship of Husband-Wife shall exist BOTH at the time of transfer of asset as well as at the time of accrual of income
- What if asset transferred before marriage - clubbing provisions **shall not be applicable**
- What if either of the spouse dies - Clubbing not applicable
- If transferee spouse sells off that transferred asset - **CG income shall to be clubbed** in the hands of transferor spouse
- What if asset is transferred for adequate consideration - **NO clubbing**
- An Income arising from accretion - **NO clubbing**

Example = Mr A transferred 1,000 - 12 % Debentures of Rs 100 each in X Ltd to his wife without any consideration. Debenture interest of 12,000/- received by Mrs. A shall be clubbed in the hands of Mr. A.

But if Mrs A invests the interest amount of 12,000/- to buy further debentures and earns further interest of Rs 1200/- then that shall not be clubbed back in the hands of Mr. A. as income arising from accretion or addition to the asset is not liable to clubbing provisions.

#### 5. Transfer of an income yielding asset to Son's Wife without an adequate consideration [Section 64(1)(vi)]

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[only son's wife and not daughter's husband] - Clubbed in the hands of transferor

- Section applicable to individuals only
- Father-in-Law or Mother-in-Law and Daughter-in-Law relationship shall exist both at the time of transfer of asset as well as at the time of accrual of income from that asset

#### 6. Transfer of an income yielding asset by Assessee without an adequate consideration to any person for the benefit of Spouse [Section 64(1)(vii)] - Clubbed in the hands of transferor

#### 7. Transfer of an income yielding asset by Assessee without an adequate consideration to any person for the benefit of Son's Wife: [Section 64(1)(viii)] - Clubbed in the hands of transferor

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#### 8. Income of a Minor Child: [Section 64(1A)]

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General Rule - Income earned by minor shall be Taxable in the hands of the PARENTS (whose income is MORE) Clubbing NOT APPLICABLE

- Income is due to **MANUAL WORK**
- Income is due to **SKILLS AND TALENT**
- Minor is suffering from **DISABILITY**

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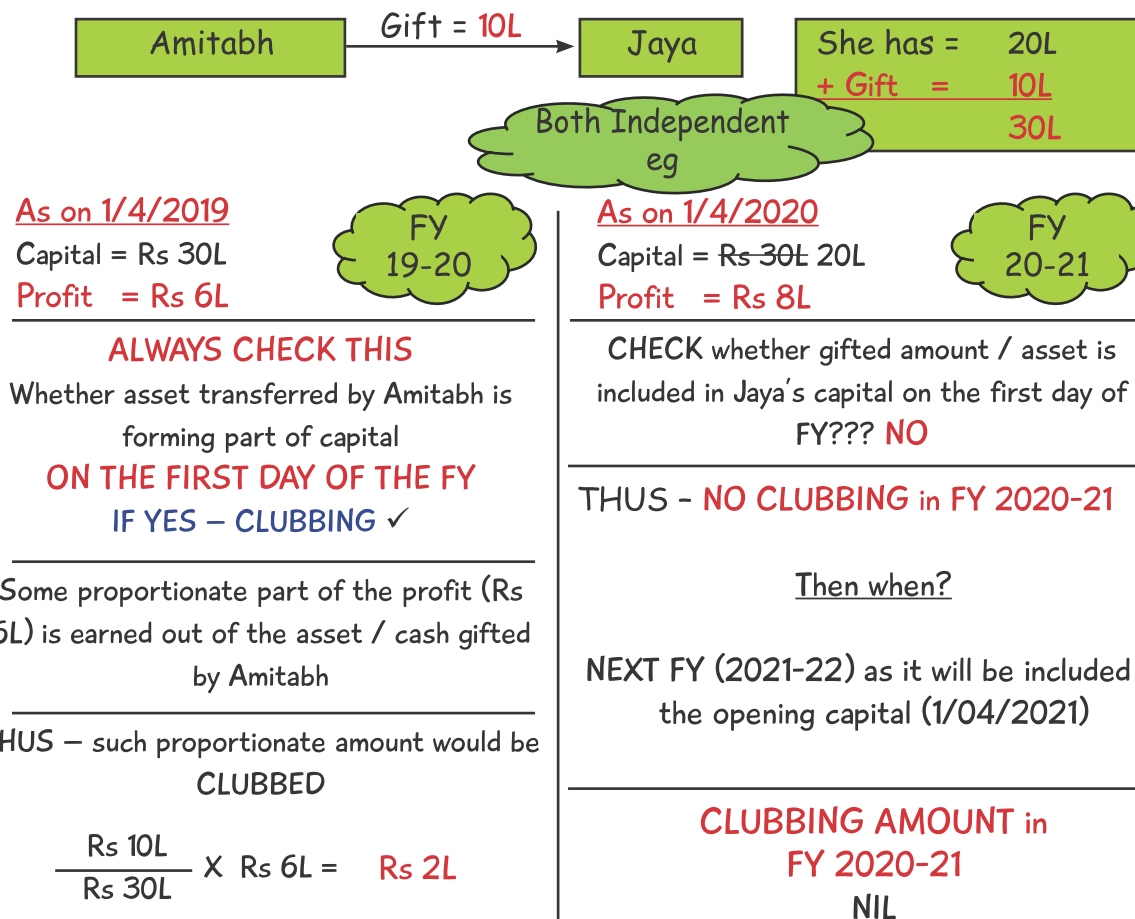
If clubbed - Exemption Rs 1,500 p.a. per child

For clubbing, marriage should be subsisting - else clubbed in the hands **who maintains him / her** irrespective of the total income

Once clubbed - continued to get clubbed **in that parent's hand only** even though in the next year total income of other increases

### 9. Transferred asset is invested in business 13 19 30

- Where the assets transferred by an individual to his spouse are invested by the transferee in the business - proportionate income arising to the transferee from such investment is to be included in the total income of the transferor.
- If the investment is in the nature of contribution of capital, proportionate interest receivable by the transferee from the firm will be clubbed with the income of the transferor.



### 10. Sec 64(2) – HUF

- When personal property of an individual is converted after 31.12.69 into the property of the family, then the Income from such converted property will be included in the Income of the Individual.
- Total income clubbed i.e. not only to the extent of inadequate consideration.
- If however, the converted property is subsequently partitioned amongst the members of the family, the income derived from such converted property, as is received by the spouse of the transferor, will be taxable in the hands of the transferor.

#### Example

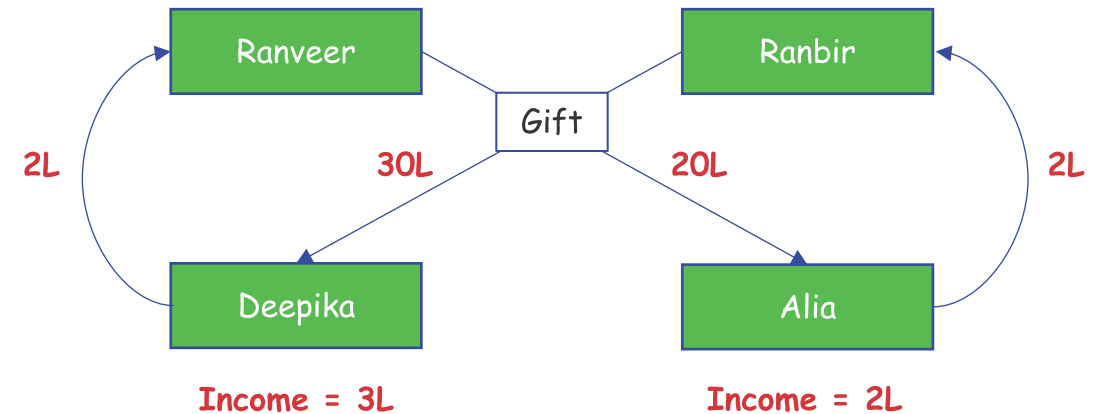
X transfers his self acquired property yielding an annual income of Rs. 1,00,000, to his HUF, consisting of X, Mrs. X, his major son Y and minor son Z.

Income of Rs. 1,00,000, will be included in the income of X (and not the HUF) by virtue of this section.

If, however, the property is partitioned amongst the family members; income derived from converted property by Mrs. X (i.e. 1/4th of Rs. 1,00,000) will be included in the income of X under section 64(2).

**CROSS TRANSFER**

- Example - A making gift of 50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth 50,000 owned by him
- In the case of cross transfers also, the income from the assets transferred would be assessed in the hands of the **DEEMED TRANSFEROR** if the transfers are so intimately connected as to form part of a single transaction, and each transfer constitutes consideration for the other by being mutual or otherwise.
- Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the provisions of this section, showing that such transfers constituted consideration for each other.
- CIT v. Keshavji Morarji[1967] 66 ITR 142,
- If 2 transactions are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

Simple language to write in exam

If Assessing Officer is convinced that some gifts are related  
with each other in a circuitous way  
AND  
There is an intention to evade provisions of Sec 64(1)