

## CHAPTER V

## INCOME OF OTHER PERSONS, INCLUDED IN TOTAL INCOME OF ASSESSEE

- 96.** All income arising to any person by virtue of transfer,—
- 5           (a) whether revocable or not, and whether effected before or after the commencement of this Act; and
- (b) where there is no transfer of assets from which such income arises, shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.
- 10       **97.** (1) All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as income of the transferor and shall be included in his total income.
- (2) The provisions of sub-section (1) shall not apply, if such transfer—
- 15           (a) is by way of trust which is not revocable during the lifetime of the beneficiary; or
- (b) and in case of any other transfer, is not revocable during the lifetime of the transferee,
- and the transferor does not derive any direct or indirect benefit from such income in cases referred to in clauses (a) and (b).
- 20       (3) Irrespective of the provisions of sub-section (2), all income arising to any person by virtue of such transfer shall be chargeable to income-tax as income of the transferor as and when the power to revoke such transfer arises, and shall then be included in his total income.
- 98.** For the purposes of sections 96 and 97, and this section,—
- 25           (a) “transfer” includes any settlement, trust, covenant, agreement or arrangement;
- (b) a transfer shall be considered to be revocable, if—
- (i) it contains any provision for the direct or indirect re-transfer of the whole or any part of the income or assets to the transferor; or
- 30           (ii) 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.
- 99.** (1) The total income of any individual, for a tax year, shall include the income arising directly or indirectly,—
- 35           (a) to the spouse,—
- (i) by way of salary, commission, fees or any other form of remuneration, whether in cash or kind, from a concern in which such individual has a substantial interest but shall not exclude income solely attributable to the application of technical or professional knowledge,
- 40           experience and professional qualification of the spouse;
- (ii) from assets transferred directly or indirectly to him or her by such individual otherwise than for adequate consideration or in connection with an agreement to live apart, subject to the provisions of section 25(a);
- 45           (iii) from assets transferred directly or indirectly to any person or association of persons otherwise than for adequate consideration to the extent to which the income from such assets is for the immediate or deferred benefit of the spouse;

Transfer of income without transfer of assets.

Chargeability of income in transfer of assets.

“Transfer” and “revocable transfer” defined.

Income of individual to include income of spouse, minor child, etc.

(b) to the son's wife,—

(i) from assets transferred directly or indirectly on or after the 1st June, 1973, to her by such individual, otherwise than for adequate consideration; or

(ii) from assets transferred directly or indirectly on or after the 1st June, 1973, to any person or association of persons otherwise than for adequate consideration to the extent to which the income from such assets is for the immediate or deferred benefit of the son's wife;

(c) to the minor child of the individual but shall not include in the total income of the individual where the income arising or accruing to the minor child is from manual work done by such child, or from activities where his skill, talent, specialised knowledge or experience is applied, or where such minor child is suffering from disability of the nature specified in section 154.

(2) If the asset transferred under sub-section (1)(a) or (b) is invested by the spouse or son's wife, in any business or capital contributed as a partner in a firm, or, as the case may be, for being admitted to the benefits of partnership in a firm, then, the income to be included in the hands of the individual for the tax year shall be as follows:—

$$A = B \times \left(\frac{C}{D}\right)$$

where,—

A = Income to be included in the hands of individual for the tax year;

B = Income and interest or both, arising to the spouse or son's wife from the business or the firm, as applicable during the tax year;

C = Value of such assets invested, or contributed as capital by the spouse or son's wife as on the first day of the tax year;

D = Total investment or total capital contribution, as the case may be, by the spouse or son's wife as on the day for which A is being computed.

(3) Where a property owned by an individual is converted into property belonging to the Hindu undivided family of which he is a member, through—

(a) the act of impressing such separate property with the character of property belonging to the family; or

(b) throwing it into the common stock of the family; or

(c) transfer, directly or indirectly to the family,

without adequate consideration, then, irrespective of any other provision of this Act or any other law in force for computing the total income of such individual,—

(i) the individual shall be deemed to have transferred such property, through the family, to the members of such family for being held jointly, and the income derived from such property or part thereof, shall be deemed to be income of the individual;

(ii) upon partition (whether partial or total) of the family, the income derived from such property as is received by the spouse of the individual on partition, shall be deemed to arise to the spouse from assets transferred indirectly to the spouse and the provisions of sub-section (1)(a) shall apply;

(iii) the income referred to in clauses (i) and (ii) shall, on being included in the total income of the individual, be excluded from the total income of the family or, the spouse.

(4) The provisions of sub-section (3) shall not apply where the property of the individual has been converted into property belonging to the family on or before the 31st December, 1969.

(5) In this section,—

(a) for sub-section (1)(a),—

(i) the income referred to in that clause shall be included in the hands of either of the spouse whose total income before such inclusion is greater; and

(ii) such income, once included in the total income of either spouse, for a tax year, shall not be included in the income of the other spouse for any succeeding tax year, unless the Assessing Officer is so satisfied, after giving the other spouse an opportunity of being heard;

(iii) “substantial interest in a concern” means,—

(A) in case of a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 20% of the voting power are, at any time during the tax year, owned beneficially by the individual or jointly with one or more of his relatives;

(B) in any other case, if such person is entitled, or such person and one or more of his relatives are jointly entitled, to atleast 20% of the profits of such concern at any time during the tax year;

(b) for sub-section (1)(d), income of minor child shall be included—

(i) in the income of that parent whose total income before such inclusion is greater in case where the marriage of his parents subsists; or

(ii) in the income of the parent who maintains such child during the tax year in case where marriage of his parents does not subsist,

and such income, once included in the total income of either parent, for a tax year, shall not be included in the income of the other parent for any succeeding tax year, unless the Assessing Officer is so satisfied, after giving the other parent an opportunity of being heard;

(c) for sub-section (3), “property” includes—

(i) interest in property; or

(ii) movable or immovable property; or

(iii) proceeds of sale of such property and any money, property or investment representing such proceeds; or

(iv) where property is converted into any other property by any method, such other property;

(d) for this section, “income” includes loss.

**100.** Where, income of a person, other than the assessee, arising from any asset, or income from membership of a firm, is included in the total income of the assessee under this Chapter or under section 25(a), then, irrespective of anything to the contrary contained in any other law in force,—

(a) such person, in whose name such asset stands, shall be liable to pay, that portion of the tax levied on the assessee which is attributable to the income so included, upon service of notice of demand by the Assessing Officer in this behalf;

(b) where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay such tax; and

(c) the provisions of Chapter XIX-D shall apply accordingly.

Liability of person in respect of income included in income of another person.

## CHAPTER VI

## AGGREGATION OF INCOME

Total  
income.

**101.** In computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter XVIIIA-4.

Unexplained  
credits.

**102.** (1) Where any sum is found credited in the books of account maintained by the assessee for any tax year, and— 5

(a) the assessee offers no explanation about the nature and source of such credit; or

(b) the explanation offered by assessee is not satisfactory in the opinion of the Assessing Officer, 10

then, the sum so credited shall be charged to income-tax as income of the assessee of that tax year.

(2) If the sum so credited consists of loan or borrowing, or any such amount, by whatever name called, the explanation offered by such assessee shall be deemed to be not satisfactory, unless,— 15

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation, in the opinion of the Assessing Officer referred to in sub-section (1), has been found to be satisfactory. 20

(3) If the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium, or any such amount, by whatever name called, the explanation offered by such assessee company shall be deemed to be not satisfactory, unless— 25

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation, in the opinion of the Assessing Officer referred to in sub-section (1), has been found to be satisfactory. 30

(4) Nothing contained in sub-section (2) or (3) shall apply if the person, in whose name the sum referred to in those sub-sections is recorded, is a venture capital fund or a venture capital company as referred to in Schedule V (Table: Sl. No. 6).

Unexplained  
investment.

**103.** Where in any tax year, any investment has been made by the assessee which is not recorded in the books of account, if any, maintained by such assessee, or, the Assessing Officer finds that the amount of such investment exceeds the amount recorded in such books of account where the investment is found recorded, and the assessee— 35

(a) offers no explanation about the nature and source of such investment, or such excess amount, as the case may be; or

(b) the explanation offered by the assessee, is not satisfactory in the opinion of the Assessing Officer, 40

then, the value of such investment, or such excess amount, as the case may be, shall be deemed to be the income of the assessee of that tax year.

Unexplained  
asset.

**104.** (1) Where in any tax year, any asset has been found to be owned by or belonging to the assessee which is not recorded in the books of account, if any, maintained by such assessee, or the Assessing Officer finds that the amount of such asset exceeds the amount recorded in such books of account where the asset is found recorded, and the assessee— 45