

**CHAPTER - II**

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**INCOME : STATUTORY PROVISIONS**

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#### 2.1 INTRODUCTION:

In the present Chapter, the statutory provisions, as they stand in the statute book are being reproduced verbatim, so as to analyse them in the succeeding Chapter. These provisions have been extracted from Taxmann's "Income Tax Act", 1990 Edition. The explanation of the footnote numbers have been given in the 'References' part of the Chapter for illustrating as to how these provisions have undergone changes over the time through various Finance Acts.

#### 2.2 TEXT OF THE PROVISIONS:

##### Definitions.

2. In this Act, unless the context otherwise requires, -

....

(24) "income" includes -

( i) profits and gains;

( ii) dividend;

<sup>1</sup>[(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes <sup>2</sup>[or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) of clause (23C), of section 10].

Explanation: For the purpose of this sub-clause, "trust" includes any other legal obligation;]

<sup>3</sup>(iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17;

<sup>4</sup>[(iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

(iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;]

<sup>5</sup>(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

<sup>6</sup>[(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereinafter in this sub-clause referred

to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;]

(v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;

<sup>7</sup> [(va) any sum chargeable to income-tax under clause (iiia) of section 28;]

<sup>8</sup> [(vb) any sum chargeable to income-tax under clause (iiib) of section 28;]

<sup>9a</sup> [(vc) any sum chargeable to income-tax under clause (iiic) of section 28;]

<sup>9b</sup> [(vd)] the value of any benefit or perquisite taxable under clause (iv) of section 28;

(vi) any capital gains chargeable under section 45;

(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a cooperative society, computed in accordance with section 44 or any surplus taken to be such profit and gains by virtue of provisions contained in the First Schedule;

<sup>9c</sup> (viii)....

<sup>10</sup> (ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever;]

<sup>11</sup> [(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948) or any other fund for the welfare of such employees;]

Charge of income-tax

<sup>12</sup>4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and <sup>13</sup>[subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year <sup>14</sup>[\*\*\*] of every person;

Provided that where by virtue of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Scope of total income

<sup>15</sup>5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which -

- (a) is received or is deemed to be received in India in such year by or on behalf of such person; or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or
- (c) accrues or arises to him outside India during such year;

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a

profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which -

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1: Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that is taken into account in a balance sheet prepared in India.

Explanation 2: For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

Heads of income.

14. Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income -

A. - Salaries.

<sup>16</sup> [\*\*\*]

C. - Income from house property.

D. - Profits and gains of business or profession.

E. - Capital gains.

F. - Income from other sources.

Transfer of income where there is no transfer of assets.

60. All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of his Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Revocable transfer of assets.

61. All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Transfer irrevocable for a specified period.

62. (1) The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer -  
(i) by way of trust which is not revocable during lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee; or  
(ii) made before the 1st day of April, 1961, which is not revocable for a period exceeding six years;

Provided that the transferor derives no direct or indirect benefit from such income in either case.

(2) Notwithstanding anything contained in sub-section (1) all income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

"Transfer" and "revocable transfer" defined.

63. For the purpose of sections 60, 61 and 62 and of this section -

- (a) a transfer shall be deemed to be revocable if -
  - (i) 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, or
  - (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;
- (b) "transfer" includes any settlement, trust, covenant, agreement or arrangement.

<sup>17</sup>Income of individual to include income of spouse, minor child, etc.

<sup>18</sup> 64. <sup>19</sup> <sup>20</sup> [(1)] In computing the total income of any individual, there shall be included all such income as arises directly or indirectly -

- <sup>21</sup> [(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner;]
- (ii) 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 such individual has a substantial interest;

<sup>22</sup> [Provided that nothing in this clause shall apply in relation to any income arising to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience;]

- <sup>23</sup> (iii) to a minor child of such individual from the admission of he minor to the benefits of partnership in a firm;]

- (iv) subject to the provisions of clause (i) of section 27, <sup>24</sup>[in a case not falling under clause (i) of this sub-section,] to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart;
- (v) subject to the provisions of clause (i) of section 27, <sup>25</sup>[in a case not falling under clause (iii) of this sub-section,] to a minor child <sup>26</sup>[\*\*\*] of such individual, from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration;
- (vi) to the son's wife, or son's minor child, of such individual, from assets transferred directly or indirectly on or after the 1st day of June, 1973, to the son's wife or son's minor child by such individual otherwise than for adequate consideration; <sup>27</sup>[\*\*\*]
- (vii) to any person or association of persons from assets transferred directly or indirectly otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child <sup>28</sup>[\*\*\*] <sup>29</sup>[or both; and]
- <sup>30</sup>[(viii) to any person or association of persons from assets transferred directly or indirectly on or after the 1st day of June, 1973, otherwise than for adequate consideration, to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his son's wife or son's minor child or both.]

<sup>31</sup>[Explanation 1 : For the purpose of clause (1) <sup>32</sup>[and clause (ii)], the individual, in computing whose total income the income referred to in that clause is to be included, shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater; and, for the purposes of clause (iii), the income of the minor child from the partnership shall be included in the income of that parent whose total income (excluding the income referred to in that clause) is greater; and where any such income is once included in the total income of either spouse or parent, any such income arising in any succeeding year shall not be included in the total income of the other spouse or parent unless the <sup>33</sup>[Assessing] Officer is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary so to do,]

<sup>34</sup>[Explanation 1A : For the purposes of clause (i), where the spouse of an individual is a beneficiary under a trust, the income arising to the trustee from the membership of the trustee in a firm carrying on a business in which such individual is a partner shall, to the extent such income is or the immediate or deferred benefit of the spouse of such individual, be deemed to be income arising indirectly to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner.]

Explanation 2 : For the purposes of clause (ii), an individual shall be deemed to have a substantial interest in a concern -

- (i) in a case where the concern is 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 twenty percent of the voting power are, at any time during the previous year, owned beneficially by such person

or partly by such person and partly by one or more of his relatives;

(ii) in any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

<sup>35</sup> [Explanation 2A : For the purposes of clause (iii), where the minor child of an individual is a beneficiary under a trust, the income arising to the trustee from the membership of the trustee in a firm shall, to the extent such income is for the benefit of the minor child, be deemed to be income arising indirectly to the minor child from the admission of the minor to the benefits of partnership in a firm.]

<sup>36</sup> [Explanation 3 : For the purposes of clauses (iv), (v) and (vi), where the assets transferred directly or indirectly by an individual to his spouse or minor child or son's wife or son's minor child (hereafter in this Explanation referred to as "the transferee") are invested by the transferee in any business, that part of the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business, as the value of the assets aforesaid as on the 1st day of the previous year bears to the total investment in the business by the transferee as on the said day, shall be included in the total income of the individual in that previous year.]

<sup>37</sup> (2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the

character of property belonging to the family or throwing it <sup>38</sup> [into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property)], then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971 -

- (a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;
- (b) the income derived from the converted property or any part thereof <sup>39</sup> [\*\*\*] shall be deemed to arise to the individual and not to the family;
- <sup>40</sup> (c) where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the income derived from such converted property as is received by the spouse or minor child on partition shall be deemed to arise to the spouse or minor child from assets transferred indirectly by the individual to the spouse or minor child and the provisions of sub-section (1) shall, so far as may be, apply accordingly;]

Provided that the income referred to in clause (b) or clause (c) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse or minor <sup>41</sup> (child) of the individual.

Explanation <sup>42</sup> [1] : For the purposes of sub-section (2), -

<sup>43</sup>[\*\*\*] "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

<sup>44</sup>[\*\*\*]

<sup>42</sup>[Explanation 2 : For the purpose of this section, "income" includes loss.]

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

65. Where, by reason of the provisions contained in this Chapter or in clause (i) of section 27, the income from any asset or from membership in a firm of a person other than the assessee is included in the total income of the assessee, the person in whose name such asset stands or who is a member of the firm shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be liable, on the service of a notice of demand by the <sup>45</sup>[Assessing] Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included, and the provisions of Chapter XVII-D shall, so far as may be, apply accordingly.

Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

REFERENCES

1. Inserted by the Finance Act, 1972; w.e.f. 1.4.1973.
2. Suostituted for or by a trust or institution of national importance referred to in clause (d) of sub-section (1) of

section 80F" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier the said expression was substituted for *not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution*", by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

3. See also Board's letter to Indian Merchants Chamber published in Chamber's Annual Report, 1963, p.87.
4. Inserted by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1.4.1982.
5. Board's letter 1963, op.cit.
6. Inserted by the Finance (No.2) Act, 1980, w.e.f. 1.4.1980.
7. Inserted by the Finance Act, 1990, w.e.f. 1.4.1962.
8. Inserted, ibid., w.e.f. 1.4.1967.
- 9a. Inserted by the Finance Act, 1990, w.e.f. 1.4.1972.
- 9b. Renumbered by the Finance Act, 1990, w.e.f. 1.4.1964. Earlier existing clause (va) was inserted by the Finance Act, 1964, w.e.f. 1.4.1964.
- 9c. Prior to its omission, sub-clause (viii) read as under:  
"*(viii) any annuity due, or commuted value of any annuity paid, under the provisions of section 280D*".
10. Inserted by the Finance Act, 1972, w.e.f. 1.4.1972.
11. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
12. See also Circular no.447 dated 22.1.1986, Circular no.142 dated 1.8.1974, Letter no.75/19/191/62-ITJ dated 24.8.1966 and Instruction no.747 [F.no.288/29/74-IT(A-II)] (relevant extracts) dated 30.8.1974.
13. Substituted for "*subject to the provisions of this Act*" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
14. "*or previous year, as the case may be*", omitted, ibid.
15. See also Circular no.369, dated 17.9.1983 and Letter F.no. 36/16/65-IT(A-I) dated 25.4.1966.
16. "*B. - Interest on securities*" omitted by the Finance Act, 1988, w.e.f. 1.4.1989.

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17. Amendments made by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989, have been revoked by the Direct Tax Laws (Amendment) Act, 1989, with effect from the same date. Amendments made by the Amendment Act, 1989, have only been indicated at appropriate places.
18. See also Letter [F.no.12/2/63-IT(A-I)] dated 20.11.1963.
19. Substituted by Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
20. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
21. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
22. Restored to original version, ibid.
23. Reintroduced, ibid.
24. Ibid.
25. Ibid.
26. "*(not being a married daughter)*" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
27. "*and*" omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.4.1985.
28. "*(not being a married daughter)*" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
29. Substituted for "*or both*" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.4.1985.
30. inserted, Ibid.
31. Restored to its original version by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
32. Inserted by the Finance Act, 1979, w.e.f. 1.4.1980.
33. Substituted for "*Income-tax*" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.

34. Inserted by the Finance Act, 1979, w.e.f. 1.4.1980 and now reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
35. Inserted by the Finance Act, 1979, w.e.f. 1.4.1980, and now reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
36. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Prior to its substitution, Explanation 3 stood as under:
- Explanation 3 : For the purposes of clauses (iv) and (v), where the assets transferred directly or indirectly by an individual to his spouse or minor child are invested by the spouse or minor child in any business, that part of the income arising out of the business to the spouse or minor child in any previous year, which bears the same proportion to the income of the spouse or minor child from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the spouse or the minor child as on the said day, shall be included in the total income of the individual in that previous year.*
37. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
38. Substituted for "into the common stock of the family (such property being hereinafter referred to as the converted property)" by the Finance Act, 1979, w.e.f. 1.4.1980.
39. "in so far as it is attributable to the interest of the individual in the property of the family" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.

40. Substituted, ibid.
41. Substituted for "son", ibid.
42. Inserted by the Finance Act, 1979; w.e.f. 1.4.1980.
43. "(1)" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
44. Clause (2) omitted, ibid.
45. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.