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B.B Part - III rd

Paper - VIII th

Taxation

Transfer of individual's property to Hindu Undivided Family Section - 64 (2) :-

Where an individual who is a member of a Hindu undivided family has any separate and at any time after 31st December 1969 converts the 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 into the common stock of the family or transfers it directly or indirectly to the family otherwise than for adequate consideration, then for the purpose of otherwise than for adequate consideration, then for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after 1st April 1971 - (a) individual shall be deemed to have transferred the converted property through the family, to the members of the family or being held by them jointly; (b) the income derived from the converted property or any part thereof shall be deemed to arise to the individual

and not to the family (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 on partition shall be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and the provision of Section 64(1) shall apply accordingly. However, if an income has been included in the total income of an individual under Section 64(2) it shall be excluded from the total income of the family or, as the case may be, the spouse of the individual. The provision has been introduced to avoid double taxation in respect of the income which may be included in the total income of the transferor. For this purpose "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. For this purpose income includes loss also.

Sub-section (g) of Section 64 has been amended by the Finance Act 1979, to extend its scope to recover all transfers made by a member of the Hindu undivided family of his separate property to the family otherwise than for adequate consideration. Consequently, after this amendment income arising from the separate property as a member will be included in his total income even after the aforesaid property is transferred by him to his Hindu undivided family provided such transfer is otherwise than for adequate consideration. It is to be noted that Section 64 (g) came into force on 1st April 1971 and thus it does not apply to separate property converted into joint family property before 1st January 1970.

Liability of person whose income included in the income of another person (Section-65)

When 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 be liable, on the receipt of a notice

of demand by Assessing Officer in  
his 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 (collection  
and recovery) of this Act shall apply accordingly  
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.

