**SOME CLARIFICATIONS ON TAXATION**

**QUESTION: I am a retired person and filing tax return every year. I need a clarification regarding Direct Taxes Code (DTC), 2010.**

Assuming DTC Bill, which is tabled in Parliament becomes law with effect from April 1, 2012, as provided in the Bill, could you advise whether my income for the current year, April 2011 to March 2012 [assessment year 2012-13] would be assessed under the DTC provisions? Or whether DTC provisions would be applied only with effect from assessment year 2013-14?

**ANSWER:** If the DTC becomes law effective from April 1, 2012, as provided in the Bill, it will start applying for the income of the financial year being the period of 12 months from the first day of relevant year, that is, financial year 2012-13 vide the definition of financial year in clause (e) of sub-section (102) of Sec. 314 of the Code Bill.

The concept of assessment year is not continued in the Code.

**When can wife's income be clubbed in husband's hands?**

**QUESTION:**My wife is a home-maker. But she has fixed deposits from which she derives taxable income. Her deposits have been built up partly by gifts from her parents, partly marriage gifts received by her at the time of our marriage and partly by amounts saved by her from moneys given by me to her for household expenses. I have not been showing any interest in her accounts in my hands but can I be questioned for non-inclusion of her income in the light of the clubbing provisions because my wife does not have any independent source of income.

**ANSWER:** Gifts from parents and wedding gifts received by her at the time of marriage could not be attributable to the husband. They exclusively belong to her. Wedding gifts from husband's friends and relatives meant for her cannot be treated as gift from her husband. Household savings are also not treated as gifts by the husband.

There is also authority for this proposition in respect of such savings described as pin money from the decision in *R. B. N. J. Naidu v CIT (1956) 29 ITR 194 (Nag)* and *R. Dalmia (Deceased) (1982) 133 ITR 169 (Del)* . There is, therefore, no need for any apprehension for the reader for non-inclusion of his wife's income.

It is better to bear in mind that even an indirect transfer may attract the clubbing provision under Sec. 64 as was decided when the husband was contributing to life insurance premia for the benefit of his wife, even though the proceeds exclusively belong to her under Marriage Women's Property Act, 1874, so that the interest on the proceeds of the policy will be clubbed in the hands of the husband as held in*Damodar K. Shah v CIT (2001) 252 ITR 235 (Guj)* . But where the wife receives bonus shares in respect of shares gifted by the husband, bonus shares cannot be treated as having been made by the husband, since bonus shares are accretions and not income for original shares as held in *CIT v T. Saraswathi Achi (1982) 133 ITR 315 (Mad)* . Cross gifts, as in a case, where the brothers gave gifts to the wives other than their own, would be treated as gifts by them to their wives as decided in *CIT v C.M. Kothari (1963) 49 ITR 107 (SC)* . But the good news, however, is that income from such income cannot be clubbed. In other words, the clubbing will not extend to the income from such clubbed income as was decided in *Sevantilal Maneklal Sheth v CIT (1968) 68 ITR 503 (SC)* .

**Income from income of a transferred asset cannot be clubbed**

**QUESTION:**Apropos the answer to the first question regarding clubbing of wife's income in the hands of the husband, you have referred to the decision of the Supreme Court in the case of *Sevantilal Maneklal Sheth v CIT (1968) 68 ITR 503 (SC)* and have observed that “the clubbing will not extend to the income from such clubbed income as was decided in *Sevantilal Maneklal Sheth v CIT (1968) 68 ITR 503 (SC)* ” but the observations of the Supreme Court are otherwise.

Please see my enclosed write-up. You may like to reconsider your views.

**ANSWER:**  The decision in *Sevantilal Maneklal Sheth v CIT (1968) 68 ITR 503 (SC)* was cited as an exception to the principle that income from income could not be clubbed.

In this case, clubbing was upheld because capital gains were held to be not an income from an income, but capital gains on conversion of preference shares into ordinary shares, so that such capital gains was not, therefore, income from income.

The Supreme Court itself explained this decision in *CIT v Smt. Pelletti Sridevamma (195) 216 ITR 826 (SC)* , that capital gains is occasioned only substituting the gifted asset and is not income from income.

The second generation income, where the assessee had received income from the income of transferred assets as in a case where the wife derives income from deposits out of interest or other income on gifts from husband, such income cannot be clubbed as decided in *Smt. Nisha Rani Agrawal v CIT (2007) 294 ITR 46 (All)* . Similar view was taken in *CIT v M. S. S. Rajan (2001) 252 ITR 126 (Mad)* and *CIT v Chandanmal Kasturchand (1978) 112 ITR 296 (Bom)* . The law in the answer referred to is, therefore, well-settled.

***Source: The Hindu***