

TOPIC 7- TRANSFER FOR BENEFIT OF UNBORN PERSONS (SECTION 13-18 OF TPA)

THINGS TO BE COVERED

- **Creation of Prior Interest and Absolute Interest in Favour of Unborn Persons (section 13)**
- **Rule Against Perpetuity (section 14)**
- **Rule of Possible and Actual Events**
- **Transfer to a Class (section 15)**
- **Transfer when prior interest fails (section 16)**
- **Directions for Accumulation of Income and Exceptions (section 17 and 18)**

SECTION 13-TRANSFER FOR THE BENEFIT OF UNBORN PERSON

Section 13 gives effect to the general rule that a transfer can only take place between living persons. If at all an interest has to be transferred for the benefit of an unborn person, section 13 lays down the mechanism.

The term unborn refers to not only those who might have been conceived but not yet born i.e. a child in the womb, but also those who have not yet been conceived as well. Whether they would be born or not is also a possibility but a transfer nevertheless can be effected for their benefit.

Mechanism for Transfer

As per section 13 of the Act, for a transfer for benefit of unborn first a life estate has to be created in favour of living person or persons and then an absolute interest in favour of the unborn. The person in whose favour a life estate has been created shall possess and enjoy it till the time he/she is alive. If during such person's life time the person in whose favour an absolute interest has been created (i.e. the unborn) is born, the title in the property shall immediately vest in him/her even though he/she would get possession of the property only upon the death of life holder. If the unborn is not born during the life time of the life holder, the property shall be enjoyed by the life holder during his life time after which it would revert back to the transferor or his heirs as the case maybe.

Eg: A transfers his property in 1960 to B for life and then to C for life and finally to C's son S, who is unborn at this time. Both B and C are alive at this time. the property would be first possessed by B for his life and then by C. S is born in 1970. At this time, he takes a vested interest in the property but the possession of it is postponed till the death of C (which say for instance took place in 1975)

If S died in 1974, then because he had a vested interest in the property since 1970 i.e. when he was born, the property would after the death of C go to the heirs of S. But if S was not born till 1975

(i.e. when the last life estate in favour of C ended) then the property would revert back to A or his heirs as the case maybe.

Thus it is important for a valid transfer under section 13, for an absolute interest to be created in favour of unborn (i.e. a life estate cannot be made in favour of unborn) and for the unborn to come into existence before the life estate created in favour of someone else comes to an end.

Rule Against Perpetuity (Section 14)

The term perpetuity literally means an indefinite period or infinity. The rule against perpetuity under Section 14 states that when an interest is created for an unborn, the vesting of such interest cannot be postponed beyond the life time of those in whose favour a life interest is created plus the minority of the unborn i.e. before he turns 18.

As seen under section 13 an interest can be created in favour of an unborn if first a life interest is created in favour of someone else and then an absolute interest in favour of such unborn. The moment the unborn comes into existence there is a vested interest created in him with respect to the property so transferred even though he may get possession of it at a later date (i.e. upon the death of the life estate holder).

However, section 14 stipulates that devolving of such vested interest can also be postponed such that the unborn does not get a vested interest upon his coming into existence. According to section 14 an interest in the unborn cannot be postponed beyond the period of life of those in whose favour a life interest has been created plus the minority of the unborn. Thus vesting of interest in favour of ultimate beneficiary may be postponed only up to life or lives of those in whose favour a life estate has been created plus minority of the unborn.

Eg. 1) A transfers property to B for life and then to his first child (who is presently not in existence) when he attains the age of 18 yrs. Here the unborn child would not attain a vested interest in the property upon his birth but would do so only upon his attaining majority. Such a transfer is a valid transfer as per section 14 of the Act. But if the first child dies before attaining the age of 18yrs the property would revert back to A or his heirs as the case maybe.

2) A transfers property to B and then to his unborn when he attains the age of 30 yrs. The vesting is void as it is hot by the rule against perpetuity as laid down under section 14.

In between the period when last person in whose favour a life interest in created, dies and majority of ultimate beneficiary the unborn has a contingent interest which becomes vested upon his attaining majority.

Regard Must be to Language of Deed and not to Actual Events

Every limitation is to be considered at the time of making the deed and not with regard to what actually happens. If at the time of making deed there is slight possibility that the perpetuity period may be exceeded, the transaction would be void even if in reality the period is not exceeded as per the actual happening of events.

(case *Law-Ram Newaz v. Nankoo*)

Exceptions to Rule against Perpetuity

- 1) It does not apply to a pre-emption clause (case law- *Ram Baran Prasad v. Ram Mohit Hazra*)
- 2) It does not apply to a lease (case law- *R.Kempraj v. Burton Son and Co.*)

Transfer to Class (Section 15)

Property may be transferred for the benefit of single unborn person or for the benefit of a class of such persons. In both situations the transfer must be in accordance with section 13 and 14. Section 15 states that if on transfer of property an interest is created for benefit of a class of persons with regard to some of whom the interest fails by reason of rules contained in section 13 and 14, such interest fails in regard to such persons only and not in regard to the whole class. Thus as per section 15, the transfer should be given effect to as far as possible. Ddaughter

Eg. A transfers his property to his son S for his life and then to his grandsons when they attain the age of 18years and to his granddaughters when they attain the age of 21 years. While the transfer in favour of the grandsons is valid, the one in favour of granddaughter is void as it is hit by the rule of perpetuity under section 14. As per section 15, the transfer in favour of grandsons would also not become void just because that in favour of granddaughters is void.

Transfer to take effect on failure of prior interest (section 16)

As per this section, if due to violation of section 13 and 14 a specific transfer fails, any transfer that is intended to take effect after or upon failure of such transfer also fails.

Eg. A transfers property to B for life and then to B's sons on attaining age of 25 years. The deed further provides that if B, dies without any son, the property would vest absolutely in C. B and C were alive on date of transaction but there was no son of B at that time. Here transfer for unborn is hit by section 14 and so is void. As per section 16 and considering the present example, transfer in favour of C which was to take effect upon failure of this prior transfer that is void, would also fail and cannot take effect.

The use of term “after or upon failure of prior interest” means that a transfer subsequent to or after void transfer fails and that the prior one would take effect. Thus in the above example transfer in favour of B because is before the void transfer would be valid and would take effect.

Direction for Accumulation (section 17)

This section applies to those transfers where the property and the income arising from the property are separated by the transferor. The transferee is directed not to spend the income arising from the property but to accumulate it for a specific or non-specific purpose. If the period for which the transferee must accumulate the income exceeds the life of the transferor or 18 years, the direction is considered to be void and can be ignored by the transferee for the exceeding period.

Section 17 therefore specifies the time period beyond which the direction for accumulation of income would be void. The prescribed time period is life of transferor or from the date of transfer a period of 18 years. These limitations are alternative and cumulative.

Eg. A transfers his property to B in 1970 with a direction that the income arising from it has to be accumulated till 30 years. A dies in 1975, the maximum period for which the income can be accumulated would be 1970+18 years i.e. 1988 after which B is free to use the property as he likes.

Where the time limit so specified is different from what has been given under section 17, then the actual events subsequent to the transfer would determine the maximum period for which the income is to be accumulated. It would be life of transferor or 18 years from transfer whichever is longer.

Exceptions

- 1) Accumulation for payment of debt- where accumulation is for payment of debt of transferor section 17 does not apply i.e. the accumulation can be directed for a longer period than as specified under the said provision.
- 2) Provision for children- where accumulation is for benefit of children it is not hit by section 17.
- 3) Preservation and maintenance of property- if accumulation of income is for the maintenance of the property so transferred it is not hit by section 17.

Transfer in perpetuity for benefit of public (section 18)

As per this section the rules regarding perpetuity and accumulation do not apply if the transfer is made for the benefit of public. It makes a distinction between transfers that are purely personal or commercial in nature and those that are for the benefit of public. It includes transfers that are for the benefit of public in advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind. If transfer includes both charitable and non-charitable objects, it would remain valid for charitable ones and not for the non-charitable ones.

