

# **Hindu Undivided Family**

## **Under**

### **The Hindu Law & Income Tax Act, 1961**

***{As Amended by Hindu Succession (Amendment)  
Act, 2005}***

# *Topics covered*

- Characteristics of HUF
- Consequence of Amendment in Hindu Succession Act
- Mode of Creation of HUF
- Income Tax Issues

# *Meaning of HUF*

# **Distinction - Coparcener** **and a member**

A HUF, as such, can consist of a very large number of members including female members as well as distant blood relatives in the male line. However, out of this, coparceners are only those males who are within 4 degrees in lineal descent from the common male ancestor. The relevance of concept of coparcener is that only coparceners can ask for partition. The other male family members; i.e, other than coparceners in a HUF, have no direct claim over HUF property, but can claim only through the coparceners.

# **Characteristics of HUF**

# Characteristics .....

- The Karta can function in Dual capacity and can claim remuneration and other benefits from the HUF. ( Who can be Karta - discussed in later slides)
- It may be composed of
  - Large or
  - Small or
  - Nuclear Joint Families
- Every above said families may hold the property in its own RIGHT, may be assessed for its income as a separate unit.
- A There need NOT be more than one MALE member to form HUF
- If the family is reduced to Sole - Surviving coparcener with other family members, income tax is leviable on the joint family and not on male members as individual

# *Characteristics .....*

- There can be a HUF comprising only of FEMALE members.
- A member of the family carry on any other business individually it will be his individual income not of family even if he borrows requisite capital from the joint family fund.
- Mostly fees or salary earned by karta as director or partner may be considered as his individual income.
- Salary income of the individual will not be assessed as income of the HUF merely by the reason that the person having been educated, maintained, supported wholly by joint family funds.

# **Who can be 'Karta'**



# Who can become KARTA ?

## ■ The senior most male coparcener

Even if he become aged, infirm, ailing, or even a leper but may continue to be a KARTA. Hindu law does not clarify whether insanity or any other mental infirmity or physical disability will entitle the other coparceners to remove him.

In case the senior most member is not Karta, then the next senior male member takes over as Karta.

***{Man Vs Gaini ILR (1918) 40 All 77}***

## ■ A junior coparcener

Only if all the coparcener agreed.

***{Narendra Kumar J. Modi Vs CIT (1976) 105  
ITR 109 (SC)}***

# *Powers of KARTA*

- Managing the affairs of HUF
- Control & become custodian of the finances
- Can borrow money for & on behalf of HUF
- Spend money for the family & is not Accountable for it.
- NOT liable to submit account to anybody.
- Can make partition of the of the family Suo moto.
- Quantum of partition shall be with KARTA's liking.
- HUF cannot enter in to contracts, or form partnership firm, or represent except through Karta, however Karta may allow others to represent HUF.
- Can GIFT away the movable properties of HUF for natural love & affection but within reasonable limit.
- May transfer immovable properties for pious purposes or for the benefit of the family.

# *Powers of alienation*

- The power of alienation cannot be exercised except by Karta, where the joint family property can be alienated for the following three purposes only :
  - Legal necessity.
  - Benefit of estate of the family.
  - Acts of Indispensable duty.
- The Karta can alienate the joint family property with the consent of the coparceners even if none of the of the above exceptional cases exist and if all the coparceners are adult the alienation is binding on the entire joint family.

***[ Kandasami V. Somakanda ILR (1912) 35 Mad 177 ]***

**Consequences of Amendment in  
Hindu Succession Act.**

# Consequence of Amendment made by Hindu Succession (Amendment) Act, 2005

## - rights & liabilities of a daughter member

- Daughter shall be a Coparcener of Hindu Family Property.
- If a Hindu dies, the coparcener property shall be allotted to the daughter as is allotted to sons.
- If a female coparcener dies before partition, then children of such coparcener would be eligible for allotment assuming a partition had taken place immediately before her demise.
- No recovery is made for ancestors' dues from son, grandson, or great-grandson by applying doctrine of pious obligation.
- A female member can also seek partition of the dwelling house where the family resides.
- A widow of a pre-deceased son even though remarried is now eligible for share in property as legal heir of the pre-deceased son of the family.
- A female can also dispose of her share in coparcenary property at her own will.

# *Expenses incurred on Marriage of a Daughter by HUF*

- *Consequence of Amendment of Hindu succession Act, 1956.*
- Even daughter become coparcener. But marriage of daughter still an obligation of the Family under Hindu law.
- Thus, reasonable amount of gift given on her marriage should not objected by the male coparcener.

## General Rule of Succession - Section 8

The property Of male Hindu dying intestate shall devolve as per the provisions given below:-

- Firstly amongst the heirs specified in Class I of the schedule.
- If no heirs of class I exists than amongst the heirs of Class II.
- If no heirs in both classes then amongst agnates of the deceased.
- Lastly, if no agnates then amongst the cognates of the deceased.

## *Definition of Cognates & Agnates*

- Cognates of the deceased are relative through maternal side. “ A person is said to be the cognate of the deceased if the two are relative by blood and adoption not wholly through the males.”
- Agnates of the deceased are relatives from the paternal side.” A person is said to be the Agnate of the deceased if the two are relative by blood and adoption not wholly through the males.”



**Modes of creation of**  
**'HUF' 'Corpus'**

## *Modes of creation of HUF Corpus by*

- Blending of individual property with HUF character
- Gifts
- Joint labour
- Will
- Partition
- Reunion

## *Creation of HUF Corpus by Blending*

- HUF can be created by impressing
- One's self acquired property
- With the character of HUF property
- by bringing in to existence.
- An HUF comprising the person himself, his wife & children.
- Blending can be utilized for creating smaller HUF.

# **Applicability of Sec. 64(2) of I.T.Act, 1961**

- Property transfer to common hotchpot of HUF was deemed to be a gift.
- On partition of HUF property was clubbed in to the income of transferor.
- Similar clubbing provision were inserted in the Wealth Tax Act, 1957 in Sec 4(1A).

## *Partition of HUF after blending*

- This is for achieving distribution of immovable property among members because giving it in any other manner will require registration for effective transfer.
- Each division will have right to claim exemption under Sec 5 (vi) of the Wealth Tax Act .

## Creation of HUF by gift from Stranger

- HUF cannot be created for the first time by a gift from the stranger.
- If HUF already exists, gift can be made by a stranger to such HUF.
- The gifted property will be HUF property if the gift is made to HUF.
- Intention of donor & the character of the gifted property will depend on the construction of the gift deed.

# *Gift Vis-à-Vis HUF*

- The gift made by the family of a sole coparcener to the wife of the Karta of the family is considered to be VALID.

*{M.S.P. Rajah Vs CGT (1982) 134 ITR 1 (Mad)}*

- Gift by HUF to bride of male member in the form of jewellery at the time of marriage is valid.

Obligation of Karta is towards marriage of both sons & daughters.

*{CIT Vs A.K.Daga & Sons (2008) 296 ITR 623 (Mad)}*

*{CGT Vs Basant Kumar Aditya Vikram Birla (1982) 137 ITR 72 (Cal)}*

# *Gift of HUF Property*

## By father

- Within reasonable limits
- as a “gift of affection”.

[Gift of affection can be made to a wife, daughter & son]

**Note:** A gift of the whole or almost the whole of the property to one son excluding the others is not regarded as “gift of affection”.



# Gift to stranger

- *Karta is NOT entitled to give any gifts to strangers, EXCEPT for pious purposes.*

**{Gangadhar Narsingdas Agarwal (HUF) Vs CIT (1986) 162 ITR 320 (Bom)}**

- *A coparcener can dispose of his undivided interest in the coparcenary property by a will, BUT he CANNOT make a gift of such interest . It is said to be **void**.*

**{Thamma Venkata Subbamma Vs Thamma Ratanamma & Ors. (1987) 168 ITR 760 (SC)}**

- *Gift to a stranger of a joint family property by the manager of the family is **void**. Manager has NO absolute power of disposal over HUF property*

**{Guramma Bharatar Chanbasappa Deshmukh Vs Mallappa Chanbasappa AIR 1964 SC 510}**

# *Gift to stranger*

## **Who is regarded as stranger**

The other persons may be related to the Karta or the coparceners in the contest of family.

Other persons means excluding relatives not being members of HUF.

# *Gift to coparcener & members*

- The gift of family property by Karta of an HUF to coparceners or non-coparceners is **void ab initio & not merely voidable.**

*{CGT Vs Tej Nath (1972) 86 ITR 96 (P&H) (FB)}*

- **Gift to daughter**

Hindu father can make a gift of ancestral property within reasonable limits at the time of marriage or even long after marriage.

*{R. Kuppayee Vs Raja Gounder (2004) 265 ITR 551 (SC)}*

## ■ Gift to wife by Karta

*The Karta is empowered to make gifts to his wife within reasonable limit of the movable assets.*

*But the Karta CANNOT make gifts to his second wife. It is invalid.*

**{Commissioner of Gift Tax Vs Banshilal Narsidas (2004) 270 ITR 231 (MP)}**

## ■ Gift by Karta to nephew

*Gift made by Karta to nephew & interest on the amount gifted was deposited in the firm. It was held that gift was **void**.*

**Pranjivandas S. Patel Vs CIT (1994) 210 ITR 1047 (Mad)}**

## ■ Gift by Karta to minor children of family

*Gift made by Karta from*

*–Natural love & Affection*

*-within reasonable limits*

*The gift was said to be **Valid***

**{CWT/CGT Vs Shanmugasundaram (1998) 232 ITR 354 (SC)}**

## **Precautions to be taken by family while accepting gifts**

- Clear declaration of intention through affidavit.

***{C.N. Arunachala Mudaliar Vs C.A. Muruganatha Mudaliar & Anr. AIR 1953 SC 495: (1954) SCR 243 (SC)}***

- Gift to be valid & genuine

No specific bar to a gift by the father to the HUF of his son, his wife & minor children

For avoiding the clutches of sec 64 (1)(vi) such gifts better be avoided

***{CIT Vs Smt. T. Suryamani Kothavalsala (2003) 263 ITR 271}***

***{CIT Vs S.N. Malhotra (1989) 178 ITR 380 (Cal)}3***

- HUF can accept gifts from relations who may not be the member of the family.

# Creation by will

- No existence of HUF at the time of execution of will.
- Valid will should be there.

***{CIT Vs Ghanshyam Das Mukim (1979) 118 ITR 930 (P & H)}***

- *An HUF is created if there exist a valid will.*

# Creation of HUF by female members Via blending

- Female members CANNOT form an HUF by BLENDING

***{CIT Vs Sandhya Rani Dutta (2001) 248 ITR 201 (SC)}***

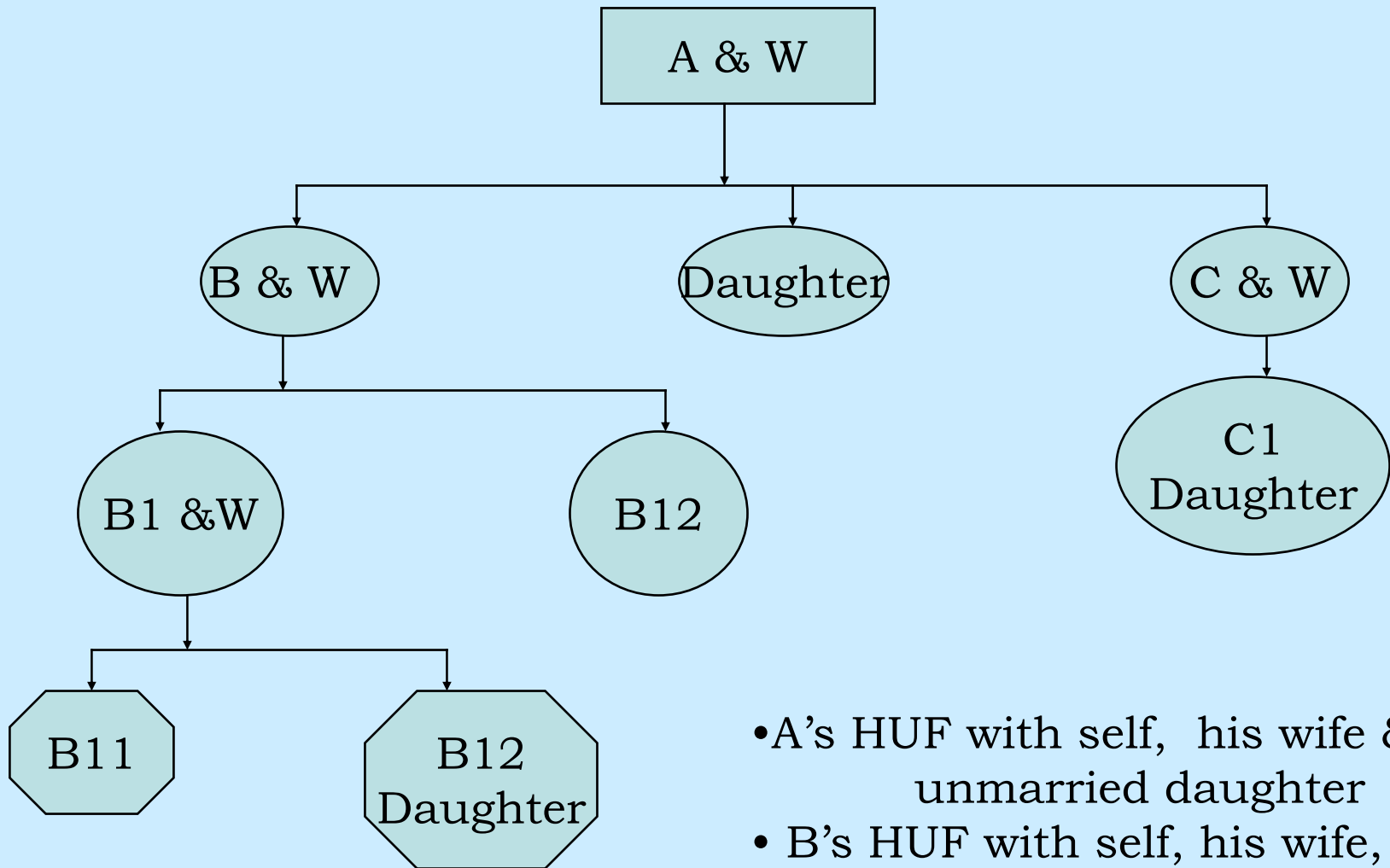
- Female member cannot blend her separate property Even if she is the absolute owner.

***{Pushpa Devi Vs CIT (1977) 109 ITR 730 (SC)}***

- In family consisting of females property which is originally of HUF, remain in the hands of widow member, they cannot divide among them, the joint family continues.

***{CIT Vs RM.AR.AR. Veerappa Chettiar (1970) 76 ITR 467 (SC)}***

# Creation by partition



- A's HUF with self, his wife & unmarried daughter
- B's HUF with self, his wife, 2 sons, grandson & grand daughter
- C's HUF with self, his wife & daughter



# **Income Tax Issues**

# **Partition - Income Tax**

## *Partition of a Hindu Undivided Family*

**The Partition of HUF can be:-**

**1. Partial Partition**

**2. Total Partition – Assets of HUF are physically divided.**

# *Tax Implications of Partial Partition of HUF*

1. As per section 171(9) of the Income-tax Act, 1961 the Partial Partition after 31-12-1978 is not recognized.
2. Even after Partial Partition the income of the HUF shall be liable to be assessed under the Income-tax Act as if no Partial Partition had taken place.

## **Tax Implications of Full Partition of HUF**

1. As per s. 171(9) of the Income-tax Act, 1961 partition means: -
  - (i) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or
  - (ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;
2. Assessment after Partition as per s. 171 & an order to be passed by the Assessing Officer.

**See also CIT v. Smt. Meera Prem Sundar (HUF ) [2005] 147 TAXMAN 535 (ALL.), CIT v. Dharam Pal Singh [2005] 146 TAXMAN 421 (ALL.)**

## Gems of Judiciary

***Hon'ble Supreme Court in Union of India v. M.V. Valliappan [1999] 238 ITR (1027) observed***

- That for the purposes of income-tax, the concept of partial partition of the Hindu undivided family was recognized, but is done away with by the amendment which specifically provides that where a partial partition has taken place after December 31, 1978, no claim of such partial partition having taken place shall be inquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such partial partition has taken place. ***If any such finding is recorded under sub-section (3) whether before or after June 18, 1980, being the date of introduction of the Finance (No. 2) Bill, 1980, the same shall be null and void.***

## **Contd..**

- The effect of the aforesaid sub-section is that for the purposes of income-tax partial partitions taking place on or after January 1, 1979, are not to be recognized.
- If a partial partition has taken place after the cut-off date no inquiry as contemplated under sub-section (2) by the Income-tax Officer shall be held. Even if the inquiry is completed and the finding is given, it would be treated as null and void.

***See also : Commissioner of Income-tax, v. Khacheru (HUF )  
[2009] 185 TAXMAN 398 (PUNJ. & HAR.)***

# Gems of Judiciary

- The Supreme Court in the case of Kalloomal Tapeswari Prasad (HUF ) v. CIT [1982] 133 ITR 690 has held that
- To claim a partition within four corners of the Income-tax Act certain additional requirements as provided under section 171 are required to be fulfilled.
- Interpreting section 171 it has been held by it that Hindu Law does not require that the property in every case be partitioned by metes and bound or physically into different portions to complete a partition.
- Disruption of status can be brought about by any of the modes recognized under Hindu Law and it is open to the parties to enjoy their share of the property as tenants in common in any manner known to law according to their desire.
- **But the Income Tax Law introduced certain additional conditions of its own to give effect to the partition under section 171. A transaction can be recorded as a partition under section 171 only if, where the property admits of a physical division, a physical division of the property has taken place.**



## *Gems of Judiciary*

- Partial Partition would be valid if claimed by male members and not by female member

**Commissioner of Income-tax v. Shyam Lal Agrawal (HUF ) [2009] 178 TAXMAN 227 (ALL.)**

# Issues

- In order to be acceptable or recognizable partition under section 171 the partition should be complete with respect to all members of HUF and in respect of all properties of HUF and there should be actual division of property as per specified shares allotted to each member.

***Mohanlal K. Shah (HUF) v. ITO 1 SOT 316. (Mum – ITAT)***

- Setting apart certain assets of HUF in favour of certain coparceners on the condition that no further claim in properties will be made by them is nothing but a partial partition and not a family arrangement not recognised in view of s. 171(9).

***ITO v. P. Shankaraiah Yadav 91 ITD 228 (ITAT – HYD)***

# Issues

- HUF is purely a creature of law and not a creature of act of parties exception being that of adoption; where a lady by will bequeathed property to purported three smaller HUFs formed by members of assessee-HUF consisting of Karta wife and three sons, property bequeathed by said lady could not be taken to belong to smaller - HUF but was assessable in hands of assessee – HUF.

*Satyanarayan Kanhaiyalal Gagrani v. CIT [2008] 215 CTR 521 (MP).*

# *Residential Status of HUF*

- Section 6 (2) of the Income-tax Act, 1961 clearly contemplates a situation where a HUF can be non-resident also. In fact, HUF can also be Not Ordinarily Resident. A HUF will be considered to be resident in India unless, during the previous year, the control and management of its affairs is situated wholly outside India. In such a case, it will be treated as non-resident HUF.
- S. 6(6)(b) further provides that, in case of a HUF whose manager has not been resident in India in nine out of ten previous years preceding the previous year or has, during the seven previous years preceding that year, been in India for a total 729 days or less, such HUF is to be regarded as Not Ordinarily Resident within the meaning of the Income-tax Act, 1961. As such, it is not necessary for a HUF to be resident in India.

# Case Study

- **An HUF is having all the properties in India. The Karta of the HUF is residing outside India permanently and the female members are staying in India and are managing the affairs of the HUF. What would be the status of such HUF?**
- Ans. As discussed in the earlier answer, the test is not where the Karta resides, the test is where the control and management of the affairs of HUF is situated. Even if a part of control and management is situated in India, such HUF will be treated as resident in India. Though, generally, Karta is supposed to manage the affairs of HUF, it is not an absolute rule and, by consent, the power of control and management may be delegated to other members of the family, either fully or partially.

## *Income of member received from HUF -Exempt*

1. As per section 10(2) of the Income-tax Act, 1961 any sum received by an individual from Hindu Undivided Family of which he is member is exempt from tax.
2. Amount received not as a member of Joint Family but in pursuance of some statutory provision, etc. would not be exempted in this clause.
3. Member of joint family living apart from the other members does not effect his/her position in law to claim the right as per section 10(2).

# Issues

Property purchased with the aid of joint family funds, howsoever small that may be, still the property would be HUF income and cannot be income of the individual with major portion of purchase price.

***S. Periannan v. CIT 191 ITR 278.***

# Issue

## Income from House property to be charged in the hands of HUF where property is purchased in the name of HUF ?

- Assessing Officer found that the assessee had purchased a house property from 'A'. The assessee's case was that since the investment was made in the name of HUF, it was not declared in his individual return. The Assessing Officer, however, took a view that the funds for acquiring the property in question were met from the personal sources of the assessee. He thus determined annual letting value of the property resulting in certain addition to the assessee's income. On appeal, the Commissioner (Appeals) directed the Assessing Officer to consider the annual letting value of the property in the hands of HUF and deleted the impugned addition.

***ACIT vs. Rakesh S. Agrawal [2010] 36 SOT 148 (AHD.)***



# Issue

- Where assessee ran business centre in owned/leased property where it also provided other facilities to customers, income from business centre was assessable as business income and not as income from house property/other sources.

*Harvindarpal Mehta (HUF) v. DCIT [2009]  
122 TTJ 163(MUM.)*

# *HUF as Proprietor of Business*

1. HUF can be a Proprietor of one or more than one Business concerns.
2. Separate name can be kept of HUF business entity.
3. No tax Audit of HUF business if Turnover within Rs. 60 lakhs.
4. Business Income Computation @ 8% without books of account in case turnover is upto Rs. 60 lakhs – The Presumptive Basis

# Issues

- When it was an admitted fact that since the very beginning, the assessee was running the business in the name of proprietorship firm in the individual status.
- All the bank accounts of the said firm were in the name of the individual and not in the name of HUF .
- All the investments were made by the appellant in the individual name and not in the name of HUF.
- The license for running the business was also obtained in the name of an individual and not in the name of HUF .
- The bank declarations were also signed as a sole proprietor and not as a karta of an HUF.
- There was a column in those forms asking whether the account was opened in the name of HUF . That column was left blank.

# Issues

- It was only when the notices were issued under section 148 for re-opening of the assessments made in the individual status, that the assessee filed the return of the HUF with an object to regularize the undisclosed investments made by him. **The entire business was found to have been carried on by the assessee in his individual capacity and therefore would be taxable in his individual hands and not as business carried by HUF.**

*Sajiv Vohra (HUF ) v. Commissioner of Income-tax\* , Amritsar [2008] 173 TAXMAN 304 (PUNJ. & HAR.)*

# Issues

- **Can a Karta of HUF become partner in to a firm with outsiders?**

*The Hon'ble Supreme Court in Ram Laxman Sugar Mills vs. CIT [1967] 66 ITR 613* observed that a HUF is undoubtedly a “Person” with in the meaning of section 2(31), it is however not a juristic person for all purposes and cannot enter in to an agreement of partnership either with another HUF or Individual. It is open to the manager of a Joint Hindu family, as representing the family, to agree to become a partner with another person. And therefore any remuneration received by Karta would be the personal income of Karta and not the income of the HUF as there is no real connection between the investment of the assets of HUF and remuneration received by Karta.

# Issues

- Where a person is a partner in a partnership firm not in his individual capacity but as the karta of the Hindu undivided family, the income accruing to his wife on account of her being a partner in the same partnership firm cannot be included in the total income of such person in an individual assessment or in the assessment of the Hindu undivided family.

*CIT v. Om Prakash [1996] 217 ITR 785 (SC)*  
*See also CIT v. Ram Krishna Tekriwal [2005] 274 ITR 266*, *Satish Chand Gupta v. CIT [2007] 160 TAXMAN 224 (ALL.)*

# Issues

Where members of HUF become the partners in a firm by investment of family funds & not because of any Special Services rendered by them, then the income will belong to HUF

***D.N. Bhandarkar v. CIT 158 ITR 724 (Kar).***

# Issue

- Once the character of an individual has been treated differently than HUF for the purposes of interest, there is no reason as to why that would not extend to the salary and bonus paid to such partners on account of their personal services rendered to the firm in contra-distinction to their capacity as representatives of HUF . Therefore, the same reasoning would apply to the cases where payment in the form of salary and bonus has been made to a partner in his individual capacity in contra-distinction to his representative character of the HUF .

*Commissioner of Income-tax, Amritsar v. Unimax Laboratories*  
*[2007] 164 TAXMAN 373 (PUNJ. & HAR.)*

- Where there is no evidence about receipt of Salary by member of HUF in its individual capacity, the same shall be taxable in the hands of HUF.

*Lachman Das Bhatia & Sons v. CIT, [2007] 162 TAXMAN 118*  
*(DELHI)*



# Issue

- It is individuals of HUF who indirectly become partner in firm in which HUF is said to be partner and therefore provisions of Section 40(b) that prohibits deduction of payments of commission to any partner who is not a working partner, in computing income under the head PGBP, will not be applicable. Therefore deduction of any commission payable to any individual of HUF shall be allowable.

*Commissioner of Income-tax v. Central Scientific Instrument Corporation [2010] 1 DTLONLINE 149 (All.)*

# Issue

- **The assessee was a partner in a firm which was dissolved with effect from 1-1-1999 and its business was taken over by the assessee in the capacity of a HUF - the assessee sought to set-off loss of the said firm against the profit of his business as HUF**
- Section 78(2) prohibits carry forward and set-off of losses of one person by another person except when the other person receives the losses by inheritance. Section 78 shows that where succession to business is by inheritance, then loss will be allowed to be set-off and not otherwise.

***Pratap H. Desai (HUF ) v. Assistant Commissioner of Income-tax [2009] 118 ITD 29 (PAT.)***

## *Capital Gain Exemption Benefits for HUF's*

1. Cost Inflation Index benefit available to Calculate Cost of the Asset.
2. Tax benefit of 20% Tax on Long-term Capital Gains.
3. Tax Saving on Long-term Capital Gain possible by investing in Capital Gains Bonds of NHAH / REC.
4. Long-term Capital Gains Saving by investing in Residential Property.

# Issues

- Capital asset should have become property of previous owner before 1-4-1981 to make assessee entitled to benefit of adopting market value as on 1-4-1981 but where construction of building was completed in 1988 and possession of flat was handed over to previous owner, i.e., HUF, it could not be said that flat itself became property of HUF prior to that date and, hence, assessee was not entitled to adopt market value of flat as on 1-4-1981
- In view of specific provisions of Explanation (iii) to section 48, indexing had to be allowed of the financial year in which flat was held by assessee on partition of HUF.

**Deputy Commissioner of Income-tax,  
Circle 3(4), Mumbai v. Kishore Kanungo  
[2006] 102 ITD 437 (MUM.)**

# Issues

- **Benefit u/s 54 would be available where more than one Residential house properties are purchased out of sale proceeds of any residential property.**
- A plain reading of section 54(1) discloses that when an individual assessee or an HUF assessee sells a residential building or land appurtenant thereto, he can invest capital gain for purchase of a residential building to seek exemption of the capital gain tax. The expression 'a residential house' should be understood in a sense that building should be residential in nature and 'a' should not be understood to indicate a singular number. That when an HUF 's residential house is sold, the capital gain should be invested for the purchase of only one residential house, is an incorrect proposition. After all, the property of the HUF is held by the members as joint tenants. If the members, keeping in view the future needs in event of separation, purchase more than one residential building, it cannot be said that the benefit of exemption is to be denied under section 54(1).

# Issues

- Assessing Officer was wrong in denying deduction under section 54B to assessee on ground that assessee being an HUF was not entitled to deduction under section 54B.

*K.S. Jain & Sons (HUF ) v. Income-tax Officer, Ward 1 Gurgaon, Haryana [2008] 173 TAXMAN 114 (DELHI)(MAG.).*

- *Against : Darapaneni Chenna Krishnayya (HUF) v.CIT [2007] 291 ITR 98 (AP)*

# Issues

- Independent of the above discussion, an aspect which override the above issue, was that, the agricultural land, which was sold was of the HUF of the assessee but the flat purchased in the co-operative society was not in the name of the HUF . *The flat was in the individual name of the assessee along with his mother. To claim the benefit of section 54F, the residential house which is purchased or constructed has to be of the same assessee whose agricultural land is sold.*

**Vipin Malik (HUF ) v. Commissioner of Income-tax [2009] 183 TAXMAN 296 (DELHI).**

# Issues

- Under section 48, any payment made by assessee for education, maintenance and marriage of his unmarried daughter from sale proceeds of movable & immovable property received under partition, though under consent decree, could not be said to be an expenditure wholly and exclusively incurred in connection with transfer of property or could not be considered as a cost of acquisition or cost of improvement.

*Krishnadas G. Parikh v. DCIT [2008] 114 ITD 362 (AHD).*



## ***Taxation of money received by HUF without consideration – S. 56(2)(vii)***

- Where HUF receives from any person after 01/10/2009, without any consideration –
  - Any amount exceeding Rs. 50000, the whole of such amount.
  - Any immovable property, the stamp duty value of which exceeds Rs. 50000/-, the stamp duty value of such property.
  - Any property, the FMV of which exceeds Rs. 50000, the whole of FMV of such property.
  - Or for a consideration which is less than FMV of such property by an amount exceeding Rs. 50000, the aggregate FMV of such property as exceeding such consideration.

## *Proviso to S. 56(2)(vii)*

Provision of S. 56(2)(vii), shall not apply to any sum of money or any property received -

- (a) From any relative.
- (b) On the occasion of the marriage of the Individual.
- (c.) Under a will or by way of inheritance; or
- (d) in contemplation of death of the payer or donor, as the case may be, or
- (e) from any local authority as defined in explanation to clause (20) of section 10; or
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10.

**Direct Tax Code**

**vs.**

**Income Tax Act, 1961.**

# S. 169 of DTC vs. 171 of IT Act 1961.

<b>S. 171 of IT Act 1961</b>	<b>S. 169 of DTC</b>
S.S (1) – HUF will be assessed as HUF until finding of partition is given under this section.	Clause (1) – Same effect
S.S.(2) – while making assessment u/s 143 or 144, if it is claimed by members of HUF that total or partial partition has already taken place, the AO shall make an inquiry to that effect after giving notice to all the members of the HUF.	Clause (2) (a) & (b) – Inquiry about partition at the time of making assessment by giving notice to all members (Does not specify particular sections of assessment) -
S.S.(3) – if on inquiry partition confirms – than AO will record, if it is a total or partial partition, & the date on which such partition took place.	Clause 2(c) – Same effect
S.S.(4) – For the period up to the date of partition – income will be assessee as if no partition took place and all the members of the HUF shall be jointly and severally liable for the taxes.	Clause (3) – Same effect

# S. 169 of DTC vs. 171 of IT Act 1961.

<b>S. 171 of IT Act 1961</b>	<b>S. 169 of DTC</b>
S.S(5) – Partition took place after the expiry of the P.Y. then the assessment shall be made as if no partition had taken place. And all the members of the HUF shall be jointly and severally liable.	Clause (4) – Each member assessed as undivided shall be jointly and severally liable for tax.
S.S. (6) – if Partition took place after the assessment of HUF – then all the members of HUF before partition shall be jointly and severally liable.	
S.S (7) – Joint and several liability of member of HUF can in any way will not exceed its share in HUF.	Clause (5) – Same effect
S.S (8) – Provision of penalty, interest & fine shall apply only up to the date of partition.	Clause (6) – Same effect.
<b>S.S (9) – If the partial partition took place after the 31/12/1978, the assessment of HUF shall be made as if no partition took place and all the members of HUF shall be Jointly &amp; Severally liable to the extent of their share in HUF.</b>	Clause (7) & (8) – Partial partition – not need to be inquired – assessed as HUF & all the members will be Jointly & Severally liable to the extent of their share in HUF.

# ***Thank You***

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