

HUF: A Practitioners' Perspective

218. Is the concept of HUF applicable to all?

Under section 2(31) of the Income-tax Act, 1961 a Hindu undivided family or HUF is treated as an entity distinct and different from an individual and it would be wrong not to keep that difference in view - C. Krishna Prasad v. CIT [1974] 97 ITR 493 (SC).

However, the concept of HUF is applicable to all those who have been brought up as Hindus. In other words, all those persons who have been brought up as Hindus can claim the status of a Hindu joint family under the tax laws.

The Jain families are also regarded as Hindu families for the purpose of levy of income-tax and wealth tax In India- CWT v. Smt. Champa Kumari Singhi [1972] 83 ITR 720 (SC) / Nathu Sao v. CIT (1934) 2 ITR 463(Nag.)

219. How to create a HUF? Who can be a member of a HUF?

A Hindu undivided family or HUF is neither the creation of law nor of contract. The membership of a Hindu undivided family normally arises from birth. A Hindu is verily born into a Hindu undivided family. In a Hindu undivided family, an 'adopted son' is however exactly on the same footing as a 'natural son'.

Membership to a HUF is possible only by birth. Traditionally speaking, a Hindu undivided family or a joint Hindu family thus consists of all males lineally descended from a common ancestor, their wives and unmarried daughters and daughters-in-law. Generally, the father or senior most male member of the family manages the property of the family as 'karta'.

However, with the enactment of the Hindu Succession (Amendment) Act, 2005 (w.e.f. 9th September, 2005), a daughter of a coparcener shall also by birth become a coparcener in her own right in the same manner as the son.

Unlike an AOP or a firm or a company, which are created by acts of parties, the HUF is purely a creature of Hindu law and cannot be created by act of parties. However, a HUF can be divided and put to an end by the parties under the Hindu law.

220. Can non-Hindus claim the status of a HUF?

In *Perumal v. Ponnuswamy* (AIR 1971 SC 235.) the Supreme Court has held that any person can become a Hindu after expressing his intention that he lives as a Hindu and that the community or caste into the fold of which he is ushered has accepted him as a member of that community or caste. Thus, any non-Hindu in India can become a Hindu by undergoing the formality of conversion, as prescribed by a caste or community to which he converts.

Further, it is legally possible in India for certain non-Hindus like *Khojhas*, *Cutchi Memons*, the *Bohras*, *Moplas* and the *Holai Memons*, who are Muslims, to follow the Hindu law of inheritance and succession subject to the provisions of the Shariat Act, 1937. Similarly, some Christian communities can also follow the Hindu law of succession. However, in all these cases, the Muslims/Christians cannot claim the status of a HUF even if they do follow Hindu law of succession.

221. Who are 'Hindus' for the purpose of Hindu laws?

Under the codified law relating to the Hindus, (viz., Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956), the meaning and the concept of the term "Hindu" and "Hinduism" have undergone radical changes over the years. In this context, it is notable that the aforesaid Hindu Acts are not only applicable to Hindus by birth or religion but also to a large number of other persons who are 'deemed' to be Hindus in the eyes of law.

In case where one of the parents is a Hindu and the son is brought up as a Hindu, the son will be a Hindu. Son born of a family married under Special Marriage Act, 1972 even where one of the parents is a Christian, can be a Hindu, if brought up as a Hindu- *CWT v. Late R. Sridharan*. (1976) 104 ITR 436 (SC). Similarly, even a Hindu who declares for the purposes of Special Marriage Act, 1972 that he is not a Hindu does not cease to be a Hindu for purpose of succession - *CIT v. Partap Chand* (1959) 36 ITR 262 (Punj.). Broadly speaking, the following are some of the persons to whom the Hindu law applies:

- ❑ Hindus by birth;
- ❑ Hindus by religion, i.e., converts to Hinduism;
- ❑ Illegitimate children where both parents are Hindus;

- ❑ Illegitimate children where the father is a Christian and the mother is a Hindu, and the children are brought up as Hindus. [However, the Hindu law of coparcenary, which contemplates the father as the head of the family and the sons as coparceners by birth with rights of survivorship, cannot, from the very nature of the case, apply to such children]
- ❑ Jains;
- ❑ Buddhists;
- ❑ Sikhs;
- ❑ Nambudiri Brahmins except so far as such law is varied by custom;
- ❑ Lingayats who are considered Sudras;
- ❑ Hindus by birth who, having renounced Hinduism, have reverted to it after performing the religious rites of explanation and repentance. [Or even without a formal ritual of reconversion when they were recognised as Hindus by their community]
- ❑ Sons of Hindu dancing girls of the Naik caste converted to Mahomedanism, where the sons are taken into the family of the Hindu grand-parents and are brought up as Hindus;
- ❑ Brahmos;
- ❑ AryaSamajists;
- ❑ Santhals of Chota Nagpur;
- ❑ Santhals of Manbhum except so far as it is not varied by custom;
- ❑ Hindus who made a declaration that they were not Hindus for the purpose of the Special Marriage Act, 1872.
- ❑ Radhaswamis;
- ❑ Swayamariyathais (self-respecters) opposed to Purohit cult.
- ❑ Satsangis etc.

222. Distinguish between 'specified HUFs' and 'Non-specified HUFs'.

Upto assessment year 1996-1997, there was a distinction between specified HUFs and Non-specified HUFs. Specified HUFs were those HUFs one or more of whose members earn an individual income equivalent to the taxable minimum for an individual (Rs.40,000 for the assessment year 1996-97). On the other hand, non- specified HUFs were those HUFs none of whose

members earn an individual income equivalent to the taxable minimum for an individual.

As regards taxation, there was a lower taxable minimum income – Rs.18,000 up to 1996-97 assessment year for the specified HUF and such specified HUF's were taxed a higher rate. The non-specified HUFs were treated on par with the individual for the purpose of determining the taxable minimum and for rates of tax. However, this distinction and discrimination of HUFs now stands abolished (for and from the assessment year 1997-98).

223. Is it compulsory for a HUF to carry on any business?

A Hindu undivided family is basically a unit of society and therefore it need not necessarily be an economic or commercial unit. Practically speaking, there could be a HUF, which does not own any property or carry on any business. Such a joint family can also acquire property, which has all the characteristics of an HUF property.

224. Is HUF a distinct taxable entity? Are there any benefits in treating a HUF as a separate taxable entity?

Under the income-tax law, the income of a Hindu undivided family can be assessed in the hands of the HUF alone and not in the hands of any of its members, unless specifically so provided by law. This is because the HUF is a separate and distinct tax entity under the law. The following are some of the notable tax benefits in treating a HUF as a separate taxable entity:

- ❑ In case of an individual assessee, who is also a member of HUF, the share of his income, which is derived from the HUF property, is not considered for deriving at the total income of that person as an individual [Section 10(2)]
- ❑ HUF itself is a separate tax entity and therefore there is no question of double taxation.
- ❑ In the assessment of HUF, expenses like remuneration, interest, commission etc. paid to the members thereof for services rendered are deductible.
- ❑ Total partition of HUF is one of the best ways to avoid income tax, capital gain tax, gift tax, wealth tax, stamp duty etc. because the property divided amongst the members of a HUF through partition is not considered as transfer or disposition of the property under section 47.

225. When can a HUF be a resident in India?

Under section 6(2)] of the Income-tax Act, 1961, a Hindu undivided family is said to be resident in India if the control and management of its affairs is "wholly or partly" situated in India. "Control and management" of affairs for this purpose means controlling and directive power. It means de facto control and management and not merely the right to control or manage- CIT v. Nandlal Gandalal [1960] 40 ITR 1(SC).

For the purpose of residential status of a HUF, the situation of control and management of the HUF in relevant year only is material. What the income-tax law requires is the control and management of the affairs in the accounting period and not in any subsequent or earlier accounting period- *Sri Raja K.V. Narasimha Rao Bahadur v. CIT* [1950] 18 ITR 181 (Mad.)

A resident Hindu undivided family is said to be "ordinarily resident" in India if the karta or manager of the family (including successive kartas) is resident in India in at least 2 years (9 years upto the assessment year 2003-2004) out of 10 years immediately preceding the relevant previous year and is in India for 730 days or more during 7 years immediately preceding the relevant previous year.

If the karta or manager of a resident family is not resident in India in at least 2 out of 10 immediately preceding previous years or is not present in India for at least 730 days in 7 immediately preceding previous years, the joint family will be regarded as "resident but not ordinarily resident" in India.

226. When will a HUF be a non-resident? Who has to prove the non-residential status?

A Hindu undivided family or HUF will be non- resident in India if the control and management of the family is situated wholly outside India during that year.

The onus of proving that the HUF taxpayer is not resident in India is on the assessee. In case the assessee-HUF has not proved that its case falls under exception, it cannot be treated as non-resident-V. *VR.N.M. Sybbayya Chettiar v. CIT* [1951] 19 ITR 168 (SC).

227. Discuss in brief the evolution of Hindu laws in India.

Till the 19th century, A.D, the ancient Hindu-law, as laid down in the so-called *Srutis*, the *Smritis* and other Hindu law scriptures and texts, followed its customary course without any interference of the lawmakers. However, during the first half of the 20th century, some attempts were made by the

lawmakers in India for legislative reforms in respect of the time-old Hindu laws, which were badly in need of amendments and reforms. The dire need to give a better status to Hindu women through a limited estate was felt for the first time by the lawmakers. These amendments helped a lot in making the Hindu law, more relevant for the changing time and conditions of the Hindu society.

The first phase of the Hindu law reforms started with the enactment of the following Acts:

- ❑ The Hindu Law of Inheritance Act, 1929;
- ❑ The Hindu Gains of Learning Act, 1930;
- ❑ The Hindu Women's Right to Property Act, 1937 and
- ❑ The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

After the dawn of independence on 15th August, 1947, the legislative movement on codification of Hindu laws in India gained further momentum. Accordingly, the Indian Parliament proceeded to enact the following Acts:

- ❑ The Hindu Marriage Act, 1955
- ❑ The Hindu Succession Act, 1956
- ❑ The Hindu Minority and Guardianship Act, 1956.
- ❑ The Hindu Adoptions and Maintenance Act, 1956.

These Hindu Acts, enacted by our Parliament are now the supreme authority as regards Hindu laws in India. These enactments, (which have overriding effect in case of inconsistency with the respective branch of law) hold good in the respective branch of Hindu law covered by them. In this context, it is also true that these enactments have not touched many areas, where the ancient customary usages and exceptional provisions still hold sway.

228. Will the children of mixed marriages be treated as Hindus?

The decision of the Supreme Court in the case of *CWT v. Late R. Sridharan (1976) 104 ITR 436 (SC)* is relevant here. In this case where a son, born to a Hindu father and Christian mother and who has been brought up as a Hindu, had formed a HUF with his father. The Court held that legitimate children born to such a mixed marriage couple who are brought up as Hindus would be governed by the Hindu law. According to the apex Court, if a Hindu married a Christian lady under Special Marriage Act, son born to them if brought up as a Hindu, would be a Hindu, and such a son can validly form a

HUF with his father. However, a Hindu who has converted to Christianity is not entitled to claim the status of a Hindu undivided family. [*P. F. Pinto 65 ITR 123 (Mys)*].

Where a Hindu marries a Christian lady and their daughter is brought up as a Christian, the individual, his wife and daughter would not constitute a HUF for assessments to tax under income tax law. For claiming the status of a HUF, it is necessary that the child must be brought up as member of the family to which the Hindu parent belongs, namely, the family of the Hindu parents and brothers, etc., - *Addl. CIT v. G. Venkataraman (1977) 109 ITR 247 (Mad)*. However if a Hindu marrying a Christian lady brought up his son/daughter as a Hindu by taking the child into the fold of Hindu family, the child would be regarded as Hindu- *Lingappa Goundan v. Esudasan (1903) ILR 27 13 (Mad)*.¹ *Late R. Sridharan v. CWT 73 ITR 360 (Mad)*.

229. What will be the effect of marriage on a member of a HUF under the Special Marriage Act?

Section 19 of the Special Marriage Act, 1954 deals with the effect of marriage on a member of an undivided family. Accordingly, the marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jain religion shall be deemed to effect his severance from such family. In other words, if a Hindu gets married under the Special Marriage Act with a non-Hindu by declaring that he is not a Hindu, he will cease to be a member of the HUF of which he was a coparcener before his marriage.

However, section 20 of the Special Marriage Act, 1954 provides for the rights and disabilities not affected by Act. Accordingly, subject to the provisions of section 19, any person whose marriage is solemnized under this Act, shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (21 of 1850), applies. A male member of a HUF on marriage with a non-Hindu does not relinquish his interest in joint HUF property. However such a member ceases to be a coparcener. Section 19 read with section 21A of the Special Marriage Act, 1954 enables a person who solemnises a marriage with a non-Hindu lady to realise his interest in HUF but he will cease to be a coparcener.

230. What do you mean by 'HUF property'?

The term 'joint family property' or 'HUF property' under the Hindu law may also include self-acquired property. Hindu coparcenary property means the

property, which consists of ancestral property, or of joint acquisitions, or of property thrown into the common stock, an accretion to such property- *Kapur Kaur v. Kishan Singh, AIR, 1970 (P&H) 270*. Following are the properties, which are recognized as 'coparcenary property' under the Hindu law:

- ❑ Ancestral property;
- ❑ Property allotted at a partition;
- ❑ Property jointly acquired by coparceners;
- ❑ Property acquired with the aid of coparcenary property;
- ❑ Separate property of a coparcener thrown into family hotchpot and treated as coparcenary property; and
- ❑ Separate property of a coparcener blended with coparcenary property. (*CIT v. Dr. (Mrs.) Sita Bhateja, (1973) 91 ITR 193, 195-6 (Mys.)*).

For this purpose, 'ancestral property' means all property inherited by a Hindu male from his father, father's father or father's father's father. If the property came from the father as gift to a son, such gifted property cannot be treated as ancestral property. Ancestral property in the ordinary sense means property of the father or forefathers, which is inherited- *Khalill Ullah Shah v. Ewaz Ali, 741 IC AIR (1923)*.

231. What do you mean by an 'ancestral property'? What are the properties which cannot be treated as ancestral in nature?

All property, which a man inherits from a direct male ancestor, not exceeding three degree higher than himself, is ancestral property and it is at once held by himself, in coparcenary with his own issue. However, where he has inherited from a collateral relation, as for instance, from a brother, nephew, cousin or uncle, it is not ancestral property; consequently, his own descendents are not coparceners in it with him –*Gurumurthi Reddi v. Gurammal and another 1 IC 750*. In this context, the following properties would not be an ancestral property for this purpose of HUF:

- ❑ any property inherited from maternal grandfather (*Muhammad Husai Khan v. Babu Kishya Nandan Sahai, (1937) 64 IA 250.*) or
- ❑ any property inherited from collaterals, (*Baboo Nund Coomar v. Razeeooddeen, (1973) 10 Beng LR 183.*) or

- any self-acquired or separate property obtained from paternal ancestor under express terms of gifts or will (*Arunachala Mudaliar v. Murugantha Mudaliar, 1954 SCR 243.*)

232. What are the two different types of ancestral property?

Under the Mitakshara law, ancestral property is of two types, namely: (1) Apratibandhadaya or unobstructed heritage, and (2) Sapratibandhadaya or obstructed heritage.

An unobstructed heritage or apratibandhadaya is an ancestral property in which a person acquires an interest by birth. An apratibandhadaya is not obstructed by the existence of the owner. Unobstructed heritage is not recognised by the Dayabhaga law whereas the Mitakshara law recognises an unobstructed heritage. Further, the obstructed heritage devolves by succession, whereas the unobstructed heritage devolves by survivorship.

233. What are the rights of a member of a HUF? Are these rights different from that of a coparcener?

As regards the rights of members, a coparcener under the Hindu law is superior over other members of the HUF who are not coparceners. An adult coparcener has not only the right of maintenance but also has the right to claim partition. On partition, his branch of the family secures a specific share of the HUF property. However, what a coparcener gets on partition of the HUF is not his own individual share but the share of family of which he is the Karta.

On the other hand, the members of the family, other than coparceners, (especially the females) do have only the right of maintenance. They do not have the right to claim partition.

234. Who are coparceners?

Under the Hindu law, a coparcenary consists of a male ancestor and his lineal descendants in the male line within four degrees including himself. The coparceners of a Hindu undivided family qua inherited property are as follows:

- The person who inherited the HUF property; (viz., the one in whose time the Hindu family acquired property by inheritance for the first time);
- His sons;
- His grandsons; and

- His great grandsons.

However, with the enactment of the Hindu Succession (Amendment) Act, 2005 (w.e.f. 9th September, 2005), a daughter of a coparcener shall also by birth become a coparcener in her own right in the same manner as the son.

235. Can females be coparceners in a HUF?

With the enactment of the Hindu Succession (Amendment) Act, 2005 (w.e.f. 9th September, 2005), a daughter of a coparcener shall also by birth become a coparcener in her own right in the same manner as the son.

236. "No female can be a member of a HUF"-Is it legally correct?

Under the Hindu law, it is not correct to say that no female can be a member of HUF and a HUF does not necessarily consist of only male members [Kalyanji Vithaldas v. CIT 5 ITR 90 (PC)]. In a HUF, a daughter is also a member of the family till her marriage. On her marriage, the daughter ceases to be a member of her father's family and she becomes a member of the family of her husband as a daughter-in-law.

Even though a Hindu undivided family may consist of its members, males and females, adults and minors, only some of the members of the joint family of Hindus are known as "coparceners". Before the enactment of the Hindu Succession (Amendment) Act, 2005, the coparceners were always from the male members of the Hindu undivided family.

However, with the enactment of the Hindu Succession (Amendment) Act, 2005 (w.e.f. 9th September, 2005), a daughter of a coparcener shall also by birth become a coparcener in her own right in the same manner as the son.

237. Distinguish between a Hindu coparcenary and a Hindu undivided family.

A Hindu coparcenary is always smaller than the membership of a Hindu undivided family. In this context, it is true that there can be a Hindu undivided family all of whose members are coparceners. However, there cannot normally be a Hindu undivided family without a coparcener.

A Hindu undivided family or HUF is a body, which is wider than a Hindu coparcenary. The direct tax laws in India (both the Income-tax Act, 1961 and Wealth-tax Act, 1957) also deal with the Hindu undivided families (HUF) and not with the Hindu coparcenary.

238. Who is called 'karta' of HUF?

Under the Hindu law prevalent in India, the manager of a Hindu undivided family or a Hindu joint family is called the 'Karta'. In legal parlance, the word 'Karta' as used in Wills and other legal documents always means heir or person entitled.

As an accepted general rule, the right to managership of a Hindu undivided family under the Hindu law is conferred on the father as the head of a joint Hindu family. Where the father of the family is dead, the right to managership of the Hindu undivided family simply devolves upon the senior-most adult member of the Hindu joint family.

As regards the basic qualification to become a karta of a Hindu undivided family, the person on whom the right of managership devolved must be a coparcener of the joint family. In other words, if the person is not a member of the coparcenary, he has no right to claim the managership of the joint Hindu family.

The Karta has extensive powers in respect of the day-to-day management of the joint Hindu family. He is the controller of the income and expenditure of the joint family and he is the custodian of its surplus finances.

239. What are the salient features of the Hindu Succession (Amendment) Act, 2005?

The Hindu Succession (Amendment) Act, 2005 (39 of 2005) has come into force from 9th September, 2005. The Hindu Succession (Amendment) Act is to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters under Section 6:

- ❑ The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son;
- ❑ The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
- ❑ The daughter shall be subject to the same liability in the said coparcenary property as that of a son; and any reference to a Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of a coparcener;
- ❑ The daughter is allotted the same share as is allotted to a son;

- ❑ The share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter;
- ❑ The share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.

240. Can a female be the karta of a HUF?

Under the Hindu law prevalent in India, the right to managership of a Hindu undivided family is generally conferred on the father as the head of a joint Hindu family. In case the father of the family is no more, the right to managership of the HUF simply devolves upon the senior-most adult member of the Hindu joint family.

As regards the basic qualification to become a karta of a Hindu undivided family, the person on whom the right of managership devolved must be a coparcener of the Hindu joint family. In other words, if the person is not a member of the coparcenary, he has no right to claim the managership of the joint Hindu family.

Coparcenership is an essential qualification for the managership of a Hindu joint family. With the enactment of the Hindu Succession (Amendment) Act, 2005 (w.e.f. 9th September, 2005), a daughter of a coparcener shall also by birth become a coparcener in her own right in the same manner as the son. In this context, a female may also be a karta of a HUF.

241. Can a Hindu widow have interest in coparcenary property?

Though a Hindu widow cannot be a coparcener, she has coparcenary interest and she is also a member of the coparcenary by virtue of the rights conferred on her under section 3(2) of the Hindu Women's Right to Property Act, 1937- CED v. Alladi Kuppaswamy, (1977) 108 ITR 439, 450 (SC).

Under the Hindu Women's Right to Property Act, 1937, the interest of the widow of member of a Hindu coparcenary arises not by inheritance, nor by survivorship, but by statutory substitution. The widow does not become a coparcener, though invested with the same interest, which her husband had in the property; she does not acquire the right, which her husband could have exercised over the interest of other coparceners. If however she died before partition, the interest acquired by her would merge in the coparcenary property and will devolve upon the heir of her husband. -Satruganisser v. Smt. Sabujpari, AIR (1967) SC 272.).

A Hindu widow is the surviving half of her husband and so long as she is alive, the husband continues to live in her. In that case the Hindu widow does not become a coparcener but she is entitled to claim partition in the same position in which her deceased husband would have been in the matter of exercise of the right. The quantum of interest of such a Hindu widow is to be determined as on the date on which she seek to enforce a partition under section 3(3) - Potti Lakshmi Perumallu v. Potti Krishnavenamma, AIR (1965) SC 825.

However, with the passing of the Hindu Succession Act, 1956, widow has been designated as class I heir to male Hindu dying intestate. In this context, if a Hindu widow remarries, then on her remarriage, she does not have a right in the erstwhile joint family estate. This is because she ceases to be the surviving part of her husband's body on her remarriage- Pandurag Narayana Salunke v. Sindhu AIR (1971) (Bom.) 413.

242. What will happen to the HUF if a Hindu widow adopts a son?

When a Hindu widow adopts a male heir, the adopted son would be a member of the family from the date of death of adoptive father and therefore the widow cannot be considered to be the sole member of the HUF. The Hindu undivided family would be constituted by the Hindu widow along with the adopted son- C. Krishna Prasad v. CIT [1974] 97 ITR 493 (SC). An adoption by a Hindu widow amounts to adoption by her late husband and the adopted son would be a child of the husband also. In this view, the Hindu undivided family did not cease to exist and on adoption of a son by assessee widow, the status of assessee is to be taken as that of a HUF - Savitri Devi v. CIT [1976] 104 ITR 385 (Pat).

243. Can a sole surviving coparcener obtain the status of a joint Hindu family when he is single?

Under the Hindu system of law, prevalent in India, a sole surviving coparcener cannot obtain the status of a joint Hindu family when he is single. However, if he gets married, he can obtain the status of a joint family. An individual may acquire joint family property by survivorship or on partition. In such cases, he has to be assessed only as an individual till his marriage, since a joint family implies plurality of membership. Plurality of persons is an essential attribute of a family. In other words, a single person, male or female, does not constitute a family. A family consisting of a single individual is a contradiction in terms. Section 2 (31) of the Income-tax Act, 1961 treats a HUF as an entity distinct and different from an individual and it would be wrong not to keep that difference in view-C. Krishna Prasad v. CIT, (1974) 97

ITR 493 (SC). The sole surviving coparcener on marriage holds the property as potential joint family, which comes into existence on marriage - Prem Kumar v. CIT. (1980) 121 ITR 347 (All.)/ S. Periannan v. CIT (1991) 191 ITR 278 (Mad.)/ CIT v. Arun Kumar Jhunjhunwala & Sons. (1997) 223 ITR 45 (Gau.)

244. Can a single male member with females constitute a HUF? Can a brother (along with his unmarried sisters) be a HUF?

Under the Hindu system of law, a joint family may consist of single male member and widows of deceased members-Kalyanji Vithal Das v. CIT 5 ITR 90 (PC). Similarly, a joint family may consist of single male member with wife and daughters- N.V. Narendra Nath 74 ITR 190 (SC). Likewise, a joint Hindu family may consist of single male member with his unmarried daughter-CIT v. Harshwardhan Mangaldas (1992) 194 ITR 136 (Guj.) Interestingly, a joint Hindu family may also consist of a brother and his unmarried sisters-Bharatkumar Chinubhai v. CIT (1969) 74 ITR 1 (Guj.).

245. A HUF did not have any ancestral property and the HUF property was created by the sole coparcener throwing his separate property in the common hotchpot. How to assess the income from the property?

In case the HUF did not have any ancestral property and the HUF property was created by the sole coparcener throwing his separate property in the common hotchpot, the income from the property would be assessed in his hands as an individual. This is because none other than him had any coparcenary interest in the property. In this case, the property did not come to him either by devolution or by partition but by his own act of throwing the same into the family hotchpot. Therefore though the property assumes the character of HUF property, it could not be held assessable in the hands of the HUF- Surjit Lal Chhabda v. CIT (1975) 101 ITR 776 (SC).

In other words, in cases of single coparceners for determining their status, the distinction regarding the source of acquisition of the nucleus property is to be seen. In case the single coparcener of the HUF got the property by devolution on the death of the other coparcener, the ancestral property was subsisting and there was continuity of ownership of property in the Hindu family. On the other hand, in case where the property did not come to the single coparcener either by devolution or by partition but by his own act of throwing the same into the family hotchpot, the property could not be held assessable in the hands of the HUF.

246. Can a single member without females constitute a HUF?

A single person, male or female, does not constitute a family and a family consisting of a single individual is a contradiction in terms. 'Family' connotes a group of people related by blood or marriage- CIT v. Ved Prakash [1982] 136 ITR 238 (Punj. & Har.) Further, an individual by himself cannot constitute a Hindu undivided family. In other words, there must be more than one person in the family before a HUF can come into existence. However, it is not necessary that the two members should both be males. The HUF can validly consist of a male and a female, like a husband and wife, or a father and his unmarried daughter.

Thus where a Hindu family is reduced to a single male coparcener without any female member, such a family has to be treated as an individual and not as a HUF. This is because the single male member is entitled to dispose of the coparcenary property as if it were his separate property. He may sell or mortgage the property without legal necessity or he may make a gift of it. The sole surviving coparcener is entitled to dispose of the coparcenary property as if it was his separate property- Surendra Nath Malhotra (HUF) v. GTO [1985] 13 ITD 499 (Cal.)

In this context, the only way by which the single coparcener can constitute a HUF is to marry a woman. In that case he and his wife would constitute a Hindu undivided family. Once the sole surviving coparcener marries, a HUF comes into existence, for the wife along with her husband constitutes a joint Hindu family- Prem Kumar v. CIT (1980) 121 ITR 347 (All.)

247. Can a HUF consist of only female members?

Legally speaking, a female can be a member of a Hindu undivided family- Kalyanji Vithaldas v. CIT [1937] 5 ITR 90 (PC). Similarly, there can be a HUF consisting of female members only. Females are and can be component parts of an undivided Hindu family. That being so, there can be an undivided Hindu family consisting of females only- CIT v. Sarwan Kumar [1945] 13 ITR 361 (All).

The Hindu coparcenary shall come to an end with the disappearance of the last male member in the family. However, the existence of coparcenary is not essential for the existence of a joint Hindu family- CIT v. Sarwan Kumar 13 ITR 361 (All).

248. Do you find any difference in adoption of a child by an unmarried Hindu female and a Hindu widow? Will such an adoption bring into existence a HUF?

Under the Hindu Adoptions and Maintenance Act, 1956, even an unmarried female can adopt. In such a case, the adoption made by an unmarried female would be to her only. However, a Hindu widow does not cease to be the wife of her deceased husband merely by death. In this context, the adopted child becomes the child of the husband also and such adoption brings into existence a joint Hindu family-Savitri Devi v. CIT, (1976) 104 ITR 385 (Pat).

249. Can a coparcener blend his individual property with the main HUF? Can he do so with the smaller HUF?

Under the Hindu system of law, blending of individual property in the hotchpot of the family may be done with the main or smaller HUF. Accordingly, a Hindu coparcener has the discretion to blend the individual property with the property of the main family consisting of his father, himself and his brothers and their progeny or the smaller family consisting of himself, his sons and their progeny. Blending of his separate property in the hotchpot of the smaller family can be done even while he is a coparcener in the bigger HUF, comprising his father, himself and his sons.

250. Discuss the doctrine of throwing into common stock. Can the family reject such blending?

Under the doctrine of throwing into common stock, the separate property of a member of a joint Hindu family may be impressed with the character of joint family property if he voluntarily throws it into the common stock with the intention of abandoning his separate claim therein. On such blending, the separate property of a Hindu ceases to be separate property, and acquires the characteristics of joint family or ancestral property. This result is achieved not by any physical mixing of separate property with the ancestral property but by a unilateral act of his own volition waiving and surrendering his separate property. In such a case, there is no question of the joint family rejecting or accepting and therefore there is no donor or donee – Goli Eswariah v. CGT [1970] 76 ITR 675 (SC).

251. What are the basic principles involved in throwing into the common hotchpot?

The following are notable principles with regard to the throwing into the common hotchpot of the separate self-acquired property of a Hindu, as laid

down in the case of *Mallesappa Bandappa Desai v. Desai Mallappa* (1961) 3 SCR 779:

- ❑ The owner of the separate and self-acquired property desirous of throwing it into the common hotchpot should himself be a coparcener, having coparcenary interest in the joint property of the family.
- ❑ The existence of a coparcenary is, therefore, a condition precedent for throwing separate and self-acquired property into the common hotchpot.
- ❑ Such a coparcenary may or may not own a joint property but should be capable of owning joint property.
- ❑ The intention of abandoning his exclusive ownership over the separate and self-acquired property and blending it with the property of the HUF should be clear and unequivocal.
- ❑ There need not be a physical mixing of the separate property thrown into the common hotchpot with the existing property of the HUF, if any.
- ❑ The action of throwing his separate and self-acquired property into the common hotchpot is a unilateral action on the part of the coparcener.
- ❑ The action of throwing his separate and self-acquired property into the common hotchpot by a coparcener does not require the consent of other members of the family, coparceners or otherwise.
- ❑ There is no question of acceptance of this blending of individual property of a coparcener into HUF property.
- ❑ Once the intention to vest the property with the character of joint family property is made clear and unequivocal by the concerned coparcener, voluntarily and on his own (in specific and unambiguous terms), the blending will take effect.
- ❑ No sooner does a coparcener declare his intention to treat his self-acquired property as ancestral property, the property assumes the character of joint family property.
- ❑ The doctrine of throwing into the common stock is a doctrine peculiar to the Mitakshara school of Hindu law.

- ❑ In the case of blending of individual property of a coparcener into HUF property, there is no donor and no donee and the vesting coparcener does not make any gift.

252. How to create a HUF property?

Since the HUF is a creature of Hindu law, it can exist even without any nucleus or ancestral joint family property-CIT v. K. Satyendra Kumar (1998) 232 ITR 360 (SC)]. However, a HUF property can be created in the following ways:

- ❑ partition of a larger Hindu Undivided family;
- ❑ devolution of interest in coparcenary property of a coparcener who dies intestate;
- ❑ inheritance through a specific bequest under a will;
- ❑ reunion of separated coparceners;
- ❑ receipt of gifts;
- ❑ blending of individual property with the family hotchpotch;
- ❑ doing joint labour for the benefit of HUF.

Even though there may be many modes of creation of HUF property available, the methods of gift and will are the most common ways for creating a HUF.

253. Can a newly created HUF receive gifts from outsiders?

As a matter of tax planning, a newly created HUF as a unit may receive gifts from outsiders or from father or brothers of the karta who are not members of the donee HUF. In such cases, such gifts will result in accretion to the family fund without attracting the provisions of section 64(2) of the Income-tax Act, 1961. It is noted that none of the donors should be coparceners or members of the donee HUF.

254. Is registration required for partition?

A partition of a HUF may be effected either orally or in written form. In case the parties reduce the transaction to a formal document, which is intended to be the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition, and is thus, within the mischief of section 17(1)(b) of the Registration Act, 1908- Nanni Bai v. Gita Bai AIR 1958 (SC) 706/ Hans Raj Agarwal v. CCIT (2003) 259 ITR 265 (SC).

Under Hindu Law it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof- *Digambar Adhar Patil v. Devram Girdhar Patil* 1995 (4) JT (SC). Further, an oral partition recorded later by Memorandum of Partition does not need registration under any law.

255. What do you mean by 'partition'?

Under section 171 (Explanation (a)) of the Income-tax Act, 1961, the expression 'partition' means:

- ❑ 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
- ❑ 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.

Under the Dayabhaga School of Hindu law, the shares of members are already defined and therefore no physical division is required. On the other hand, under the Mitakshara School, mere intention to divide and specification of interest of various members may [without even actual division] constitute a partition.

However, under the tax laws, only a physical division by metes and bounds does constitute a partition. In case a property is incapable of such division, specification of shares may however be sufficient. To be more specific, there is said to be a partition under tax laws only when the Assessing officer passes an order under section 171 of the Income-tax Act, 1961 or under section 20A of the Wealth-tax Act, 1957.

256. How to effect partition in a joint family consisting of only brothers?

In case the joint Hindu family consists of only brothers, they take equal shares on a partition.

257. How to effect partition in a joint family consisting of father, mother and sons?

In a partition of a HUF, which includes father, mother and sons, the mother has no right to claim partition. However, when a partition is actually effected, the mother in the family takes a share equal to the sons.

258. How to effect partition in a joint family consisting of unmarried daughters?

Earlier, under the Hindu law, the unmarried daughters had generally no right to share on partition. However, with the passing of the Hindu Succession (Amendment) Act, 2005 (w.e.f. 9th September, 2005), a daughter of a coparcener shall also by birth become a coparcener in her own right in the same manner as the son.

259. How to make a partition to get recognized under the Income-tax Act, 1961?

Under the Income-tax Act, 1961 it is essential to have a partition by metes and bounds and only then it can be recognised as a partition. In other words, if it is not possible to have a physical division, then an adjustment will have to be made amongst coparceners to comply with the definition of partition under section 171. The most important aspect of partition for recognition under the Income-tax Act, 1961 is that there must be a physical division of the property and there must be a partition in definite portions or by metes and bounds. It is not sufficient for coparceners to divide the ownership, and become co-owners or tenants-in-common.

The expression "physical division in definite portion" for this purpose means a division in which a member takes a particular house which he can occupy and live or a piece of land which he can cultivate or which he can sell or mortgage, or takes a particular ornament which he can wear or dispose of. In other words, such a division is not one in which he can only claim as a proportion of the income and a division of the corpus but where he cannot claim any definite portion of property. However, a business cannot be divided into parts in the same manner as a piece of land and division may only be possible in the books-Joint Family of Udayan Chinubhai v. CIT [1967] 63 ITR 416 (Guj)

260. Is registration of partition deed mandatory?

As regards registration and attestation requirements in respect of deed of partition, the law is now well settled that if a partition is made by a formal document and the property affected is above Rs.100 in value, such a document requires mandatory registration. In other words, a partition, which is effected by writing, requires registration under the Registration Act, 1908 if the property involved is worth Rs.100 or more. Section 17 (1) of the Registration Act does not refer to a deed of partition but provides in clause (b) that a non-testamentary instrument which purports or operates to create,

declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upward to or in immoveable property requires registration.

In this context, a deed of partition, even assuming that it is not a transfer of property, still declares or limits or extinguishes a right, title or interest in property and, therefore, if the property is immovable and of the value of Rs. 100 or more, it would require registration-Siromani v. Hemkumar & Dinmani, AIR 1968 SC 1299; Nanibai v. Gitabai, AIR 1958 SC 706; Muthyalareddy v. Venkata Reddi, AIR 1969 A. P. 242.]

However, if the document is not a formal document effecting a partition, but is only one which merely acknowledges a former partition orally made or is merely a memorandum of what was decided at the oral partition, it does not require registration-Sunder Singh Majithia, (1938) 5 I.T.R. 336; Kalwa Devadattam v. Union of India, (1983) 33 I.T.R. 56. However, the deeds of partition made by Revenue Officer do not require registration under the law.

261. What is partial partition? Is partial partition valid under Hindu law?

Legally speaking, partition of a HUF can be partial as regards property or persons or both. In a partition of HUF, there can be a division/partition where only some of the property is divided while the balance of the property remaining joint. Similarly, there may be a partition where some of the coparceners leave the family, with their share of property, while others remaining joint.

Under Hindu law, partial partition in HUF is valid and there is nothing in Hindu law to stop members from effecting a division of one of the assets and remaining joint in respect of the other property but the partition must take place legally and the property actually divided in definite portions- Sir Sunder Singh Majithia v. CIT [1942] 10 ITR 457 (PC). Accordingly, the property partially partitioned would thereafter belong to the members and that income from the property would not belong to the HUF- Charan Dass Haridas v. CIT [1960] 39 ITR 202 (SC).

262. Is partial partition valid under income tax law?

All partial partitions made on or before 31st December 1978 could have been recognised under section 171 of the Income-tax Act, 1961. However, though Hindu law recognises division of property among family members through partial partition, from assessment year 1980-1981, the Income-tax Act, 1961 and Wealth-tax Act, 1957 do not recognise such partial partition, made after 31st December, 1978.

Section 171(9)(c) provides for recovery of tax in such cases and accordingly each member shall be jointly and severally liable for tax. Under section 171(9)(d) the separate liability of any member shall be computed according to the portion of the family property allotted to him on such a partial partition. The effect of section 171(9) in a case of partial partition which takes place after 31.12.1978 is that:

- ❑ the amendment takes effect from the assessment year 1980-81.
- ❑ the partial partition cannot be claimed; [even if a claim is made by any member of the HUF, the same will be ignored by the Assessing Officer who will not make any inquiry and will not record any finding]
- ❑ the partial partition cannot be recorded;
- ❑ the partial partition cannot be recognised under section 171;
- ❑ the HUF will continue to be assessed as joint family in future as if no such partial partition has taken place;
- ❑ the income apportioned to members will continue to be included in the hands of HUF for assessment purposes;
- ❑ the wealth apportioned to members will continue to be included in the hands of HUF for assessment purposes;
- ❑ the tax liability for the income or wealth will be borne jointly and severally;
- ❑ the taxes will be apportioned according to the ratio of assets and incomes so allotted;

263. How to assess a HUF after partition?

- ❑ Legally speaking, unless and until there is a finding of partition of HUF, as recorded by an assessing officer, a Hindu undivided family assessed as such is deemed to be a Hindu undivided family.
- ❑ In case at the time of making an assessment under Section 143 or 144 it is claimed by or on behalf of any member of a Hindu Undivided Family that a partition of the HUF, [whether total or partial] before 1 January 1979 has taken place among the members of such family, the Assessing Officer shall make an enquiry therein after giving notice of the enquiry to all the members of the family.
- ❑ On the completion of such enquiry, the Assessing Officer shall record a finding as to whether there has been a total or partial partition of the joint family property.

- ❑ If there has been such a partition of Hindu undivided family, the Assessing Officer shall record the date on which it has taken place.
- ❑ For this purpose, a partition of a Hindu undivided family can be either total or partial. The term "partition" means:
 - ❑ 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
 - ❑ 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)
- ❑ The term "partial partition" means a partition, which is partial as regards the persons constituting the Hindu Undivided Family or the properties belonging to the HUF, or both.
- ❑ After 31.12.1978, any partial partition of Hindu undivided families will not be recognised as per amendment by the Finance (No.2) Act, 1980, effective from assessment year 1980-81.
- ❑ In case the Assessing Officer has recorded a finding of total or partial partition under this section and the partition has taken place during the previous year the total income of the joint family in respect of the period upto the date of partition shall be assessed as if no partition had taken place.
- ❑ In such cases, each member or group of members shall, in addition to any tax for which he or it may be separately liable be jointly and severally liable for the tax on the income so assessed.
- ❑ Further, if the partition of HUF has taken place after the expiry of the previous year, the income of the family shall be assessed as if no partition has taken place.
- ❑ After the completion of the assessment of the HUF if the Assessing Officer finds that the family has already affected a partition, whether total or partial, the Assessing Officer shall proceed to recover the tax from every person who was a member of the family before the partition.
- ❑ In such cases, every such person [every person who was a member of the family before the partition] shall be jointly and severally liable for the tax on the income so assessed.

- For this purpose, the 'several liability' of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the time of partition, whether total or partial.

264. What are the pre-requisites for a valid reunion under Hindu law?

The following are the conditions precedent [as decided in CIT v. A.M. Vijayapuri Chettiar & Ors. (1995) 215 ITR 836 (Mad)] for a valid reunion under Hindu law:

- there must have been a previous state of reunion. Re-union is possible only among the persons who were, on an earlier date, members of an HUF;
- there must have been a partition in fact;
- the reunion must be effected by the parties or some of them who had made the partition;
- there must be a junction of the estate and the reunion of property because reunion is not merely an agreement to live together as tenants-in-common;
- Reunion is intended to bring about a fusion in the interest and in the estate among the divided members of an erstwhile HUF so as to restore to them the status of an HUF once again.

265. Discuss in brief the taxability of conversion of a self-acquired property into a HUF property.

- Under section 64(2) of the Income-tax Act, 1961, in case an individual being a member of a Hindu undivided family, converts, at any time after the 31st of December 1969, his separate property 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 into the common stock of the family otherwise than for adequate consideration, 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.
- The income derived from the converted property or any part thereof shall be 'deemed to arise to the individual' and not to the family.
- 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 provisions of section 64(1) shall apply accordingly.

- ❑ For this purpose, "income" includes loss and "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.
- ❑ Under section 64(2) the income generated by the blended or impressed assets has to be clubbed in the individual income of the member who has blended his asset with the HUF character. But the interesting point to be noticed is that such income remains with the HUF and may be invested by the HUF. Any income generated from this income will be assessed in the hands of HUF. In other words, clubbing provision will attract only in respect of income generated from the amount originally blended by the individual with HUF character.
- ❑ To illustrate the clubbing provisions, if Mr. X, a member of a HUF, transfers or blends his individual cash amount of RS.500,000 with the HUF character and the HUF in turn invests this money in fixed deposit with bank. In such a case, assuming the interest rate at 12% p.a., a sum of RS.60,000 being the income on the amount blended by Mr. X will be clubbed in his individual income. However, if the amount of interest of RS.60,000 is invested further and the HUF gets an interest of RS.6,000 on the same, it will be assessed as income of HUF. In this context, it may also be pointed out that a female member is not eligible to blend her personal property into HUF but she can make a gift to HUF – *Pushpa Devi v. C.I.T. 109 ITR 730 (SC)*.
- ❑ Under section 4(2) of the erstwhile Gift Tax Act, the gift tax was also attracted in respect of the amounts blended to the extent of the share of coparceners other than the transferor himself. For example, if a father has four sons and blends his personal property valued at RS.500,000 with the HUF character, making a declaration to that effect. In such case four fifth of the blended amount i.e. RS.400,000 will be treated as gift to the HUF. Therefore while deciding the amount to be blended, the gift tax exemption limit should be kept in

mind. However gift made on or after 1.10.1998 are not subject to gift tax [as gift tax in India has been abolished w.e.f. 1.10.1998].

- From the viewpoint of tax planning, in certain cases it may be useful for a member of the HUF to blend or transfer his own shares of any company with the HUF character. If, later on, bonus shares are issued in respect of the shares so blended with the HUF property, such bonus shares will be treated as the property of the HUF. Consequently, the dividend in respect of original shares will only be clubbed with the income of the transferor member of HUF and the dividend on bonus shares will be assessed in the hands of HUF. In this context, the decision of Madras High Court in *CIT v. T. Saraswathi Achi 133 ITR 315*. Is relevant. It becomes more useful as the dividends from Indian companies referred to in section 115-o, is now totally exempt u/s 10(34) w.e.f. 1.4.2004 (as amended by Finance Act, 2003). So consideration of dividend in the hands of individual will have no tax impact.

266. Can a HUF be created out of gifts from others?

- The Supreme Court in *Pushpa Devi v. CIT 109 ITR 730 (SC)* has held that a HUF can accept gift from a person who is not a coparcener. The decision of the Madras High Court in *Satyendra Kumar v. CIT 140 ITR 840 (Mad.)* is also relevant. In this case the donor provided gifts to the donee with the clear intention to benefiting the family. The donee kept the gifted amount as nucleus of the HUF and there was no evidence that the donee intended at any point of time to hold the said property as his individual property. The Court held that once the intention of the donor to donate the funds for the joint family was conceded, the presence of the basic nucleus of the joint family was established.
- In *C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar [1954] SCR 243*, it was *held* that the court would have to collect the intention of the donor from the language of the document taken along with surrounding circumstances in accordance with the well-known canons of construction. The point that the gift is being made to the HUF and not to the Karta in his individual capacity should be clearly indicated by the donor by way of an affidavit.
- In order to avoid various complications it is advised that gifts to HUF should be preferred from the uncles, brother-in-law, grandparents and other relatives who are not the members of the HUF. In such a case

the transfer by way of gift will not attract the clubbing provisions of section 64.

267. Can a HUF be created through will?

- ❑ The creation of HUF through Will has been upheld by various High Courts following the Supreme Court decision in the case of *SurjitLal Chhabda v. C.I.T. [1975] 101 ITR 776*.
- ❑ A Will can be made in favour of a HUF, which is not in existence at the time of the execution of the Will or which does not have HUF nucleus, as decided by Punjab & Haryana High Court in *C.I.T. v. Ghanshamdass Mukim 118 ITR 930*. In the said case a Will was left by the mother of Ghanshamdass providing therein for passing of certain properties to the HUF of his son who had only wife and a daughter at that time. The Will in favour of HUF was held valid and the contention of revenue that no HUF could be created by Will was rejected.
- ❑ It was observed that joint family is the normal condition of Hindu Society and there is no restriction to bequeathing property to a joint Hindu family, therefore the Court held that the pre-existence of HUF was not necessary for bequeathing property to HUF through a Will.

268. Can a HUF be created by joint labour?

- ❑ Under the Hindu law a property is treated as joint family property if it has been acquired in business by persons constituting a joint Hindu family by the joint labour unless the acquirer's intention is to hold the property as co-owners individually. 'Ancestral nucleus' is not necessary for creation of HUF by joint labour of coparceners.
- ❑ However, the coparceners should be engaged in carrying on work together and they should belong to the same line of ancestors.
- ❑ For the purpose of income tax it would be advisable that such coparceners should declare the intention in writing stating that the income earned through their joint labour will be the income of the joint family and such income or any assets acquired out of it will neither belong to them nor their legal heirs or successors in individual capacity.
- ❑ The income of joint family through joint labour is not subjected to clubbing provisions of section 64(2) of the Income-tax Act, 1961.

269. Can partial partition be made for tax benefits?

- A HUF can be partitioned and as such smaller HUFs can be created, each enjoying the benefit of threshold limit under the income tax act as well as Wealth tax Act. It may however be noted that the partial partition is no more useful after 31.12.1978 due to insertion of section 171(9).
- Accordingly, even in case of partial partition taking place, such Hindu family shall continue to be liable to be assessed under the Income-tax Act as if no such partial partition had taken place.

270. Discuss in brief the tax implications of a HUF property received and held by a husband & a wife having no son.

- In *Pannalal Rastogi v. CIT 65 ITR 592 (Pat.)* the High Court held that 'A' and his wife constituted a HUF in respect of the assets and the property they got on partition. They stated that safer test would be, as pointed out in the case of *Attorney General of Ceylon v. Arunachalam Chettiar [1957] A.C. 540* whether there is a potentiality of a coparcener being brought into existence either by law (i.e. adoption) or by nature (birth by wife). So long as the potentiality is there, the property must be held to be that of a HUF. Such a potentiality exists in the case of a sole surviving coparcener because he may be getting a son or adopting a son.
- In *Bharat Kumar Chinubhai v. CIT 71 ITR 1, (Guj.)*, it was held "where an assessee has only a wife or unmarried daughter and no son, the property received by him in respect of his share in the joint family properties on partition belongs to the HUF consisting of himself and his wife or unmarried daughter and is liable to be assessed as property of the HUF and not his individual property". Similar decision was also made in *CIT v. Beni Prasad Tandon 71 ITR 322 (All.)*
- In *Pratap Narain v. CIT 63 ITR 505 (All.)* 'P' received certain properties on partition of a HUF. He had a wife but no children. It was held that he constituted a HUF with his wife and was assessable as such. The Court observed, "It is not correct to say that the share of the property upon partition constitutes the separate property of the coparcener and that it is only subsequently when a son is born that the property becomes ancestral property or HUF property. The birth of a son does not alter the nature of the property. Property all along continues to be coparcenary property".

271. Can the coparcenary property be gifted?

The coparcenary property belonging to a HUF is joint property and the same can be transferred or alienated or gifted away only under certain specific circumstances, like the following-

- ❑ A Hindu father, being the Karta, has a right to make a gift of ancestral movable property, within reasonable limits, without the consent of his sons, for the purpose of support of the family, relief from distress, affection and other indispensable acts of duty. Such a gift may be made to a wife, to a daughter and even to a son, within reasonable limits. However, gift of whole of such property would not be within reasonable limits.
- ❑ For pious purposes a Hindu father has power to make a gift of ancestral immovable property also but it should be within reasonable limit.
- ❑ Gifts of reasonable amount can be made from the HUF property at the time of marriage of any family member apart from incurring normal expenses on marriage.

However, what amount should be termed reasonable, will depend upon the circumstances of each case depending upon the quantum of HUF properties, the number of family members, responsibilities of maintaining the family, expenses required to be incurred by the HUF on marriage, education and other purposes etc.

272. Discuss in brief some of the tax planning options available with regard to a HUF?

The following are some notable tax-planning options with regard to a HUF, namely,

- ❑ Ensure that gifts or inheritances meant for the benefit of all the members of a family are gifted specifically to the HUF, instead of separately to individual members of the family. Since there is no gift tax and estate duty, neither the benefactor nor the recipient will attract tax on such a transfer.
- ❑ The capital of a HUF can also be enhanced by borrowing funds from people who are not members. If the borrowings are specifically in the HUF's name, and it is thereafter invested in the HUF's name, the income arising on the investment will be regarded as the income of the HUF.

- ❑ It is advisable to transfer individual funds to the HUF and then invest the money in tax-free instruments. Since the income from such investments will be tax-free, it will not be clubbed with the individual's income. The income arising on the reinvestment of the tax-free income (which may be in taxable income-yielding assets) will also not be clubbed, since only the income arising on transferred amounts is clubbed.
- ❑ Legally speaking, it is possible for a member of a HUF to transfer his or her individual assets to the HUF. However such a transfer is not beneficial from the income tax point of view. This is because there is no transfer of the tax liability on the income from such assets, due to the tax provisions governing the clubbing of such income with the income of the transferor.

273. What is a family settlement? What are its salient features?

- ❑ A family settlement is an arrangement between family members for sharing the family property. It is resorted to for the benefit of the family members, to sort out doubtful or disputed rights and to avoid future litigation.
- ❑ The term family settlement is popular in connection with property settlements, whether by partition or otherwise. Family settlement is the best way to settle disputes of family property and ensure amity and goodwill amongst the family members.
- ❑ The concept of family settlement is not necessarily confined to Hindu families in India. In fact family settlement is a familiar concept under the English Law as well. The Halsbury's Laws of England has defined the term 'family arrangement' as under: "A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family, either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour."
- ❑ The following are the salient features of a family settlement:
 - There must be mutual understanding among the various family members regarding the terms of the family settlement.
 - The family settlement should benefit the family as a whole and promote goodwill between the members.

- The family settlement should be just and fair.
- The settlement should not be induced by fraud, coercion or undue influence
- The settlement must be completely voluntary.
- Family settlement can be both oral and written.
- The members who are parties to the family arrangement must have some title, claim or interest or even a possible claim in the property, dealt with in the family settlement.
- A family member can give up all his claims to a family property in favour of another who does not have any claim or title in the family property.
- Family disputes can be settled by a genuine family arrangement, which is fair and equitable. It is irrelevant whether they do involve legal claims or not.
- In a family arrangement it is not essential that every participating party should be shown to have a legal claim to share in family property-Rangaswami Gounder v. Nachiappa Gounder, AIR [1918] PC 196.
- The family settlement is final and binding on the parties.

274. Can a minor be a party to a family settlement?

- ❑ Legally speaking, a minor can be a party to a family settlement if a guardian represents him. [Generally, only adults of sound mind are eligible to contract].
- ❑ Further, any family settlement made for the minor member must be beneficial to him. In other words, no family liability should be imposed on the minor member of the family.

275. How does a 'family settlement' differ from a 'gift' or 'will'?

A family settlement is different from a gift which can be made to anybody, whether family member, institution or government. Legally speaking, gift involves the transfer of property, whereas there is no immediate transfer of property in a family settlement.

A family settlement is also different from a will. A will normally confers rights on anyone, even if he is not a family member. However, family settlement involves only members of the very same family. Further, a will comes into

effect after the lifetime of the person who makes it unlike a family settlement, which comes into effect from the date of the settlement itself.

276. Is registration required for any deed of family arrangement?

- ❑ Registration is not required in the case of a memorandum of partition or family arrangement. Generally, a family arrangement would not require registration but if the title vested in one person is transferred to another in an immovable property, it would require registration-Shambhu Prashad Singh v. Phool Kumari, AIR [1971] SC 337; Maruri Pullaiah v. Maturi Narasimham, AIR [1966] SC 1836;
- ❑ Further, any family settlement which merely recognises the rights of all the persons mentioned therein and makes no transfer of any title does not require registration.
- ❑ However, any settlement deed dealing with immovable property must be stamped. Accordingly, the duty to be paid is calculated on the market value of the property. Further, two competent persons must attest the settlement deed. For this purpose, persons who are of sound mind and above the age of eighteen are eligible to attest.

277. Who are owners of a HUF business?

- ❑ The owner of a HUF business is the joint Hindu family and in Mitakshara family the coparceners have coparcenary interest in joint business asset of the family in the same way as in the other assets of the family. The relationship between the Hindu coparceners arises not out of contract but by the operation of Hindu law.
- ❑ Based on the above, if and when disputes arise amongst the coparceners of a family in respect of the joint business of the Hindu family, these disputes should be resolved under the relevant provisions of the Hindu law and not under the Indian Partnership Act, 1932.

278. What are the salient features of a 'trading family' under the Hindu law?

Under the Hindu law, the following are the notable features of a trading family:

- ❑ A trading Hindu undivided family is not a firm.
- ❑ A joint Hindu family is the creature of personal law and not of contract.

- ❑ No member of Mitakshara family can predicate any definite shares in the business assets until division/partition.
- ❑ A joint family business is not dissolved by the death of a coparcener.
- ❑ A coparcener is not entitled, on severance of his connection with the family business, to ask for accounts of past profits and losses.
- ❑ In the joint Hindu family business, the shares of the individual members in the profits and losses are not worked out.
- ❑ In the case of family business, the manager alone has the implied authority to contract debts in the ordinary course of business.
- ❑ In the case of family business, the debts, as contracted by the karta, would be binding on the family property including the interest of the minor coparceners therein.
- ❑ In the case of a family business, the manager or karta is liable to the debts, contracted by him (in pursuance of his implied authority in ordinary course of the family business) to the extent of his share in the joint family property. Further, the karta, being a party to the contract, is also liable personally (viz., his separate property is also liable).
- ❑ In case of coparceners (who are not minors) the liability is normally limited to the extent of their interest in the family property. However, they are personally liable in the case of a contract sued upon, (though purporting to have been entered into by the karta alone), is in reality (i) one to which the coparceners are actual contracting parties, or (ii) one to which the coparceners can be treated as being contracting parties by reason of their conduct, or (iii) one which the coparceners have subsequently ratified;
- ❑ In the case of minor coparceners, unless they have ratified the contract on attaining majority, the liability is normally limited to the extent of their interest in the family property.

279. Can a HUF be a shareholder in a company?

Under section 2(31), a Hindu undivided family is a 'person' for the purpose of the Income-tax Act, 1961. However, a Hindu undivided family or HUF is not a juristic person for all purposes (viz., for the purposes of other laws) including the company law. However, there is no legal bar on a Hindu undivided family to invest its money in shares and securities of companies and the Companies Act, 1956 does not prohibit membership of HUF.

Under the company law, the shares cannot be directly allotted to a Hindu undivided family. However, they can be allotted to any member of the joint family as a representative. In other words, the HUF can purchase the shares in a company in the name of the individual members or coparceners of the family. In such a case, these persons (individual members or coparceners of the family) may hold the shares in a representative capacity and the beneficial interest in the shares is held by the HUF.

280. Can a HUF create a trust?

- ❑ Under section 7 of the Indian Trusts Act, 1882, any person competent to contract and competent to deal with property can create a trust. Accordingly, not only individuals but also a body of individuals or any artificial person such as an association of persons, an institution, limited company or a Hindu undivided family can also form a trust.
- ❑ Legally speaking, a Hindu undivided family is entitled to create a trust through its karta or manager. A karta or manager of a joint Hindu family can create a charitable trust in relation to the joint family property, for the benefit of the family- *Sri Thakurji v. Nand Ahir* ILR 43 All. 560.
- ❑ Further, the karta of the HUF can also form a charitable trust if it is necessary to fulfil the religious or charitable obligations of the Hindu joint family- *Gangi Reddi v. Tami Reddi*. AIR 1927 PC 80; *S. Devraj v. CWT* (1973) ITR 400 (Mad); *Narasimhaswami v. Venkatalingam*. AIR 1927 Mad. 636(FB).
- ❑ However, a Hindu coparcener, governed by the Mitakshara Hindu law, cannot transfer or alienate his coparcenary interest in the joint family property to a charitable trust- *Sahu Ram Chandra v. Bhup Singh* AIR 1917 PC 61.

281. Can a HUF be a partner in a firm? Can all members of the family become partners?

- ❑ Under section 2(31), a Hindu undivided family is a 'person' for the purpose of the Income-tax Act, 1961. However, a Hindu undivided family or HUF is not a juristic person for all purposes (viz., for the purposes of other laws) including the partnership law.
- ❑ Under the Indian Partnership Act, 1932, a Hindu undivided family is not a juristic person and it cannot enter into a valid partnership with any other person.

- ❑ The HUF cannot as such enter into a contract of partnership with another person or persons-Agarwal & Co. v. CIT [1970] 77 ITR 10 (SC).
- ❑ However, the karta of the HUF may enter into partnership with outsiders on behalf and for the benefit of his joint family. But when he does so the other members of the family do not, vis-a-vis the outsiders, become partners in the firm. They cannot interfere in the management of the firm or claim any account of the partnership business or exercise any of the rights of a partner. So far as the outsiders are concerned, it is the karta who alone is, and is in law, recognised as the partner- CIT v. Seth Govindram Sugar Mills [1965] 57 ITR 510 (SC).

282. Can a HUF control a partnership in India? Discuss in brief the legal rights of the joint family vis-à-vis its nominee partner.

The Supreme Court of India in the case of Rashik Lal & Co. v. CIT [1998] 229 ITR 458 (SC) clarifies the position of a Hindu undivided family in partnerships:

- ❑ The HUF (directly or indirectly) cannot become of a partner of a firm because the firm is an association of individuals;
- ❑ All the provisions regarding mutual rights and liabilities are only applicable to the partners who are members of the firm;
- ❑ The only right of HUF is possibly to call upon the nominee partner to render accounts for the profits that he has made from the partnership business;
- ❑ The nominee partner of HUF does not act in a representative capacity in the partnership. The nominee simply functions in his personal capacity like any other partner;
- ❑ The HUF or its representative does not have any special status in the Indian Partnership Act, 1932.
- ❑ The HUF is not and cannot be a partner in a partnership firm as it is not being a 'person' who can enter into an agreement of partnership;
- ❑ If the Karta enters into partnership, upon the death of the Karta, the partnership will stand dissolved. In the absence of a contract to the contrary, another member of the HUF cannot step into the shoes of the Karta;

283. What are the income tax rates (applicable for HUF) for assessment year 2013-14?

Sl. No.	Total Income	Tax payable
1.	Upto Rs.2,00,000	Nil
2.	Rs.2,00,000 – Rs.5,00,000	10 per cent of the amount by which the total income exceeds Rs.2,00,000
3.	Rs.5,00,000-10,00,000	Rs.30,000 plus 20 per cent of the amount by which the total income exceeds Rs.5,00,000
4.	Above Rs.10,00,000	Rs.130,000 plus 30 per cent of the amount by which the total income exceeds Rs.10,00,000
5.	Surcharge	Nil
6.	Education Cess	2 per cent on the amount of income tax
7.	Secondary and Higher Education Cess	1 per cent on the amount of income tax

Note: For the assessment year 2013-14, tax payable by a HUF cannot be less than 18.5% (+EC+SHEC, effective rate 19.055 % of 'adjusted total income' as per section 115JC. [as amended by Finance Act, 2012, w.e.f.1.4.2013].

284. What are the income tax rates (applicable for HUF) for assessment year 2012-13?

Sl. No.	Total Income	Tax payable
1.	Upto Rs.1,80,000	Nil
2.	Rs.1,80,000 – Rs.5,00,000	10 per cent of the amount by which the total income exceeds Rs.1,80,000
3.	Rs.5,00,000-8,00,000	Rs.32,000 plus 20 per cent of the amount by which the total income exceeds Rs.5,00,000
4.	Above Rs.8,00,000	Rs.92,000 plus 30 per cent of the amount by which the total income exceeds Rs.8,00,000
5.	Surcharge	Nil

6.	Education Cess	2 per cent on the amount of income tax
7.	Secondary and Higher Education Cess	1 per cent on the amount of income tax

285. How to compute income tax in case of a HUF? Discuss briefly all the steps involved.

As regards the computation of income tax in case of HUF, the following steps/points are noteworthy:

- ❑ First of all, the HUF must compute the gross total income, like any other person. [The gross total income for this purpose shall be computed under four heads of income, on the basis of their residential status. There can be no income under the head income from salaries in the case of HUF].
- ❑ Sections 60 to 63 [viz., provisions relating to income of other person included in the assessee's total income] are applicable in case of HUF.
- ❑ However, section 64 is not applicable to HUF as it is applicable in case of individual assessee only.
- ❑ Set off of losses is permissible in case of HUFs while aggregating the income under different heads of income.
- ❑ Carry forward and set off of losses of past years, if permissible, is allowed.
- ❑ The income computed as above is known as gross total income from which the following deductions under sections 80C to 80U will be allowed. [A HUF is eligible for deductions under sections 80C, 80D, 80DD, 80DDB, 80G, 80GGA, 80HH, 80HHA, 80HHB, 80HHBA, 80HHC, 80HHD, 80HHE, 80HHF, 80-I, 80IA, 80-IB, 80JJA, 80L (omitted w.e.f. 1.4.2006) and 80-O].
- ❑ Find out the balance of income after allowing the deductions, which is known as total income. Round off the total income to the nearest Rs.10.
- ❑ Compute the tax on such total income at the prescribed rates of tax.
- ❑ Find out the balance, which is the total tax payable.
- ❑ Add the tax payable by surcharge at applicable rates.

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- ❑ Add education cess at the rate of 2 per cent on the amount of income tax and surcharge [The Finance Act, 2007 has, with effect from 1st April, 2007, provided for levying an additional cess of 1% on all taxes to fund the secondary and higher education, thus effectively increasing the rate of education cess from 2% to 3%.].
- ❑ Deduct the TDS and advance tax paid for the relevant assessment year.
- ❑ Find out the balance, which is the net payable.
- ❑ Pay the net tax payable as self-assessment tax before submitting the return of income.
- ❑ While computing the income under the head 'capital gains', the HUF is entitled to the following exemptions:
 - (i) Capital gain on sale of property used for residence (section 54)
 - (ii) Capital gain on compulsory acquisition of lands and buildings (Section 54D)
 - (iii) Capital gain on transfer of long-term capital assets (section 54EC)
 - (iv) Capital gain on transfer of certain capital assets where investment is made in a residential house (section 54F)
 - (v) Capital gain on transfer of assets on shifting of an industrial undertaking from urban area (section 54G).
 - (vi) However, exemption in respect of capital gains of agricultural land covered u/s 54B is not allowed to HUF.

286. Who are 'sapinda relations' under Hindu law?

- ❑ Clause (f) of section 3 of the Hindu Marriage Act, 1955 deals with sapinda relations of Hindus. Accordingly, "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation.

- ❑ In this context, two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant, who is within the limits of sapinda relationship with reference to each of them.
- ❑ Under section 5 of the Hindu Marriage Act, 1955, which contains certain conditions for a Hindu marriage, a marriage may be solemnized between any two Hindus, if the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two [Clause (v) of section 5].

287. What are the powers of a karta of a HUF?

- ❑ The Karta has extensive powers in respect of the day-to-day management of the joint Hindu family. He is the controller of the income and expenditure of the joint family and he is the custodian of its surplus finances. The Karta may well spend on a son whose family is large or who has special aptitude or necessity- CIT v. Dewan Krishna Kishore 9 ITR 695 (PC)
- ❑ The Karta is always expected to utilise the income of the joint family for the purpose of the family, viz., for the maintenance, education, marriage, shradh and other religious ceremonies of the coparceners and members of the joint family. Where the karta spends more than the other members approve, their remedy is to demand a partition of HUF.
- ❑ The Karta as manager of the affairs of HUF has power to contract debts on behalf of the joint family and discharge claims against the family. Interestingly, the Karta of HUF is not liable to submit account to anyone, even in the contingency of partition of the HUF.
- ❑ The Karta has a right to partition the family with or without the consent of his sons or other coparceners, if any. The Karta father is also entitled to effect a division (in the overall interest of the family) between the sons inter se.
- ❑ The Karta is also empowered to alienate for value the joint family property, so as to bind the interests of both adult and minor coparceners. However, such alienation is to be made for a legal necessity, or for the benefit of the estate.

- The Karta can enter into partnership on behalf of the Hindu undivided family. In such a case, the Karta is the only person recognised as a partner by others- CIT v. Kalubabu Lal Chand 37 ITR 123 (SC).

288. Can two HUFs enter into a partnership agreement?

In case two Kartas of two HUFs enter into a partnership agreement, the partnership is popularly described as between the two HUFs. However, in the eyes of law it is a partnership between the two Kartas. In such a case, the other members of the families do not ipso facto become partners-K. Mohan Sanyasi Charan Sadhukkan v. CEPT 24 ITR 488 (SC)

289. Can a minor member of a HUF be its karta?

Legally speaking, a minor member can also act as the karta of the joint Hindu family. The minor member can act through his natural guardian, his mother, where father's whereabouts are not known at the time- Jogendra Singh v. Narayan, AIR (1965) Punj. 300.

290. Can a person other than the senior most coparcener be the Karta of a HUF?

- A person other than senior most coparcener may also be Karta. It is generally presumed that the senior most member of the family would be regarded as Karta of the joint Hindu family.
- However, in case the senior member gives up his right of management, a junior member may be appointed manager. A junior member of a family can act as Karta with the consent of the other members- Narendra Kumar S. Modi v. CIT 105 ITR 109 (SC).

291. Can a person be the karta in more than one HUF?

- Under the Indian income tax law, just like every other person, a HUF or Hindu Undivided Family is also given a specific name for its identification. Accordingly, a Hindu Undivided Family is normally referred to as "Name of the Karta (HUF)".
- Practically speaking, it is possible that a person can be a Karta or manager in more than one HUF at a time. For instance, Mr. X, a Hindu male member, may constitute a HUF along with his five younger brothers, his spouse, the spouses of his five brothers and the children of all the brothers. In this big HUF, Mr. X will be the Karta or manager. This is simply because he is the oldest surviving male member of the said HUF. Under the income tax law, this HUF will be referred to as "X (HUF)". At the same time, Mr. X may also constitute

another HUF along with his wife and children. Interestingly, the same Mr. X can be the karta of the newly constituted HUF consisting of himself, his wife and children.

- ❑ In such circumstances, in order to avoid any difficulty in identification, the first HUF is identified as 'X' (BHUF) and the second as 'X' (SHUF). The expressions "BHUF" and "SHUF" here denote 'bigger HUF' and 'smaller HUF' respectively.

292. Can smaller HUF be created from an existing HUF?

- ❑ Under the Hindu law, a smaller HUF may also be created by partial partition of an existing HUF. However, any such creation or partial partition is derecognised under section 171(9) of the Income-tax Act, 1961. In case where a smaller HUF is created as a taxable entity, many tax advantages such as the basic exemption, the lower slab rates of tax and other deductions will be available.
- ❑ In this context, in case where the HUF consists of fairly large members, it may be beneficial to form multiple HUFs. In such process one member of HUF releases his right in one property and brings another HUF into existence in which other members of HUF other than the member who relinquishes his right will be the members of that HUF. Similarly other member in other properties would do relinquishment of rights one by one. This will bring the new HUF entity into existence.
- ❑ In other words, a number of HUFs can be brought into existence by process of relinquishment of right in the properties. As a result, considerable tax gains can be achieved by dividing the existing income among a number of different taxable entities. Legally speaking, this concept of multiple HUFs/ relinquishment of right in the properties has been upheld by the Gujarat High Court in the case of CIT vs. Shantikumar Jagabhai [1976] 105 ITR 795 (Guj.).

293. Can a HUF be assessed as a distinct tax entity? Discuss notable features of taxation of a HUF.

- ❑ Under section 2(31) of the Income-tax Act, 1961, a HUF is a separate and a distinct tax entity. Accordingly, the income of a Hindu undivided family can be assessed in the hands of the HUF alone and not in the hands of any of its members, unless specifically provided by law.

- ❑ However, any sum received by an individual as a member of a HUF, where such sum has been paid out of the family or income of the impartible estate belonging to the family shall be exempt in the hands of the member of the HUF as per section 10(2).
- ❑ As per section 64(2), income from the transfer of a self-acquired asset, without adequate consideration or conversion of the same into joint family property, shall not be treated as the income of the HUF. Such income [viz., income from the transfer of a self-acquired asset, without adequate consideration or conversion of the same into joint family property] shall continue to be taxed in the hands of the transferor who is the member of the HUF.
- ❑ Any fee or remuneration received by a member of the HUF as a director or a partner in a company or firm, which is a result of the investment made in such concern out of the funds of the HUF, shall be treated as income of the HUF. However, if such fee or remuneration is earned by the member of the HUF as a director or partner for services rendered purely in his personal capacity, it shall be treated as the income of the individual and not the HUF.
- ❑ Remuneration and commission received by the karta/manager of HUF on account of his personal qualifications and exertions and not on account of investment of the family funds in the company cannot be treated as income of HUF-K.S. Subbiah Pillai v. CIT (1999) 103 Taxman 400 (SC).

294. Can a HUF pay remuneration to its karta/manager?

If remuneration is paid to the karta/manager of a HUF under a valid agreement which is bona fide and in the interest of, and expedient for, the business of the family and the payment is genuine and not excessive, such remuneration paid wholly and exclusively for the business of the family, shall be allowable as an expenditure while computing the income of the HUF-Jugal Kishore Baldeo Sahai v CIT (1967) 63 ITR 238 (SC).

295. Is Alternate Minimum Tax applicable for a HUF?

Under sections 115JC to 115JF of the Income tax Act, 1961, Alternate Minimum Tax provisions are applicable for a HUF from assessment year 2013-14.

From the assessment year 2013-14, alternate minimum tax provisions are applicable in the case of a HUF only in the following cases:

- ❑ if the assessee has claimed any deduction under section 10AA or 80H to 80 RRB (except section 80P).
- ❑ if adjusted total income exceeds Rs. 20 lakh.

296. How to compute alternate minimum tax in respect of a HUF?

From the assessment year 2013-14, a HUF in India shall be subject to alternate minimum tax. For this purpose, the alternate minimum tax shall be computed as follows:

Step involved	Computation process/notable points
1	Compute the regular income-tax liability of the HUF ignoring the provisions of sections 115JC to 115JF.
2	Find out adjusted total income of the HUF. Adjusted total income is net income or total income of the HUF as increased by: <ul style="list-style-type: none">❑ amount claimed as deduction by the HUF under sections 80H to 80RRB , (not being section 80P) and❑ amount claimed as deduction by the HUF under section 10AA. If the assessee is a HUF and the adjusted total income is Rs 20 lakh (or less), then the provisions of alternate minimum tax are not applicable.
3	Find out 19.055% (i.e., 18.5% +EC +SHEC) of adjusted total income computed under Step 2.
4	If amount computed under Step 1 is equal to or more than amount determined under Step 3, then the provisions of alternate minimum tax will not be applicable. If, however, amount computed under Step 3 is more than the regular tax liability determined under Step 1, then- <ul style="list-style-type: none">❑ adjusted total income determined under Step 2 will be deemed as total income of the HUF for such previous year; and❑ 19.055% of adjusted total income will be deemed as tax liability of the HUF for such previous year.
5	<ul style="list-style-type: none">❑ The excess of the amount computed under Step 3 over the amount computed under Step 1 will be available as credit for alternate minimum tax.

	<ul style="list-style-type: none">❑ It can be carried forward and can be set off against regular tax liability of the HUF of the next year or subsequent year (but not beyond the 10th assessment year).❑ No interest is payable on such credit.❑ Tax credit shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the alternate minimum tax to the extent of the excess of the regular income-tax over the alternate minimum tax
6	Where the provisions of alternate minimum tax are applicable, the assessee will have to obtain a report in Form No. 29C from a chartered accountant.

297. How to serve notice on a HUF?

- ❑ Under section 282(2) of the Income-tax Act, 1961, any notice or requisition under the income tax law in respect of a Hindu undivided family may be addressed to the manager or any adult member of the family. For this purpose, the adult member of the family need not be a coparcener or male member. In other words, the service of a notice on any adult member would amount to service on the HUF.
- ❑ However, the term 'adult' for this purpose does not mean 'major' and accordingly a notice may be served on a 'minor' member of the family provided he has attained the age of discretion-Sridhar Udai Narain v. CIT, (1962) 45 ITR 577 (All). Legally speaking, there is no legal bar to a female member acting as a manager representing a HUF for purposes of assessment of income tax. In such a case, any notice may be validly served on her-Champa Kumari v. Addl. Member, Board of Revenue, (1962) 46 ITR 81 (Cal);
- ❑ Any notice issued to any adult member of a Hindu undivided family for submitting a return of income of the family is a valid notice-Sarupchand & Hukumchand v. UOI, (1953) 23 ITR 282 (MP-FB). Though a notice in respect of a HUF can be served on any adult member of the family, it should clearly indicate that it is meant for the family and not for that particular adult member of the family.

298. Who can sign return of income in case of a HUF?

Under section 140(b) of the income-tax Act, 1961 in the case of a Hindu undivided family, the return shall be signed and verified by any of the following persons:

- ❑ by the karta of the Hindu undivided family or
- ❑ where the karta is absent from India, by any other adult member of such family or
- ❑ where the karta is mentally incapacitated from attending to his affairs, by any other adult member of such family.

Before signing the verification, the signatory in the return of income should satisfy himself that this return is correct and complete in every respect. This verification assumes greater importance because any person making a false statement in this return shall be liable to prosecution under section 277 of the Income-tax Act, 1961.

299. Can a karta of a HUF be punished for making false statements before income tax authorities?

Under section 277 of the Income tax Act, 1961, [as amended by Finance Act, 2012] any person, making a false statement in any verification (under the Income-tax Act, 1961 or any rules made there under) in return of income shall be punishable with imprisonment/fine as follows:

- ❑ In a case where the tax sought to be evaded exceeds twenty five lakhs rupees, he may be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- ❑ In any other case, with rigorous imprisonment for a term, which shall not be, less than three months but which may extend to two years and with fine.

Under section 278A, if any person convicted of an offence under section 277 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

300. Is return of wealth to be filed by every HUF in India?

- ❑ Under section 14 of the Wealth-tax Act, 1957, every HUF, if its net wealth or the net wealth of any other person in respect of which it is

assessable under this Act on the valuation date exceeded the maximum amount which is not chargeable to wealth-tax, shall, on or before the due date, furnish a return of its net wealth or the net wealth of such other person as on that valuation date.

- ❑ Such return of wealth must be filed in the prescribed form [Form BA from Assessment year 1993-94] and verified in the prescribed manner setting forth particulars of such net wealth and such other particulars, as may be prescribed.
- ❑ Where the HUF is carrying on a business, a copy of the balance sheet or trial balance as on the valuation date or on the date of the closing of accounts immediately preceding the valuation date, and a copy of the auditor's report, if any, shall also be furnished along with the return of net wealth.
- ❑ For this purpose, "due date" in relation to an assessee under the Wealth-tax Act shall be the same date as that applicable to the HUF under the Income-tax Act under the Explanation to sub-section (1) of section 139 of the Income-tax Act, 1961.

301. Who should sign and verify the return of net wealth of a HUF?

Under section 15A of the Wealth-tax Act, 1957, the return of net wealth made under section 14 or section 15 of the Act shall be duly signed and verified by the assessee concerned. In the case of a Hindu undivided family, the return shall be signed and verified by any of the following persons:

- ❑ by the karta of the Hindu undivided family; or
- ❑ where the karta is absent from India, by any other adult member of such family; or
- ❑ where the karta is mentally incapacitated from attending to his affairs, by any other adult member of such family.

While signing the verification, the signatory in Form BA should satisfy himself that this return is correct and complete in every respect. This verification assumes greater importance because any person making a false statement in this return shall be liable to prosecution under section 35D of the Wealth-tax Act, 1957.

Under section 35D of the Wealth tax Act, 1957, any person, making a false statement in Form BA shall be punishable with imprisonment/fine as follows:

- ❑ In a case where the tax sought to be evaded exceeds one lakh rupees, he may be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- ❑ In any other case, with rigorous imprisonment for a term, which shall not be, less than three months but which may extend to three years and with fine

Feedback Page

This is the first edition of the book on Partnership & HUF by the Committee, and, obviously, therefore there is scope for improvement. We intend to make it as useful as possible in its present format. The committee, therefore, hopes to keep updating this Referential Book on a regular basis in order to make it more functional.

We solicit comments and suggestions from practitioners and others to improve the usefulness of the Book on Partnership & HUF. In particular, we will welcome practitioners, and further areas for inclusion.

Your valuable inputs may be sent to ccbcaf@icai.org.

Secretary

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