

Taxation of Hindu Undivided Family

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**Who is a
Hindu ?**

Hindu

- **There is no such law as Hindu Law. It's based on Shastras and Smritis.**
- **Various acts:**
 - **Hindu Adoption & Maintenance Act, 1956**
 - **Hindu Marriage Act, 1955**
 - **Hindu Marriage (Validation of Proceeding) Act, 1960**
 - **Hindu Minority & Guardian Act, 1956**
 - **Hindu Succession Act, 1956**
 - **Hindu Disposition of Properties Act, 1916**

Hindu

- **The word “Hindu” preceding the words ‘undivided family’ signifies that undivided family should be of those to whom Hindu law applies**

CWT v. Smt Champa Kumari Singhi 83 ITR 720 (SC)

- **Buddhists, Jains or Sikhs by religion are Hindus**
- **Any child, legitimate or illegitimate, both of whose parents are Hindus...by religion**
- **Any child, legitimate or illegitimate, one of whose parents is Hindus...by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;**
- **Any person who is a convert or re-convert to Hindu...**

Hindu

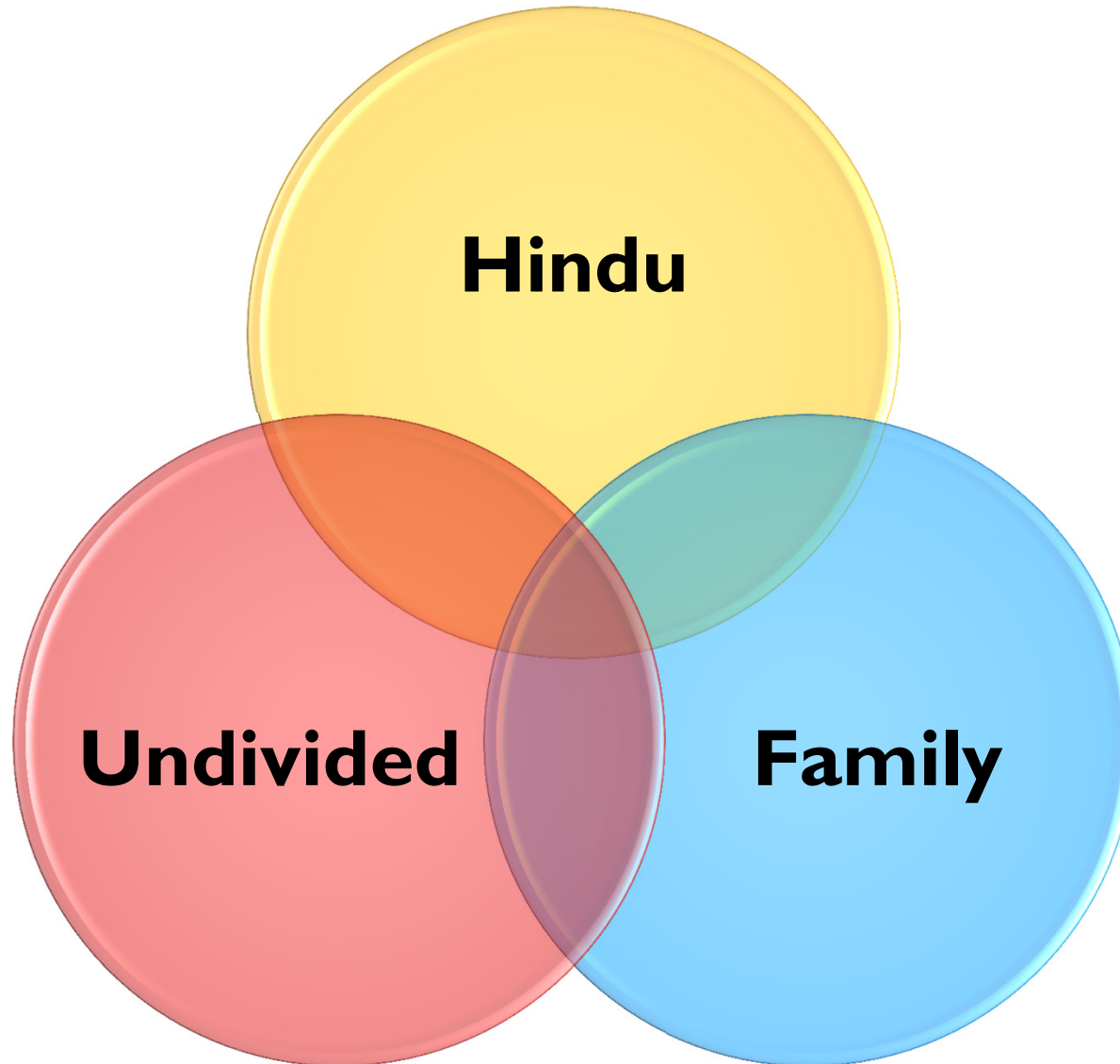
- **Adoption - Any child, legitimate or illegitimate, who has been abandoned both by his father & mother or whose parentage is not known & who in either case is brought up as a Hindu....**
- **Hindu succession Act applies to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of Brahmo, Prathana or Arya Samaj, a Buddhist, Jain or Sikh.**

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**What is
HUF ?**

HUF - Essentials



Family

- **According to Oxford English Dictionary ‘family’ means the group consisting of parents & their children whether living together or not.**
- **Only those undivided families are covered to which Hindu Law applies**

[CWT v. Smt. Champa Kumari Singhi (1972) 83 ITR 720 (SC)]

- **Is existence of male members essential?**

No [CIT v. RM. AR. AR. Veerappa Chettiar (1970) 76 ITR 467 (SC)]

HUF - Law

- **Can a single male member after his marriage form a HUF?**

Yes [CIT v. RM. AR. AR. Veerappa Chettiar (1970) 76 ITR 467 (SC)]

- **Can Male member with wife & unmarried daughter form HUF ?**

Yes [Surjit Lal Chhabda v. CIT (1975) 101 ITR 776 (SC)]

- **HUF cannot be created by act of parties but a corpus can be created for an already existing HUF through the medium of a gift or will etc.**

HUF - Law

- **Can a person be a member of more than one HUF?**
- **Can the wife sever from membership of HUF by unilateral declaration, yet retain the marital tie?**

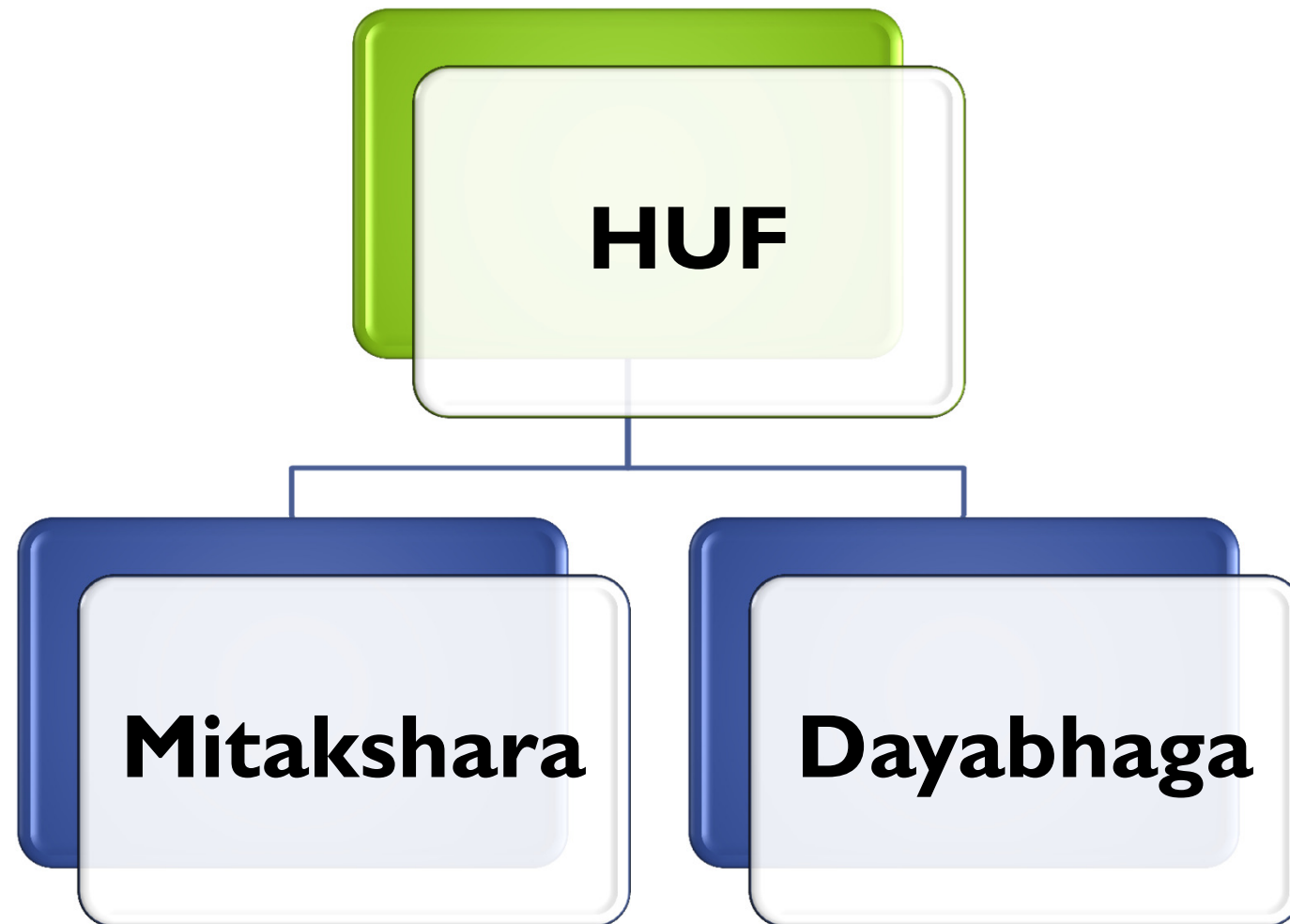
No, CWT v. M.A.R. Rajkumar (1997) 226 ITR 804 (AP) (FB)

- **A Hindu male having two wives and sons from each would have one HUF or two?**

1 - Kalyani v. Narayanan AIR 1980 SC1173

- **HUF is not a distinct entity for all purposes.**

Principle Schools of Hindutva



Coparcenary & HUF

- **HUF not specifically defined under IT Act but as per Hindu Law a joint family consists of male members descended lineally from a common male ancestor, together with their mothers, wives or widows and daughters bound by fundamental principals of family relationship - *(Dulari Devi Ors. Vs. CED (1995) 211 ITR 524 (Orissa)*.**
- **The fundamental principle of the Joint Hindu Family is the Sapindaship, without which no Joint Hindu Family can be in existence. Therefore, Joint Hindu Family status is ordinarily the result of blood relation by birth or affiliation by adoption or marriage - *(Rukmini Bai Rathor v. CWT (1964) 54 ITR 430 (Orissa)*.**

Is Female a Coparcener in HUF?

- **On and from the commencement of the Hindu Succession (Amendment) Act, 2005 in a Joint Hindu Family governed by the Mitakshara law, the daughter of a coparcener shall :-**
 - **by birth become a coparcener in her own right in the same manner as the son;**
 - **have the same rights in the coparcenary property as she would have had if she had been a son;**
 - **be subject to the same liabilities in respect of the said coparcenary property as that of a son.**

Coparcener / Member

- **HUF is a body consisting of persons lineally descendent upto 3 generations or 3 degrees from a common ancestor & include their wives & daughters**
- **Daughter is a co-parcener**
- **Wife is a member**
- **Only co-parcener can ask for partition**
- **However a widow steps into shoes of husband and can demand partition – *CIT vs. Mulchand Sukmal Jain (1993) 200 ITR 528 (Gau.)***

Karta

- **An adult co-parcener can become Karta**
- **Normally senior most male adult member is Karta**
- **If no male – daughter can be Karta now**

Property of HUF

- **Ancestral property;**
- **Property allotted on partition;**
- **Property acquired with the aid of joint family property;**
- **Separate property of a coparcener blended with or thrown into a common family hotchpot – 64(2)**
- **By will or gift**

Partnership and HUF

- **An HUF cannot become a partner in a firm.**
- **The Karta or a member of the HUF can represent the HUF in a firm.**
- **A female member can also represent HUF in a partnership firm - *CIT v. Banaik Industries 119 ITR 282 (Pat.)***
- **Remuneration received by a member of HUF from a firm, where he was partner on behalf of HUF for managing firms business was his individual income - *CIT v. G. V. Dhakappa 72 ITR 192 (SC); Premnath v. CIT 78 ITR 319 (SC)*.**
- **Partnership between HUF and coparcener as working partner is valid**



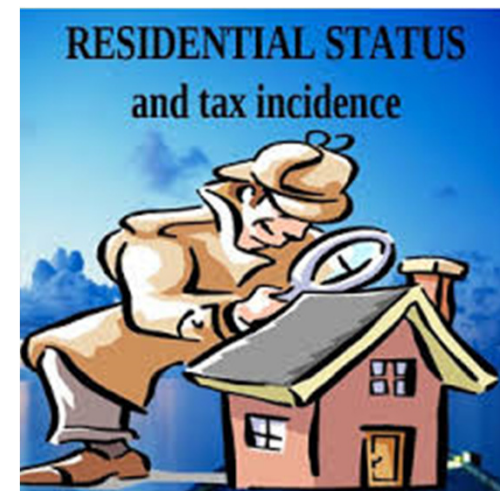
Taxation of HUF

Tax Advantages of HUF

- **HUF is a separate entity for taxation under the provisions of sec. 2(31)**
- **Separate exemption limit under Income-tax Law of Rs. 2 L (AY 2014-15) – Rs. 2.5 L (AY 2015-16)**
- **Separate deduction u/s 80G, etc.**
- **Separate deduction u/s 80C.**
- **Separate partnership share.**
- **Separate Income-tax deduction on Interest for self occupied House Property**

Residential Status

- **HUF is treated as resident in India in every case except where during that previous year the control and management of its affairs is situated wholly outside India**
- **Hence it would depend upon Karta or Manager**



Capital Gain Exemptions for HUF

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

Investment in shares & MFs

- **HUF can have a separate Demat Account.**
- **Can invest in shares of companies**
 - **Primary Market**
 - **Secondary Market**
- **Enjoy Tax Free Income for Long-term Capital Gains by holding shares for more than one year**
- **Enjoy lower tax rate of 15% on Short-term Capital Gains.**
- **Can also invest in Mutual Fund**

Wealth Tax on HUF

- **Wealth tax is applicable as a separate assessee.**
- **Separate exemption of Wealth-tax for HUF's upto Rs. 30 lacs Wealth.**
- **One House Wealth Tax Free**
- **Productive assets of HUF fully exempt for Wealth-tax**

Real Estate in name of HUF

- **Self occupied one Residential House & the tax gain specially by way of Interest on Loan & Repayment of Loan**
- **Special 30% deduction on Rental Income also to HUF.**
- **Exemption from Wealth-tax the real estate of HUF (Commercial / Rented Residential)**

HUF can run a Business

- **HUF can be a Proprietor of one or more than one Business concerns.**
- **Separate name can be kept of HUF business entity.**
- **No tax Audit of HUF business if Turnover within Rs. 100 lakhs.**
- **Presumptive taxation u/s 44AD applicable**
- **TDS provisions applicable if turnover in preceding year exceeds 44AB limits except on salary**

Member's Income

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

Remuneration to Karta or members

- Remuneration to the Karta or other members of HUF can be paid for services rendered to the family in carrying on the business of the family or looking after the interests of the family in a partnership business - *Jugal Kishore Baldeo Sahai v. CIT 63 ITR 238 (SC)*.
- The payment must be for service to the family for commercial or business expediency - *Jitmal Bhuramal v. CIT 44 ITR 887(SC)*.
- Remuneration paid to the Karta or other members of the HUF should be under a valid agreement. The payment must be genuine and not excessive - *J. K. B. Sahai v. CIT, 63 ITR 238 (SC)*.

Judicial Decisions HUF

- **Where members of HUF become the partners in a firm by investment of family funds & not because of any Special Services rendered by them - income will belong to HUF – *D.N. Bhandarkar v. CIT 158 ITR 724.***
- **Where property was purchased by members of HUF with loan from the HUF, which was later on repaid, income from such property would be assessable as individual income of the members - *L. Bansidhar and Sons v. CIT 123 ITR 58 (Delhi).***

Chapter VI deductions

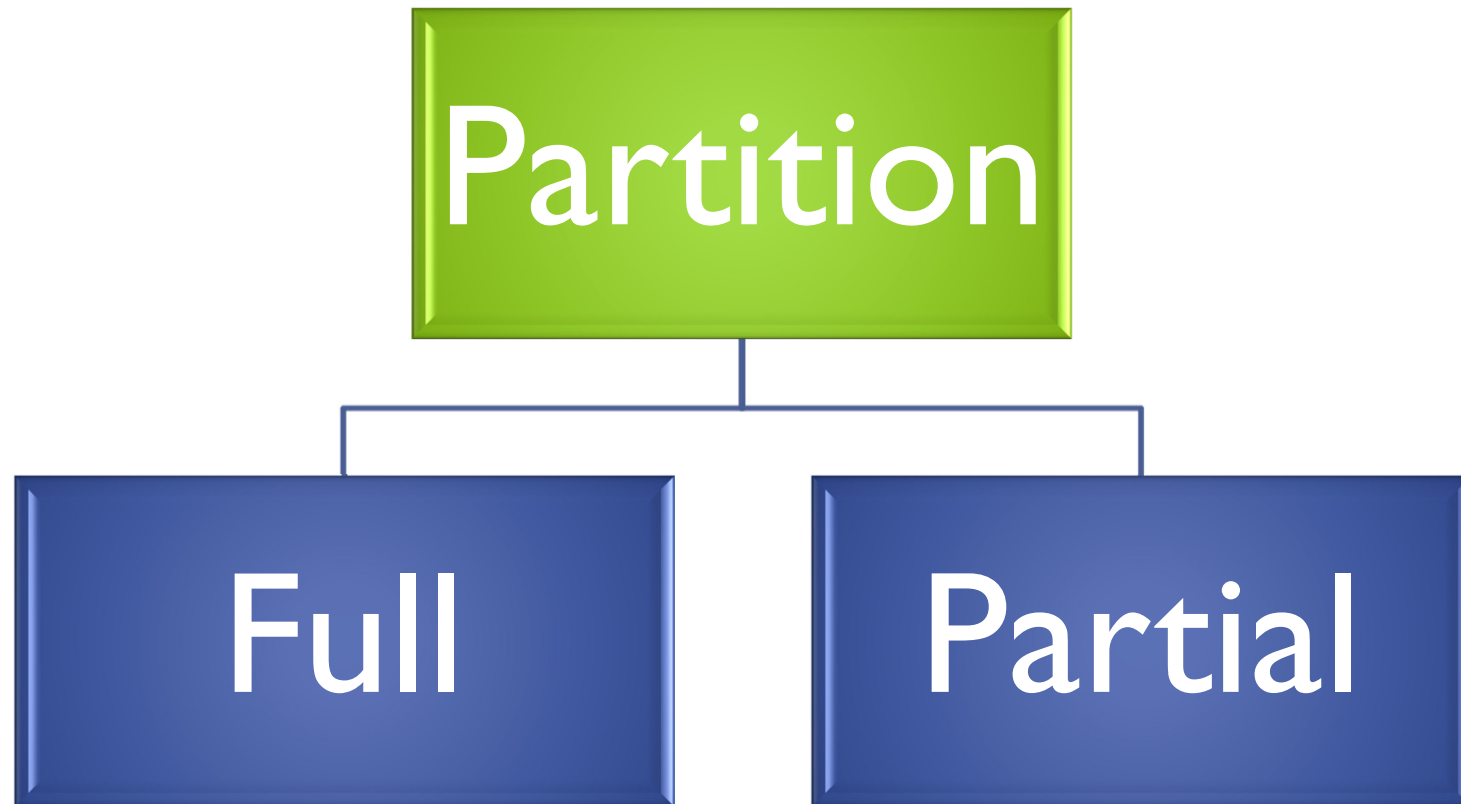
- **Deduction available to HUF as per section 80C.
[Insurance Premium, PPF can be paid on the life of any member]**
- **Section 80D deduction available on Mediclaim Policy on the health of any member of the family.**
- **Section 80DD deduction for maintenance including medical treatment of a dependant who is a HUF member.**
- **Section 80DDB in respect of Medical treatment for any member of the HUF.**
- **Section 80G Donation to recognised Charity Trust.**
- **Sections 80IA / 80IB for New Industrial undertaking.**

Miscellaneous Tax aspects

- **Receipt of Insurance maturity where premium paid by HUF.**
- **Dividend**
- **Sale of assets**
- **Return to be signed by Karta, if not in India or is mentally incapacitated by any adult member**



Partition of HUF



Partial Partition of HUF

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

Full partition of HUF

- **As per Explanation (a) to s. 171(9) of the Income-tax Act, 1961 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;**
- **Assessment after Partition as per s. 171 & order to be passed by the Assessing Officer.**

Partition of HUF

- **Partition need not be by Metes & bountes, if separate enjoyment can, otherwise the secured and such division is effective so as to bind the members - *Cherandas Waridas, 39 ITR 202 (SC)*.**
- **The members of an HUF can live separately and such an act would not automatically amount to partition of the HUF - *Shiv Narain Choudhary v. CWT 108 ITR 104 (All.)***
- **Motive or need for partition cannot be questioned by the IT Department - *T. G. Sulakhe v. CIT, 39 ITR 394 (AP)*.**

Judicial Decisions - Partition

- **In order to be acceptable or recognizable partition under section 171 the partition should be complete with respect to all members of HUF and in respect of all properties of HUF and there should be actual division of property as per specified shares allotted to each member. – *Mohanlal K. Shah (HUF) v. ITO 1 SOT 316.***
- **Setting apart certain assets of HUF in favour of certain coparceners on the condition that no further claim in properties will be made by them is nothing but a partial partition and not a family arrangement not recognised in view of s. 171(9) – *ITO v. P. Shankaraiah Yadav 91 ITD 228.***

Judicial Decisions - Partition

- **The property received by a coparcener on partition of the HUF is the HUF property in his hands vis-à-vis the members of his branch i.e. with his wife and a daughter. – *N.V. Narendranath v. CWT, 74 ITR 190 (SC)***

Legal aspects of Partition

- **Distribution of the assets of an HUF in the course of partition, would not attract any capital gains tax liability as it does not involve a transfer – S. 47(i)**
- **On the basis of the same reasoning distribution of assets in the course of partition would not attract any gift tax liability, and**
- **There would be no clubbing of incomes u/s. 64 as it would not involve any direct or indirect transfer.**

Reunion

- It means reconstruction of divided HUF on partition. Essentials of reunion are:
 - There must have been previous state of union
 - There must have been partition in fact
 - The reunion must be effected by the parties
 - Entire property existing on day of reunion have to be brought back – *CIT vs. Vaiyapuri Chettiar (1995) 215 ITR 836 (Mad)*



Gifts

Money received without / inadequate consideration

- **Provisions of section 56(2)(vii) applicable even to HUF if any sum of money or property is received by the HUF > Rs. 50 K p.a. without / inadequate consideration.**
- **Gift from relative – exempt - member of HUF is relative of HUF**
- **Gift by will or inheritance exempt.**
- **Amount or property received in contemplation of death of payer or donor exempt.**

Gift by member to HUF

- **As per section 64(2) a gift by a member to his HUF after 31-12-1969 would attract Clubbing of Income in the hands of the member and as such the income from the converted property shall be deemed to arise to the individual & not to the family.**
- **And where the converted property is the subject matter of partition, any income derived from such property by the spouse would be clubbed in the hands of the individual.**

Gift of HUF Property

- Elementary proposition that Karta of HUF cannot gift or alienate property except to the extent recognised under Hindu Law, namely necessity etc –
 - *CGT v. P. Hanumanthappa 68 ITR 363,*
 - *K.P. Gupta v. CIT 233 ITR 456*
- Reasonable limits depends upon facts -
CGT v. B.V. Narasimharaju 101 ITR 74
- Karta can make reasonable gifts to daughters – *Sushil Kumar & Sons v. ITO 234 ITR 98*

Gift of HUF Property

- Gift on Marriage Occasion is valid – **S. Lakshamma v. Kotayya AIR 1936 Mad. 825.**
- Gift of immovable property should be for pious purpose – **CIT v. Ram Gopal Rajgharia 123 ITR 693**
- Where gift is not for religious purpose or consists of the whole or large portion of joint family property , the transaction is voidable only at the instance of other coparceners & not strangers – **Imperial Bank of India vs. Maya Devi AIR 1935 Lahore 867**
- Gift to Strangers void – **Guramma v. Mallappa AIR 1964 SC 510.**

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Miscellaneous

Accounts and Audit

- **Accounts - Normal I.T. Provisions**
- **Accounting Standards applicable**
- **TDS provisions after achieving Tax Audit Turnover**
- **Audit – Tax Audit u/s 44AB**
- **Audit for claiming deductions under chapter VIA**

Tax Planning through HUF

- **By increasing the number of assessable units through the device of partition of the HUF**
- **By creation of separate taxable units of HUF through will in favour of HUF or gift to HUF**
- **Through family settlement / arrangement**
- **By payment of remuneration to the Karta and other members of the HUF**
- **By use of loan from HUF to the members of the HUF**

Thank You



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