HINDU UNDIVIDED FAMILY

UNDER

THE HINDU LAW &
INCOME TAX ACT, 1961

{As amended by Finance Act, 2012 & Hindu Succession (Amendment) Act, 2005}

Presented by: **Agarwal Sanjay**
'Voice of CA'

Team Voice of CA

TOPICS COVERED

- Meaning of HUF
- Characteristics of HUF
- Who can be ‘Karta’
- Sole Surviving Coparcener
- Consequence of Amendment in Hindu Succession Act
- Mode of Creation of HUF
- Income Tax Issues

MEANING OF HUF

HUF IS CREATION OF LAW

HUF is a Joint Hindu Family consisting of :-

- Male members lineally descended from a common male ancestor, together with their -
  1. Mothers
  2. Wives
  3. Unmarried daughters and
  4. The Hindu coparcenary *

[CGT v. B.K. Sampangiram (1986) 160 ITR 188 (Karn.)]

Note: i) HUF cannot be created by the act of parties.
ii) STRANGER can be introduced only by adoption ***[CIT vs. M.M. Khanna (1963) 49 ITR 232 (Bom)].***

* THE HINDU COPARCENARY – A NARROWER BODY THAN JOINT FAMILY.

- Consists of a common male ancestor and his lineal descendants within 4 degrees

- Includes those persons who acquires interest in joint coparcenary property by BIRTH, namely:-
  - Sons
  - Grand Sons
  - Great Grand Sons
  - Daughter will also be a Coparcener w.e.f. 09/09/2005 vide Hindu Succession (Amendment) Act, 2005.

- Have a right to claim partition.

A Coparcener is that member of HUF who acquires by birth an interest in the joint property of the family whether inherited or otherwise acquired by the family. The members of the family who are not Coparceners have no right to claim partition.

DISTINCTION – CO-PARCENER AND A MEMBER

A HUF, as such, can consist of a very large number of members including female members as well as distant blood relatives in the male line.

However, out of this, coparceners are only those males & females who are within 4 degrees in lineal descendent from the common male ancestor. The relevance of concept of coparcener is that ***only coparceners can ask for partition***. The other family members; i.e., other than coparceners in a HUF, have no direct claim over HUF property, but can claim only through the coparceners.

WHEN DOES HUF COMES INTO EXISTENCE?

- According to Hindu Law, an HUF is created at the time of marriage. It is not necessary to have a child.

- An individual after his marriage could duly form an HUF and he can be recognized as an assessee in the status of HUF and not as individual

{CIT vs Arun Kumar Jhunjhunwalla & Sons. [1997] 138 CTR 63 (Gauhati)}

CHARACTERISTICS OF HUF

CHARACTERISTICS .....

- The Karta can function in Dual capacity and can claim remuneration and other benefits from the HUF. *(Who can be Karta - discussed in later slides)*

- It may be composed of
  - Large or
  - Small or
  - Nuclear Joint Families

- Every above said families may hold the property in its own RIGHT, may be assessed for its income as a separate unit.

- There need NOT be more than one MALE member to form HUF

- If the family is reduced to Sole - Survivoring coparcener with other family members, income tax is leviable on the joint family and not on male members as individual.

CHARACTERISTICS .....

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

WHO CAN BE 'KARTA'

"KARTA"

- The senior most male coparcener

Even if the karta becomes aged, infirm, ailing, or even a leper, he may continue to be KARTA. Where the senior most member is not Karta, the next senior male member takes over as Karta.

{Man vs. Gaini ILR (1918) 40 All 77}

- A junior coparcener

Only if the senior most member gives up his right a junior coparcener can become karta of the HUF with the consent of all other members

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

- There can be more than one KARTA of a HUF

{Darshan Vs Prabhu ILR (1946) All 692}

POWERS OF KARTA

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

POWERS OF ALIENATION

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

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

SOLE SURVIVING COPARCENER

SOLE COPARCENER WITHOUT ANY MALE OR FEMALE MEMBER

- SINGLE person CANNOT constitute a family.
- If ONLY a widow was left in the family after the death of sole male coparcener. It was laid down by the court that the family was brought to an end.
- If it was not possible to add a male member by nature or by law.

{Anant Bhikappa Patil Vs Shankar Ramachandra Patil AIR 1943 PC 196}

OTHER FORMS OF SOLE COPARCENER.

- Temporary reduction to a single coparcener

{Attorney General of Ceylon Vs A.R. Arunachalam Chettiar & Ors. (1958) 34 ITR (ED) 42 (PC)}

CANNOT convert the property of undivided family to separate property of the sole coparcener.

Sole coparcener with a female member can constitute HUF

{Gowli Buddanna Vs CIT (1966) 60 ITR 293 (SC)}

CASE LAW

An individual who receives ancestral property at a partition and who subsequently acquires family, but has no male issue, would hold that property only as the property of the family. Under the Hindu law the wife of the coparcener is certainly a member of the family. Whatever be the school of Hindu law by which a person is governed, the basic concept of a Hindu undivided family in the sense of who can be its members is just the same. Thus, in order to constitute a joint family, it is not always necessary that there must be two male members.

CIT v. Parshottamdas K. Panchal [2002] 257 ITR 0096 [Gujarat]

Contd……

- Cases where property Before partition was HUF or self acquired property in father's hands, distinguishable from each other

1. Self acquired property In the hands of father

{Kalyanji Vithaldas & Ors. Vs CIT (1937) 5 ITR 90 (PC)}

-it's NOT a joint family property

2. HUF property In the hands of father

{Attorney General of Ceylon Vs A.R. Arunachalam Chettiar & Ors. (1958) 34 ITR (ED) 42 (PC)}

-it's a joint family property

POWERS OF SOLE COPARCENER

- Sole coparcener can dispose of the coparcenary property as it were his separate property, he can sell or mortgage it or gift of it.

{CIT Vs Anil J. Chinai (1984) 148 ITR 3 (Bom)}

- Sole coparcener can settle property as he likes.

{Anil Kumar B. Laskari Vs CIT (1983) 142 ITR 831 (Guj)}

- Sole Coparcener cannot partition property nor he grant share.

{B.T.Ravindranath Punja Vs CIT(1989) 179 ITR 243 (Karn)}

- Sole coparcener can make valid gift of immovable property.

{CIT Vs Admiralty Flats Motel (1982) 133 ITR 895 (Mad)}

CONSEQUENCES OF AMENDMENT IN HINDU SUCCESSION ACT.

CONSEQUENCE OF AMENDMENT MADE BY HINDU SUCCESSION (AMENDMENT) ACT, 2005 - RIGHTS & LIABILITIES OF A DAUGHTER MEMBER

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

EXPENSES INCURRED ON MARRIAGE OF A DAUGHTER BY HUF

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

DEVOLUTION OF INTEREST IN CO-PARCENARY PROPERTY

SECTION 6 AS SUBSTITUTED BY THE HINDU SUCCESSION (AMENDMENT) ACT, 2005.

Section 6(1) provides that w.e.f. 06/09/2005, in a joint Hindu family governed by the Mitakshara law, the daughter of coparcener shall by birth become a coparcener in her own right in the same manner as the son. She shall have the same rights in the coparcenery property as she would have had if she had been a son and she shall be subject to the same liabilities in respect of the said coparcenary property as that of a son.

Section 6(2) of the new post amendment section 6 provides that any property to which a female Hindu becomes entitled by virtue of sub section (1) shall be held by her with the incidents of coparcenary ownership. And property is capable of being disposed of by her by testamentary disposition.

Contd……

SEC. 6(3) PROVIDES THAT

- Where a Hindu dies after the commencement of Hindu Succession Act 2005, his interest in the property of joint family, Shall devolve by testamentary of intestate succession.
- As the case may be, under this Act and not by survivorship, & the coparcenary property shall be deemed to have been divided as if a partition has taken place and, daughter is allotted the same share as son.
- The share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter. [---- do --- with the predeceased child of pre-deceased son or a pre-deceased daughter].

Contd……

- **Section 6(4)** provides that no court shall recognize any right to proceed against a son, grandson, or great grandson for the recovery of any debt due from his father, grand father or great grand father.

- **Explanation to Section 6(5)** provides that partition for the purposes of this section means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

- **Section 6(6)** provides that nothing contained in this section shall apply to a partition, which has been effected before the 20-12-2004.

APPLICABILITY OF I.T. ACT IN CASE OF DEEMED PARTITION UNDER SECTION 6 OF HINDU SUCCESSION ACT

- For the purpose of partition of HUF, Sec. 6 of Hindu Succession Act would govern the right of the parties, however,

- So far as the Income Tax Law is concerned, the matter has to be governed by Sec.171(1)

{CT Vs Maharani Raj Laxmi Devi (1997) 224 ITR 582 (SC)}

GENERAL RULE OF SUCCESSION - SECTION 8

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

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

CLASS I HEIR

- Son
- Son of Predeceased son.
- Son of Predeceased son of Predeceased son.

- Widow
- Widow of Predeceased son
- Widow of Predeceased son of Predeceased son

- Mother

- Daughter
- Son of Predeceased Daughter.
- Daughter of Predeceased Daughter.

- Daughter of Predeceased Son
- Daughter of Predeceased Son of Predeceased Son.
- Son of Predeceased Daughter of Predeceased Daughter.

- Daughter of Predeceased Daughter of Predeceased Daughter.
- Daughter of Predeceased Son of Predeceased Daughter.
- Daughter of Predeceased Daughter of Predeceased Son.

CLASS II HEIR

- Father
- Son's Daughter's Son.
- Son's Daughter's Daughter.
- Brother.
- Sister.
- Daughter's Son's Son.
- Daughter's Son's Daughter.
- Daughter's Daughter's Son.
- Daughter's Daughter's Daughter.
- Brothers Son.
- Sister's Son.
- Brothers Daughter.
- Sister's Daughter.
- Father's Father, Father's Mother.
- Father's Widow.
- Brothers Widow.
- Father's Brother.
- Father's Sister.
- Mothers Father.
- Mothers Mother.
- Mother's Brother .
- Mothers Sister.

APPLICABILITY OF SECTION 8

Section 8 is applicable to the property of a male Hindu dying intestate.

The initial part of section 6 permits coparcenary property to devolve on heirs by survivorship, and hence where this part of section 6 applies, section 8 will have no application. In such a case section 8 applies and the divided son will get by succession as if it were the separate property of the deceased.

DISTRIBUTION OF PROPERTY ON SUCCESSION - SECTION 10

Following are the rules provided for the distribution of property among class I heirs:-

- **Rule 1** - Intestate's widow – one share [if he had more than 1 widow then also 1 share in total]

- **Rule 2** - Surviving sons, daughters & mother of deceased –one share each

- **Rule 3** - The heirs in the branch of each predeceased son or each predeceased daughter of the intestate shall take between them one share.

Contd……

- **Rule 4** - The distribution of the share referred to in rule 3 –
  - Amongst the heirs in the **branch of the predeceased son** shall be so made that his widow (or widows) together and his surviving sons and daughter get equal portions; and the branch of his predeceased son gets the same portion;
  - Amongst the heir in the **branch of predeceased daughter** shall so made that the surviving sons and daughter get equal portions.

MODES OF CREATION OF 'HUF'

MODES OF CREATION OF HUF BY

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

CREATION OF HUF BY BLENDING

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

APPLICABILITY OF SECTION 64(2) OF I. T. ACT, 1961

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

PARTITION OF HUF AFTER BLENDING

- This is for achieving distribution of immovable property among members because giving it in any other manner will require registration for effective transfer.

- Each division will have right to claim exemption under Sec 5 (vi) of the Wealth Tax Act .

DISTINCTION BETWEEN GIFT AND VESTING

Gift

1. For a valid gift, the acceptance by the HUF would be a condition precedent.
2. To gift the immovable property registration and acceptance is required.

Vesting

1. It is a unilateral action & does not required any consent of other members of HUF.
2. On the other hand, there is no need of registration even if the property vested be an immovable property.

The income will be taxed in the hand of donor (Sec. 64(2))

CREATION OF HUF BY GIFT FROM STRANGER

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

GIFT VIS-À-VIS HUF

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

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

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

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

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

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

GIFT OF HUF PROPERTY

By Father

- Within reasonable limits
- as a "gift of affection".

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

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

GIFT TO STRANGER

- *Karta is NOT entitled to give any gifts to strangers,*

  EXCEPT for pious purposes.

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

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

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

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

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

GIFT TO STRANGER

Who is regarded as stranger

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

Other persons means excluding relatives not being members of HUF.

GIFT TO COPARCENER & MEMBERS

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

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

- **Gift to daughter**

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

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

Contd……

- **Gift to wife by Karta**

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

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

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

- **Gift by Karta to nephew**

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

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

- **Gift by Karta to minor children of family**

  Gift made by Karta from

  –Natural love & Affection

  -within reasonable limits

  The gift was said to be **Valid**

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

Contd……

- *Elementary proposition that Karta of HUF cannot gift or alienate property except to the extent recognized under the 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 on Marriage Occasion is valid – S. Lakshmamma v. Kotayya AIR 1936 Mad. 825.*

- *Gift of immovable property should be for pious purpose – CIT v. Ram Gopal Rajgharia 123 ITR 693*

- *Gift to Strangers void – Guramma v. Mallappa AIR 1964 SC 510*

PRECAUTIONS TO BE TAKEN BY FAMILY WHILE ACCEPTING GIFTS

- Clear declaration of intention through affidavit.

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

- Gift to be valid & genuine

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

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

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

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

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

CREATION BY WILL

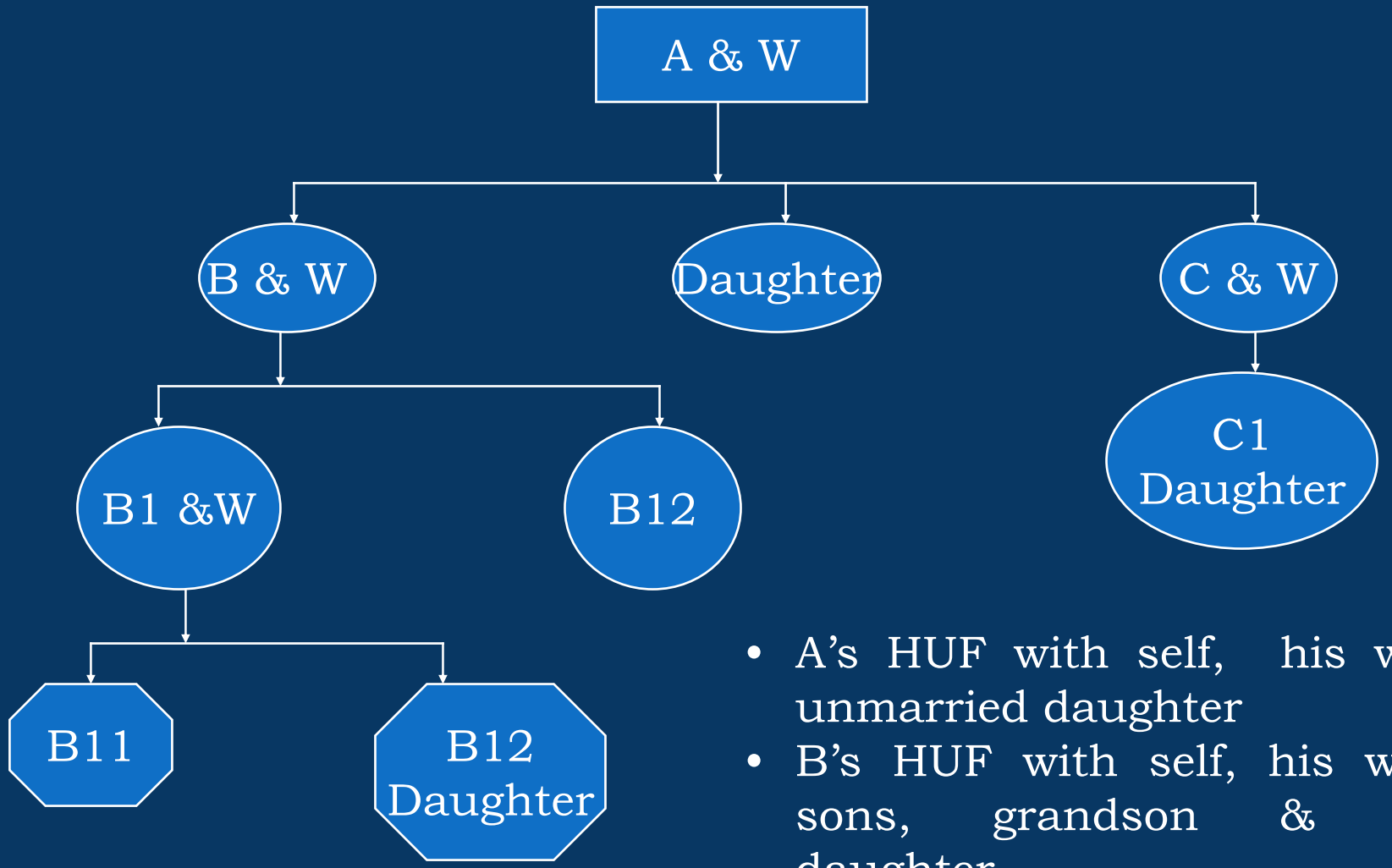
- No existence of HUF at the time of execution of will.

- Valid will should be there.

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

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

CREATION BY PARTITION



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

PARTITION OF HUF

- It takes place at the will of the coparcener
- It doesn't require the assent of the members. It is sufficient if it is made to the managing member of the family.
- Coparcener should indicate his intention to separate.
- If partition is made by court , the court will award equal partition.
- The family may mutually effect partition without going to court & mutual partition may be unequal.
- Date of partition shall be the date on which the properties are actually physically divided

INTENTION TO SEPARATE

- The intention to separate may be evidenced in :
  - By explicit declaration **or**
  - By conduct.

- It may be expressed by serving
  - a ***notice*** on the other coparcener &
  - the severance of status takes place from
  - the date when the communication was ***sent***
  - not when it was received
- Notice is withdrawn with the consent of other coparceners.
- It can be expressed by the *institution of suit*.

FOLLOWING DOES NOT RESULT IN PARTITION

- An oral request made by an elder brother at the time of his death to give half of the property to his widow.
- Death of Karta

{CWT Vs Chandrasinharao D. Gaekwad (1999)237 ITR 875 (Guj)}

- Death of common ancestor

{ITO Vs Vinod Trading Co. (1999)68 ITD 457 (Pune-Trib)}

- **Nature and Impact of section 171 of Income Tax Act, 1961. (Discussed in next part).**

CREATION BY REUNION UNDER BOTH SCHOOLS

Who can re-unite

- Reunion can take place only between persons who were parties to the original partition.
- There must be an agreement between the parties
- A member of a joint family once separated can reunite only with his
  - father,
  - brother or
  - paternal uncle

- Only male can unite. Members of different branches cannot reunite.

{Bhagwan Dayal Vs Reoti Devi AIR (1962) SC 267}

CONDITIONS FOR VALID REUNION

Under the Hindu Law:

- It is possible among persons who were on earlier date, members of HUF.
- There must have been a partition in fact.
- Reunion must be effected by the parties or some of them who had made their partition.
- Must be a junction of estate & reunion of the property

{Paramanand L. Bajaj Vs CIT (1982) 135 ITR 673(Kar)}

Note; To constitute a re-union there must be an intention of the parties to re-union in estate & interest.

RELATED ISSUES

- Share of property of reunited members got at an earlier partition &
  - its possession at the reunion
  - becomes the property of the joint family.

{Paramanand L. Bajaj Vs CIT (1982) 135 ITR 673(Kar)}

- It is not necessary that all the property
  - Belong to HUF should be brought back
  - in to the re-united joint family
  - This reunion is said to be **VALID**

{CIT ***Vs A.M. Vaiyapuri Chettiar & Anr. (1995) 215 ITR 836 (Mad)}***

- Minor is not competent to contract an agreement to reunite
- Reunion cannot be made by or on behalf of the minor

{CIT Vs Rupchand Routhmall (1963) 50 ITR 295 (Cal)}

INCOME TAX ISSUES

A. PARTITION OF HUF UNDER INCOME TAX ACT, 1961

PARTITION OF A HINDU UNDIVIDED FAMILY

The Partition of HUF can be:-

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

TAX IMPLICATIONS OF PARTIAL PARTITION OF HUF

1. As per section 171(9) of the Income-tax Act, 1961 the Partial Partition after 31-12-1978 is not recognized.

2. Even after Partial Partition the income of the HUF shall be liable to be assessed under the Income-Tax Act as if no partition had taken place.

TAX IMPLICATIONS OF FULL PARTITION OF HUF

1. As per s. 171(9) of the Income-tax Act, 1961 partition means: -

(i) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or

(ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;

2. Assessment after Partition as per s. 171 & order to be passed by the Assessing Officer.

GEMS OF JUDICIARY

Hon'ble Supreme Court in Union of India v. M.V. Valliappan [1999] 238 ITR10271 observed

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

Contd……

- The effect of the aforesaid sub-section is that for the purposes of income-tax, partial partitions taking place on or after January 1, 1979 are not to be recognized.

- If a partial partition has taken place after the cut-off date, no inquiry as contemplated under sub-section (2) by the Income-tax Officer shall be held. Even if the inquiry is completed and the finding is given, it would be treated as null and void.

See also : CIT v. Khacheru (HUF) [2009] 185 TAXMAN 398 (PUNJ. & HAR.)

GEMS OF JUDICIARY

The Supreme Court in the case of Kalloomal Tapeshwari Prasad (HUF) v. CIT [1982] 133 ITR 690 has held that

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

GEMS OF JUDICIARY

- In such a case merely physical division of the income without a physical division of a property producing income cannot be treated as a partition.
- Mere proof of severance of status under Hindu Law is not sufficient to treat such a transaction as a "partition" within the meaning of section 171.
- Meaning thereby a transaction may be treated as severance of status of Hindu Law but not a partition under the Income-tax Act as physical division of the property is necessary under the Income-tax Act.

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

ISSUES

Smt. Sudha V. Iyer *v.* *ITO* 15 taxmann.com 234 (ITAT-Mum.) [2011]

- Sum received by assessee as and towards his share as coparcener of HUF, on its partition **cannot be brought to tax as income.**

- Assessee received certain sum on account of partition of HUF - AO was of view that order for partition was passed on 14-10-2008 and not in current assessment year - He held that amount received without any consideration was taxable under section 56 - However, Assessing Officer of HUF recognized that partition had taken place on 31-5-2005 - Whether since HUF was dissolved from 1-4-2005, sum received during year under consideration on partition was not chargeable to tax - Held, yes

ISSUES

- In order to be acceptable or recognizable partition u/s 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 (2005) (ITAT-Mum.).

- 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 (2004) (ITAT-Hyd.)

ISSUES

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

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

ISSUES

Partition of joint family properties immediately after death of a male coparcener.

- **There is no ipso facto partition of joint family properties immediately after death of a male coparcener of Mitakshara school having coparcenary interest in coparcenary property.**
- **Since there was no partition & disruption of HUF after death of karta of HUF as per Explanation 1 to section 6 of the Hindu Succession Act, 1956. Therefore, No partition is recognised u/s 171(9).**

- As per the various pronouncements of the Supreme Court is that there is no ipso facto partition of joint Hindu family properties immediately after the death of a male coparcener of the Mitakshara school having coparcenary interest in the coparcenary property. The fiction given by Explanation 1 to section 6 of the Hindu Succession Act, 1956 has nothing to do with the actual disruption of the status of a HUF. It freezes or quantifies the share of a female heir in the coparcenary property on account of the death of a coparcener at the relevant point of time.

CIT vs. Charan Dass (HUF) [2006]153Taxman 307(All.)

RESIDENTIAL STATUS OF HUF

- Section 6(2) of the Income-tax Act, 1961 clearly contemplates a situation where a HUF can be non-resident also. In fact, HUF can also be Not Ordinarily Resident. A HUF will be considered to be resident in India unless, during the previous year, the control and management of its affairs is situated wholly outside India. In such a case, it will be treated as non-resident HUF.

- Section 6(6)(b) further provides that, in case of a HUF whose manager has not been resident in India in nine out of ten previous years preceding the previous year or has, during the seven previous years preceding that year, been in India for a total 729 days or less, such HUF is to be regarded as Not Ordinarily Resident within the meaning of the Income-tax Act, 1961. As such, it is not necessary for a HUF to be resident in India.

CASE STUDY

- An HUF is having all the properties in India. The Karta of the HUF is residing outside India permanently and the female members are staying in India and are managing the affairs of the HUF. What would be the status of such HUF?

- As discussed in the earlier answer, the test is not where the Karta resides, the test is where the control and management of the affairs of HUF is situated. Even if a part of control and management is situated in India, such HUF will be treated as resident in India.

  Though, generally, Karta is supposed to manage the affairs of HUF, it is not an absolute rule and, by consent, the power of control and management may be delegated to other members of the family, either fully or partially.

INCOME OF MEMBER RECEIVED FROM HUF - EXEMPT

1. As per section 10(2) of the Income-tax Act, 1961 any sum received by an individual from Hindu Undivided Family of which he is member is exempt from tax.

2. Amount received not as a member of Joint Family but in pursuance of some statutory provision, etc. would not be exempted in this clause.

3. Member of joint family living apart from the other members does not effect his/her position in law to claim the right as per section 10(2).

HOUSE PROPERTY IN THE NAME OF HUF.

1. Self occupied one Residential House & the tax gain specially by way of Interest on Loan & Repayment of Loan

2. Special 30% deduction on Rental Income also to HUF.

3. Exemption from Wealth-tax the real estate of HUF - One House Wealth Tax Free (Commercial / Rented Residential)

ISSUES

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

S. Periannan v. CIT (1991) 191 ITR 278(Mad).

ISSUE

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

AO found that the assessee had purchased a house property from 'A'. The assessee's case was that since the investment was made in the name of HUF, it was not declared in his individual return. The AO, however, took a view that the funds for acquiring the property in question were met from the personal sources of the assessee. He thus determined annual letting value of the property resulting in certain addition to the assessee's income.

On appeal, the Commissioner (Appeals) directed the AO to consider the annual letting value of the property in the hands of HUF and deleted the impugned addition.

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

ISSUE

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

{Harvindarpal Mehta (HUF) v. DCIT [2009] 122 TTJ 163(Mum.) }

B. HUF AS PROPRIETOR OF BUSINESS

HUF AS PROPRIETOR OF BUSINESS.....

1. HUF can be a Proprietor of one or more than one Business concerns.

2. Separate name can be kept of HUF business entity.

3. No tax Audit of HUF business if Turnover within Rs. 1 crore (FY 2012-13).

4. Business Income Computation @ 8% without books of account in case turnover is upto Rs. 1 crore – The Presumptive Basis

ISSUES

When it was an admitted fact that since the very beginning, the assessee was running the business in the name of proprietorship firm in the individual status.

- All bank accounts of the said firm were in the name of individual and not in the name of HUF.
- All investments were made by appellant in individual name and not in the name of HUF.
- License for running the business was also obtained in the name of an individual and not in the name of HUF.
- Bank declarations were also signed as a sole proprietor and not as a Karta of an HUF.
- There was a column in those forms asking whether the account was opened in the name of HUF. That column was left blank.

Contd……

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

[Sajiv Vohra (HUF) v. CIT [2008] 173 Taxman 304 (P & H)]

C. PARTNERSHIP BY HUF

ISSUE- CAN A KARTA OF HUF BECAME PARTNER IN A FIRM?

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

ISSUE-SALARY FROM PARTNERSHIP FIRM

The remuneration received by Karta as representative of HUF cannot be treated as income of the HUF. Remuneration will be income of HUF only when there is direct nexus between family funds and remuneration paid.

In ***Brij Mohan vs. CIT 201 ITR 831 (1993), the Supreme Court*** held that where the *receipt is a compensation made for the services rendered* and not for the return of investment, it is to be treated as individual income of the partner.

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

{Lachman Das Bhatia & Sons vs. Commissioner of Income-tax [2007] 162 Taxman 118 (Delhi)} {D.N. Bhandarkar v. CIT 158 ITR 724 Kar (1986)}

Contd……

Once the character of an individual has been treated differently than HUF for the purposes of interest, there is no reason as to why that would not extend to the salary and bonus paid to such partners on account of their personal services rendered to the firm in contra-distinction to their capacity as representatives of HUF .

Therefore, the same reasoning would apply to the cases where payment in the form of salary and bonus has been made to a partner in his individual capacity in contra-distinction to his representative character of the HUF.

CIT v. Unimax Laboratories [2007] 164 Taxman 373 (P & H)

ISSUE- DEDUCTION AVAILABLE TO PARTNERSHIP FIRM IN TERMS OF SECTION 40(B)

Partner of a firm is an individual *even if he is partner as a representative of HUF*

where assessee-firm paid salary to a partner who was actively engaged in conducting affairs of business of firm, it was to be held that requirement of Explanation 4 to section 40(b) stood complied with, and, thus, assessee-firm would be entitled to deduction in respect of salary paid to said partner even though he was a partner in representative capacity of HUF.

P. Gautam & Co. vs. JCIT [2011] 14 taxmann.com 79 (Ahd.)

Contd……

Amounts not deductible Salary to working partner HUF Karta u/s 40(b)(i)

"in the case of any firm assessable as such,—

any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as "remuneration") to any partner who is not a working partner"

- Salary paid to working partner even though as Karta of HUF, is received as individual and as working partner, hence allowable as deduction while computing income of firm.

CIT vs. Jugal Kishor & Sons [2011] 10 taxmann.com 82 (All.)

Contd……

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

CIT v. Central Scientific Instrument Corporation [2010] 1 DTLONLINE 149 (All.)

ISSUES- CLUBBING OF SALARY INCOME OF WIFE OF KARTA

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

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

OTHER ISSUES

- **The assessee was a partner in a firm which was dissolved with effect from 1-1-1999 and its business was taken over by the assessee in the capacity of a HUF - the assessee sought to set-off loss of the said firm against the profit of his business as HUF**
- Section 78(2) prohibits carry forward and set-off of losses of one person by another person except when the other person receives the losses by inheritance. Section 78 shows that where succession to business is by

  inheritance, then loss will be allowed to be set-off and not otherwise.

Pratap H. Desai (HUF) v. ACIT [2009] 118 ITD 29 (Pat.)

D. CAPITAL GAIN EXEMPTION

- Cost Inflation Index benefit available to Calculate Cost of the Asset.
- Tax benefit of 20% Tax on Long-term Capital Gains.
- Long-term Capital Gains Saving by investing in Residential Property u/s 54/ 54F.
- Exemption on sale of Agricultural land u/s 54B.
- Saving Tax on Long-term Capital Gain possible by investing in Capital Gains Bonds of NHAI / RECL u/s 54EC.
- Exemption from tax on LTCG on transfer of residential property if invested in a manufacturing small or medium enterprise u/s 54GB (introduced vide ***Finance Act, 2012***)

ISSUES

- ***Capital asset should have become property of previous owner before 1-4-1981 to make assessee entitled to benefit of adopting market value as on 1-4-1981***

  but where construction of building was completed in 1988 and possession of flat was handed over to previous owner, i.e., HUF, it could not be said that flat itself became property of HUF prior to that date and, hence, assessees were not entitled to adopt market value of flat as on 1-4-1981

- In view of specific provisions of Explanation (iii) to section 48, indexing had to be allowed of the financial year in which flat was held by assessee on partition of HUF.

DCIT v. Kishore Kanungo 102 ITD 437 (Mum.) [2006]

ISSUES

- ***Benefit u/s 54 available on purchase of more than one Residential house properties out of sale proceeds of any residential property.***

- A plain reading of sec. 54(1) discloses that when an individual assessee or an HUF assessee sells a residential building or land appurtenant thereto, he can invest capital gain for purchase of a residential building to seek exemption of the capital gain tax. The expression 'a residential house' should be understood in a sense that building should be residential in nature and 'a' should not be understood to indicate a singular number.

- That when an HUF's residential house is sold, the capital gain should be invested for the purchase of only one residential house, is an incorrect proposition. After all, the property of the HUF is held by the members as joint tenants. **If the members, keeping in view the future needs in event of separation, purchase more than one residential building, it cannot be said that the benefit of exemption is to be denied u/s 54(1)**.

CIT v. D. Ananda Basappa 180 Taxman 4 (Kar.) [2009]

ISSUES

Exemption u/s 54F

- House property in the name of HUF sold but new house purchased in the name of Karta and his mother-

- To claim the benefit of sec. 54F the residential house which is purchased or constructed has to be of the same assessee.

[Vipin Malik (HUF) Vs CIT 183 Taxman 296 (Delhi) (2009)]

ISSUES

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

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

ELIGIBILITY FOR EXEMPTION U/S 54B

In case of transfer of land which is used for agricultural purposes by a HUF, ***the rollover relief u/s 54B is available to the HUF*****.** The amendment is applicable on transfers made after ***01-04-2013*****.**

Even before the amendment, exemption was being allowed to HUF.

In K.S. Jain & Sons (HUF) v. ITO 173 Taxman 114 (Delhi) (Mag.) [2008], it was Held, AO was wrong in denying deduction u/s 54B to assessee on ground that assessee being an HUF was not entitled to deduction u/s 54B.

However, in ***Darapaneni Chenna Krishnayya (HUF) v. CIT [2007] 291 ITR 98 (AP),*** Benefit u/s 54B would only be available to an individual and not to an HUF.

EXEMPTION FROM CAPITAL GAIN U/S 54GB - INTRODUCED VIDE FINANCE ACT, 2012

Exemption from tax on LTCG on transfer of residential property if invested in a manufacturing small or medium enterprise.

- Available to an Individual or HUF.
- Transfer made on or before 31st March, 2017.
- Amount is reinvested before due date of furnishing return of income u/s 139 (1)
- In Equity of a new start up SME company in the manufacturing sector in which in hold more than 50% share capital or voting rights
- Amount is utilized by the company for purchase of new plant & machinery
- The share cannot be transferred within a period of 5 years.

TAXATION OF MONEY RECEIVED BY HUF WITHOUT CONSIDERATION

1. Provisions of section 56(2)(vii) applicable even to HUF if any sum of money exceeding Rs. 50,000 is received by the HUF without consideration.

2. Items received in kind subjected to the provisions of s. 56(2)(vii).

DEFINITION OF RELATIVE UNDER EXPLANATION TO SECTION 56(2)(VII) AMENDED BY FINANCE ACT, 2012

w.r.e.f. 1-10-2009

The provisions of section 56 are amended so as to provide that ***any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation.***

For this purpose, clause (e) of the *Explanation* below section 56(2)(vii) is to be substituted to provide that in case of HUF, relative means members of the HUF.

After the amendment,

"(*e*) "***relative***" means,—

(i) in case of an individual—

*(A) ******; and*

(ii) ***in case of a Hindu undivided family, any member thereof."***

The amendment as above is inspired by the decision of ITAT in ***Vineetkumar Raghavjibhai Bhalodia v. ITO 46 SOT 97 (Rajkot-ITAT) (2011) where it was*** held that ***Gift received from HUF is gift from relative.***

PROVISIONS OF CLUBBING – S. 64(2)

- Where any member of HUF converts any property belonging to it, in to the common property of HUF, then :
  - Individual shall be deemed to have transferred the property to the HUF i.e. to the members of the family for being held by them Jointly.
  - The Income from the property so transferred shall be taxable in the hands of Individual and not in the hands of HUF.
  - On partition amongst the members – the income derived from such property as is received by the spouse shall be taxable in the hands of spouse itself.

E. DEDUCTIONS UNDER CHAPTER VIA

S. No.	Section	Deduction
1.	Section 80C	Deduction available to HUF [Insurance Premium can be paid on the life of any member which does not exceed 10% of total sum assured for policies issued on or after 1st Apr, 2012]
2.	Section 80CCF	Investment in Infrastructure Bonds up to Rs. 20,000/-
3.	Section 80D	Mediclaim Policy on the health of any member of the family. Deduction for payment on account of preventive health check ups not available.

Contd……

S. No.	Section	Deduction
4.	Section 80DD	For maintenance including medical treatment of a dependant member of the family.
5.	Section 80DDB	Medical treatment for any dependant member of the HUF
6.	Section 80G	Donation to certain funds, charitable institutions ,etc.
7.	Sections 80IA / 80IAB / 80IB / 80IC / 80ID / 80IE / 80JJA	New Industrial undertakings

F. STOCK MARKET, MUTUAL FUNDS & HUF'S

1. HUF can have a separate Demat Account.
2. Make money by investing in shares of companies:-
   (a) Primary Market
   (b) Secondary Market
3. Enjoy Tax Free Income for Long-term Capital Gains by holding shares for more than one year.
4. Enjoy lower tax rate of 15% on Short-term Capital Gains u/s 111A.
5. HUF can also invest in Mutual Fund.

G. RETURN OF INCOME

HUF is required to furnish return in **Form ITR-2** or **ITR-3** or **ITR-4S** or **ITR-4**, as the case may be.

However, ITR-4S (Sugam) not applicable to residents HUFs having

(i) assets (including financial interest in any entity) located outside India; or

(ii) signing authority in any account located outside India.

[Inserted vide Finance Act, 2012]

In case of above HUFs, the return to be furnished

(i) Electronically under **digital signature**, or

(ii) transmitting the data in the return electronically and thereafter submitting the verification of the return in **Form ITR-V**.

Contd……

- Electronic filing is mandatory if total income exceeds Rs. 10 lakhs, (***Inserted vide Finance Act, 2012)***

- HUFs required to furnish return in ITR-4 and to whom sec 44AB is applicable, shall furnish the return electronically under digital signature.

H. MISCELLANEOUS ISSUES

DEMAND / ASSESSMENT

- Demand against member of HUF can be recovered from HUF to the extent of its share in property of HUF.

Naresh B. Chheda* v. *JCIT [2011] 9 taxmann.com 86 (Bom.)

- An assessee is entitled to challenge jurisdiction of ITO to initiate reassessment proceedings before Tribunal even though he has not raised such a plea before ITO or in earlier appeal.

Sunil Kumar Puglia (HUF) v. ITO [2009] 120 TTJ 1001 (JD)

Contd……

- When the assessment framed on the assessee in the capacity of HUF was held null and void, the entire tax deposited by the assessee (HUF) became refundable to the assessee (HUF) along with interest in accordance with law.

- The AO had exceeded his jurisdiction by giving the appeal effect to the order of the Tribunal, dated 29-9-2004 treating the assessee in the status of an individual. An individual and HUF both are the different assessee in law.

- Thus, there was a mistake apparent on record committed by the AO while giving the appeal effect to the order of the instant Tribunal. The assessee (HUF) had not filed the return. Therefore, no question of payment of any self-assessment tax as well as interest u/s 234A, 234B and 234C arose.

Rohtas v. ACIT [2008] 24 SOT 1 (Delhi)(URO)

Contd....

Whether since Act recognizes status of HUF different from individual status of Karta of HUF and two are treated as different legal entities, it is necessary that notice u/s 148 should be sent in correct status because jurisdiction to make assessment is assumed by issuing valid notice and it cannot be conferred by consent of parties. After having issued notice under section 148 to individual, Assessing Officer had no jurisdiction to assess HUF of assessee and that defect of jurisdiction could not be cured by obtaining consent of assessee to assess him in status of HUF.

Suraj Mal, HUF v. ITO 109 ITD 327 (Delhi) (TM) [2007], also see CIT v. Rohtas 167 Taxman 233 (P & H) [2008].

FOREIGN REMITTANCES

- Where assessee had received an amount under Remittances of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991 from foreign citizen which was prima facie entitled to immunity under said Act, such amount could not be added to assessee's income under section 68.

Amritraj S. Punamiya (HUF) v. ITO [2009] 126 TTJ 695 (Mum.)

SECTION-2(31)(V)-PERSON - ASSOCIATION OF PERSONS- INDIVIDUAL- ASSESSMENT- HUF- CAPITAL GAINS.(S.4, 45).

- After the death of sole male member of the family, the only person left in the family was the widow of the deceased and three married daughters. The property of the deceased would devolve on the window and three married daughters in equal shares.

Since the property of the deceased was sold without dividing the same among the assessee and her three married daughters, the capital gains on the sale of the property would be assessable in the hands of the BOI consisting of the assessee and her three married daughters.

[ITO v Shanti Dubey (2011) 139 TTJ 502/ 58 DTR 422 (Jab) (Trib)]

SECTION 2(22) OF THE INCOME-TAX ACT, 1961 - DEEMED DIVIDEND

S.M. Gupta (HUF) *v.* ACIT [2011] 10 taxmann.com 276 (ITAT-Kol.)

Facts:

- During assessment proceedings, AO noted that assessee-HUF had received loans from three companies. He further noted that there were four members of HUF who were beneficially entitled to 25% of income of HUF. AO treated said loan as deemed dividend u/s 2(22)(e).
- Assessee contended that there were 12 members in HUF and AO excluded 2 married daughters of Karta of HUF and also other members and thereby came to conclusion that only 4 persons were having beneficial rights in income of HUF. It was further contended that in view of amendment made in section 6 of Hindu Succession Act, 1956 with effect from 9-9-2005, Daughters also have equal rights in Hindu Mitakshara coparcenary property as sons have.
- Assessee further contended that since 12 individual were member/coparceners of assessee-HUF and each was having beneficial rights and interest in income of HUF none of them could hold and have share in HUF income exceeding 20 % as required by Explanation 3(b) to sec. 2(22)(e) and therefore conditions of Explanation 3(b) to sec. 2(22) were not fulfilled.

Contd……

- For becoming ‘coparcener’ of the Mitakshara Joint Hindu family it was wholly immaterial as to whether on the date on which the Amendment Act came in force the daughter was married or unmarried. It was not even necessary but the daughters were born to a coparcener after 9-9-2005.
- In view of above amendment, it can be said that two married daughters of assessee-HUF, and also other members got beneficial rights in income of HUF and therefore, none of them could hold and have share in HUF income exceeding 20 per cent as required by Explanation 3(b) to section 2(22)(e) - Held, yes.
- Whether therefore, condition of Explanation 3(b) was not fulfilled and sec. 2(22) had no application - Held, yes.

SECTION 4 OF THE INCOME-TAX ACT, 1961- HINDU UNDIVIDED FAMILY - ASSESSABLE AS

***Dr. Prakash B. Sultane* v. CIT** [2005] 148 Taxman 353 (Bom.)

- Joint family property does not lose its character merely because at one point of time there was only one male member or one coparcener - Held, yes.
- Whether an assessee who has received share on partition of HUF property but subsequently gets married is entitled to be assessed in respect of the said share in said property in status of HUF - Held, yes

SECTION 36(1)(III) OF THE INCOME TAX ACT, 1961 – INTEREST ON BORROWED CAPITAL

JCIT v. **Beekay Engineering Corporation 325 ITR 384 (Chhattisgarh) [2010]**

Where assessee-firm had given interest-free advance to Karta of HUF which was a partner through Karta and Tribunal's finding was that it was evident from balance sheet of assessee-firm that there was sufficient fund in account of HUF and no evidence was available on record to show that borrowed funds were not utilized by assessee for its own business but were diverted as advance to members of HUF free of interest.

- **Held** that, there was no justification in making disallowance out of interest paid on borrowed funds.

UNREASONABLE PAYMENTS BY HUF U/S 40A(2)

Section 40A(2)

"Where the assessee incurs any expenditure in respect of which payment has been or is to be made to **any person referred to in clause (*b*) of this sub-sec**., and the AO is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable **shall not be allowed as a deduction**."

Expenditure must be unreasonable or excessive

- Provision of Sec. 40A(2) has no application unless it is first held that the expenditure was excessive or unreasonable.

{Upper India Publishing House (P) Ltd. v. CIT (1979) 117 ITR 569 (SC)}

Contd……

- **<u>For the purpose of Sec. 40A(2)(a) following persons are specified:</u>**

I. where the assessee is a HUF- any member of the family, or any relative of such member;
II. HUF having a substantial interest in the business or profession of the assessee or any member of such family, or any relative of such member;
III. a HUF of which a member, has a substantial interest in the business or profession of the assessee; or any member of such family or any relative of such member;
IV. any person who carries on a business or profession, where the assessee being HUF or member of the family, or any relative of such member, has a substantial interest in the business or profession of that person.

SECTION 69 OF THE INCOME-TAX ACT, 1961 - UNEXPLAINED INVESTMENTS

Where assessee-HUF who was a partner in a firm had been found to have made payments of Rs. 30 lakhs to partners of firm and assessee had accumulated said sum year after year in cash from agriculture, said sum could not be treated as unexplained investment u/s 69

Facts:

Assessee-HUF was a partner in a firm. Pursuant to a survey action on firm a receipt was found showing payment of Rs. 30 lakhs by assessee to partners of firm. AO treated said sum as unexplained investment u/s 69 and made addition. On appeal, lower authorities after analyzing material available on file had recorded a concurrent finding of fact that assessee had accumulated a sum of Rs. 30 lakhs year after year in cash from agriculture, which had been paid to partners of firm and, accordingly, deleted addition.

{CIT *v.* Byyanna (HUF) 15 taxmann.com 322 (Kar.) [2011]}

SECTION 69 OF THE INCOME-TAX ACT, 1961 - UNDISCLOSED INVESTMENTS

CIT *v.* Avinash Kant [2011] 15 taxmann.com 347 (P&H)

- Assessee deposited huge cash in his bank account. On being asked to explain source of deposit, assessee contended that he made purchase and sale of property on behalf of his HUF. AO noticed that agreement for sale of properties were made by assessee in his individual name and bank-account was also maintained in individual capacity. Commissioner (Appeals), after appreciation of evidence deleted addition holding that deposits made in cash were related to HUF of assessee. On further appeal by revenue, Tribunal upheld order of Commissioner (Appeals).
- Since no illegality or perversity had been pointed out in findings of both appellate authorities except an attempt was made on behalf of revenue to persuade High Court to re-appreciate evidence and record a different conclusion, which is not permissible u/s 260A in view of concurrent findings recorded by both appellate authorities, no substantial question of law arose in instant appeal and, thus, it was to be dismissed - Held, yes

THANK YOU!!!

Presented by: Agarwal Sanjay
‘ Voice of CA’
Email ID: agarwal.s.ca@gmail.com
Mobile No.: 09811080342

Team Voice of CA