***What is A Hindu Undivided Family?* –**

The term 'Hindu Undivided Family' (HUF) hasn't been defined in various Hindu Acts:

* Hindu Marriage Act (1955),
* Hindu Minority and Guardianship Act (1956),
* Hindu Succession Act (HSA) (1956) and
* Hindu Adoptions and Maintenance Act (1956),

However, the Income Tax Act, 1961 provides for HUF as a taxable entity under S. [2(31)](javascript:void(0);).

Under S. [2(4)](javascript:void(0);) of the Kerala Joint Hindu Family System (Abolition) Act, 1975, the expression 'Joint Hindu Family' is defined as an undivided Hindu family governed by the Mitakshara Law.

In the case of ***Surjit Lal Chhabda* v. *CIT* AIR 1976 SC 109** the Apex Court held that:

|  |  |
| --- | --- |
| (*i*) | the expressions 'Hindu Undivided Family' (HUF) and 'Joint Hindu Family' (JHF) are synonymous terms; |
| (*ii*) | the terms being not independently defined in any act, is evidence enough of the underlying connotation that the **terms must be understood as they are understood in Hindu Law**; |
| (*iii*) | a joint Hindu family consists of **persons lineally descended from a common ancestor and includes their wives and unmarried daughters**. The daughter, on marriage, ceases to be a member of her father's family and becomes a member of her husband's family. The joint Hindu family is thus a larger body consisting of a group of persons who are united by the tie of Sapinda ship arising by birth, marriage or adoption; and |
| (*iv*) | HUF is a creature of law. |

Thus, HUF is an undivided group of direct descendants of a common ancestor including their wives (if any) and unmarried daughters.

***Who is a Coparcener?* –**

* a person who acquires a right in the ancestral property by **birth** and a person with the **right to demand partition in the HUF property**.
* Prior to the amendments made by the Hindu Succession (Amendment) Act,2005, only male members of a family had a right to the Ancestral property by birth and they were only entitled to demand partition in the HUF Property and thus only male members were called coparceners.
* Post 2005 amendment, even Daughters have rights equal to that of a son.
  + So, can the daughter become co-parcener?
  + What is the status of Married Daughters Coparcenary Right?
  + Can, the wife become co-parcener of her Husband’s HUF?

**Member Vs Co-parcener**

1. Member cannot demand partition
2. Co-parcener can demand partition
3. Member cannot become Karta
4. Co-parcener can only become Karta

**Who is Karta:**

* Manager of the Families Property
* He has the responsibility to take care of the Family Property
* The senior most male member of the Family is Karta

Questions?

* + So, can the daughter become Karta of HUF? (De jure)
  + Can wife of deceased Karta become Karta where there is no Male coparcener who has attained Majority? (De Facto)
    - CIT Vs Seth Govindram Sugar Mills [1965] 57 ITR 510 (SC) – Widow Cant be Karta, though she can be treated as Karta for IT Assessment.
  + Can Junior family member become Karta?

**Income-tax Provisions related to HUF**

* **Section 2(31): HUF is a separate person**.
  + Accordingly, under Income-tax Act HUF is a separate entity.
  + That means, Assessable independently from other family members.

**Section 56(2)(x)**

* + Whether Property or Money received by HUF from its Members is taxable in the hands of HUF?
    - To HUF member is considered as relative.
    - Reference is made to section 56(2)(vii)- Gift received by the HUF from member is not forming part of IOS
  + What about converse situation, i.e., gift received by the members from the HUF-
    - Can one say that family means group of relatives- lineal ascendents or descendants- which are otherwise considered as relative- should also be covered in the meaning of relative- as to exclude the gift received by member from the HUF.
    - Can one also say that, when income received by the member from the HUF is exempt [sec 2(10)]- so why the gift received from the HUF be taxed?

*Section 10. Incomes not included in total income.*

*In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*

*(1) ----*

*(2) subject to the provisions of sub-section (2) of section 64, any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family* ;

It may also be noted that the Hon'ble Supreme Court in the case of ***CIT* v. *N.S. Getti Chettiar***[[1971] 82 ITR 599 (SC)](javascript:void(0);) held that "a member of a Hindu joint family has no definite share prior to partition in the family property, so as to presume a gift. In fact, nothing prevents even surrender of one's interest in joint family property."

The Full Bench of the Gujarat High Court in the case of ***CIT* v. *Mrs. Taramati Hariprasad Vasa***[[1969] 74 ITR 211 (Guj) [FB]](javascript:void(0);) held that " where the mother was not given a share, though entitled to it under the law, there is no disposition to justify the inference of deemed gift by her as no member can identify his or her interest in the property prior to the partition." It is to be noted that this Full Bench decision was rendered by the Gujarat High Court prior to rendering of the decision by the Hon'ble Supreme Court in the case of **N.S. Getti Chettiar** (supra).

**Creating Corpus/ capital of HUF**

* Assets received as gifts by HUF. (relatives or non-relatives). Gift from non-relative should not exceed Rs 50,000.
* Assets passed on by will that favors HUF.
* Assets received on the partition of a larger HUF of which the coparcener was a member (like an HUF in which the coparcener’s father or grandfather was the Karta).
* Property acquired from the sale of joint family property
* Members infusing capital or treating their Assets as joint hindu family property
  + Whether Clubbing provisions u/s 64 would get invoked?
* **It is important here to note that capital infusion should be done taking into account the clubbing provisions under Section-64(2) of Income tax act,1961**.

**Clubbing of income**

Sec 64

(1)..

(2) Where, i**n the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted** by the individual 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 or been transferred by the individual, directly or indirectly, to the family **otherwise than for adequate consideration** (the property so converted or transferred being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971,—

 (*a*) 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;

 (*b*) **the income derived from the converted property or any part thereof shall be deemed to arise to the individual and not to the family**;

 (*c*) 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 sub-section (1) shall, so far as may be, apply accordingly:

**Provided** that the income referred to in clause (*b*) or clause (*c*) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse of the individual.

*Explanation 1*.—For the purposes of sub-section (2),—

"property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

*Explanation 2.*—For the purposes of this section, "income" includes loss.

This clubbing can be surpassed if the amount transfer in HUF account is invested by Karta in tax free scheme (E.g., tax free bonds). Income earned from tax free bonds being tax free shall not be income and clubbed in hands of transferor u/s 64(2) The tax-free income can then be re-invested to earn even taxable income. It is important to note that clubbing provision is attracted on income and shall be clubbed in hands of transferor but Income on income is out of Clubbing Provision and shall be taxable in hands of HUF and not transferor.

**Taxation on Partition:**

* Division of Joint Hindu Family
* What kind of partitions are allowed in Income-tax Act?
  + As per provisions of Section [171(9)](javascript:void(0);) of the Act were introduced in the **Act by the Finance (No.2) Act 1980 with effect from 01-4-1980 whereby partial partition after 31st December, 1978** is not recognised for income-tax purposes, in the sense that as per provisions of section 171(9)(b) of the Act " **such family where a partial partition took place shall continue to be liable to be assessed under the Act as if no partial partition had taken place".-**
  + **In such case, the family and members will be jointly and severally liable to the tax, penalty interest of fine. Members will be liable in their respective share.**
* Circular no.281 dated 22nd September,1980 vide para no.31.3 explained the purpose of insertion of section 171(9) of the Act in the following words:

*"31.3 With a view to* ***curbing the practice of creating multiple Hindu undivided families by making partial partitions****, the Finance Act has inserted a new sub- section (9) in section 171 whereunder partial partitions of Hindu undivided families effected after 31st Dec, 1978 will not be recognised for tax purposes. The new sub-section (9) which will apply in the cases of Hindu undivided families which have hitherto been assessed in the status of Hindu undivided families, has made the following provisions in this regard……"*

*Thus, it is not possible to create multiple HUFs.*

* However, this doesn't mean that a family cannot have more than one HUF. It is possible to have a separate HUF with father as the Karta and another HUF with his son or sons as Karta or even with daughters in view of the amendment made in the HS Act in 2005.
* As per section 171, the AO will conduct enquiry whether the HUF has been totally partitioned or it’s a partial partition.
  + Partial Partition- All members are not partitioned or all properties are not partitioned.
  + The effect is that, if partial partition- then income will be continued to be Assessed as income of HUF.

**Ownership of Partitioned Property**

Property received by karta and Sons become part of their respective HUF.

* However, where the recipient is bachelor Individual than income arising from such property will be assessed in his individual capacity unless he finds any mate.
* Since, plurality of persons is essential character of a Family.

Whereas, in case of wife and daughter- such property will become their individual property.

**Section 47:**

**Transactions not regarded as transfer.**

**47.** Nothing contained in [section 45](javascript:ShowMainContent('Act',%20'CMSID',%20'102520000000139766',%20'');) shall apply to the following transfers :—

(*i*) any distribution of capital assets on **the total or partial partition** of a Hindu undivided family;

**If Partial Partition is not allowed, then why does section 47 provide for that?**

* **HUF wont get taxed**

**Powers of alienation**

**6.**The Madras High Court in the case of ***Kandasami* v. *Somakanda*** ILR [1912] 35 Mad 777 held that the power of alienation can be exercised **only by the Karta that too only for the three purposes**-

|  |  |  |
| --- | --- | --- |
| (*i*) |  | Legal necessity |
| (*ii*) |  | Acts benefitting the estate |
| (*iii*) |  | Acts involving indispensable duty |

It was observed in this case that Karta can alienate the joint family property, after obtaining the concensus of the other Coparceners, even in the absence of legal necessity, the benefit of the estate, or acts involving indispensable obligation provided that the **consenting Coparceners are adults.**

**The following are generally recognized as coparcenary property-**

|  |  |  |
| --- | --- | --- |
| (*i*) |  | Ancestral property; |
| (*ii*) |  | Property allotted on partition; |
| (*iii*) |  | Property jointly acquired by coparcenary; |
| (*iv*) |  | Property acquired with the funds of coparcenary, and |
| (*v*) |  | Separate property of a coparcener being thrown into common family hotchpot and treated as coparcenary property. |

Residential status

 (*2*) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

**Creation of HUF-**

* **Individual does not refers to a family-**
* **Family means plurality of perons.**
* Where the family consists of only Husband and wife, an interesting question arises whether **unborn child in the womb of mother along with Husband and wife can constitute a valid HUF. A similar question arose in the case of T.S. Srinivasan vs CIT (1966) 60 ITR 36. In this case, it was agreed that under the Hindu Law, a son conceived has the same rights of property as a living son and therefore, HUF status should be granted from the time the son was conceived**. However, the Apex Court after detailed reasoning held that for the purposes of income-tax Act **unless the son** comes into existence, it is difficult to recognize the status of HUF notwithstanding the fact that the Hindu Law recognizes rights of an unborn son or son in the womb.
* After 2005 Amendment?

Heads of Income For HUF

* + Income from House Property
  + Income from Other Sources
  + Capital Gains
  + Profits and Gains of Business or Profession

Since HUF is an artificial person it cannot earn income from salary.

**Some Case Laws:**

**1.3** The Gujarat High Court in the case of ***Pr. CIT* v. *Vaidya Panalalmanilal (HUF)***[[2018] 98 taxmann.com 189/259 Taxman 19 (Gujarat)](javascript:void(0);) held that where consideration that arose in hands of HUF on sale of capital asset had been invested for purchase of new residential house in name of some of its members instead of assessee (HUF), deduction under section 54F of the Act in hands of HUF would still be permissible.

**11.4** The ITAT Chennai Bench in the case of ***B.S. Venkatesan* v. *ITO*** IT Appeal No.736(Chny) of 2018, dated 22-1-2019 held that the coparcener cannot be taxed for capital gain from property purchased in his name out of income of HUF.

**11.5** The ITAT Chennai Bench in the case of ***Puranchand & Family (HUF)* v. *ITO***[[2017] 79 taxmann.com 156 (Chennai - Trib.)](javascript:void(0);) held that where assessee-HUF used its capital gain from sale of diamonds to purchase a property, even though it was registered in individual name of Karta, property would belong to the HUF and that the HUF would be eligible for exemption under section 54F of the Act.

**11.6** The ITAT Indore Bench in the case of ***Shakuntala Somani* v. *ITO***[2012] 20 taxmann.com 78 (Indore - Trib.) held that where assessee acquired property on partition of HUF, indexed cost of acquisition had to be computed with reference to year in which HUF acquired the property and not the year in which property came to assessee on partition.