



Tax Planning through HUF and Family Arrangement

Organised by WIRC of ICAI on 26/11/2016

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- Hindu Undivided Family [HUF] is a person u/s 2(31) of Income-tax Act 1961
- Expression not defined in Act. It need to understood as it is understood under Hindu Law
 - Surjit Lal Chhabda v. CIT 101 ITR 776 (SC)
- Separate Entity from individual
 - C Krishna Prasa v CIT 97 ITR 493 (SC)
- Creation of law or by agreement?

Hindu Undivided Family?

Entry to membership

- agreement or automatic?

- Mitakshara
 - Benaras School
 - Mithila School
 - Maharashtra or Bombay School
 - Dravida or Madras School
 - Punjab School
- Dayabhaga
- Kerala Joint Hindu Family System (Abolition) Act, 1975

Schools of Hindu Laws

- Hindu Undivided family should be of those to whom Hindu Law applies
 - CWT v. Smt. Champa Kumari Singhi 83 ITR 720 (SC)
- Hindus by birth
- Hindus by conversion in any of its forms or developments
- Brahmans, Arya Samajists etc.
- Illegitimate children whose parents are Hindus.
- Illegitimate children born of a Christian father and a Hindu mother and brought up as Hindus.

To whom Hindu law applies?

- Buddhists, Jains, Sikhs and Nambudry Brahmans except, so far such law is varied by custom and to lingayats who are considered as Shudras.
- Sons of Hindu dancing girls of Naik caste converted to Mohammedanism where the sons are taken into the family of Hindu grandparents and are brought up as Hindus.
- A Hindu by birth who having renounced Hinduism, has reverted to it after performing the religious rites of expiation and repentance, or even without a formal ritual of re-conversion when he was recognised as a Hindu by the community.

To whom Hindu law applies? [Cont.]

- Brahmans and Arya Samajists, and to Santhals of Chhota Nagpur, and also to Santhals of Manbhum except so far as it is not varied by custom
- A person who is born a Hindu and has not renounced the Hindu religion, does not cease to be a Hindu merely because he departs from the standard of orthodoxy in matters of diet and ceremonial observances.

To whom Hindu law applies? [Cont.]

- The Hindu Law of Inheritance Act 1929
- The Hindu Gains of Learning Act 1930
- The Hindu Women's rights to property Act 1937
- The Hindu marries Women's Rights to Separate Residence and Maintenance Act 1946
- The Hindu Marriage Act, 1955
- The Hindu Minority and Guardianship Act, 1956
- The Hindu Adoption and Maintenance Act, 1956

Codified Hindu Law

- The Hindu Succession Act, 1956
- The Caste Disabilities Removal Act, 1850

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The Hindu Widow Remarriage Act, 1856
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- One of the parent is Hindu and the son is brought up as Hindu?
- Son born to a family married under Special Marriage Act 1972 and one of the parent is Hindu and son brought up as Hindu?
- Hindu declares not to be Hindu for the purpose of Special Marriage Act?
 - Marriage solemnized under Special Marriage Act of any of the member of HUF who professes the Hindu, Bhuddhist, Sikh or Jain religion shall deemed to effect his severance

Typical Issues

- Khojas, Cutchi Memons, The Bohras, Moplas, Halai Memons who are Muslim, but follows Hindu Law^s of inheritance and succession subject to Shariat Act, 1937?

- According to the Caste Disabilities Removal Act, 1850 any person who either renounces his religion or has been excluded from the communion of religion or has been deprived of caste
 - does not forfeit his interest in the joint family property but his right of survivorship between him and his coparcener is extinguished
- A male member of a HUF on marriage with non-hindu does not relinquishes his interest in HUF property
 - he ceases to be coparcener, he can realize his interest in

Typical Issues [Cont.]

- Coparcener is that member of family who acquires by birth an interest in the joint property of the joint family, whether inherited or otherwise acquired by the family.
- Member of HUF who are not coparceners do not have right to claim partition of HUF. However if and when partition takes place, a member who is not a coparcener e.g. mother can take a share equal to the sons / daughters.
- Coparcenary consists of a male ancestor and his lineal descendants in the male line within four degree including himself.

Coparcener & Members

- Post amending Hindu Succession Act
 - 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 right 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
 - Any reference to a Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of coparcener

• The daughter is allotted the same share as is allotted to a son

Hindu Succession (Amendment) Act 2005

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- 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 predeceased son of a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or daughter
- Prior to this States of Andhra Pradesh w.e.f. 5.9.1985, Tamil Nadu w.e.f. 25.3.1989, Karnataka w.e.f. 30.7.1995, Maharashtra, have passed the law giving right to daughters

Hindu Succession (Amendment) Act 2005

Under law Hindu daughter is benefitted since they now become coparcener and also have rights under Guardianship and Maintenance Act 1956

- Widow is Class 1 heir post Hindu Succession Act 1956
- Hindu widow remarries
 - Pandurang Narayana Salunke v. Sindhu AIR (1971) (Bom.) 413
- Sole surviving wife
 - Bhartiben S. Jhaveri v. CED 238 ITR 995 (Guj)
- HUF does not come to end till mother has potential bring new member either by birth or adoption

• Anant Bhkappa Patil v. Shankar Ram Chandra Patel AIR (1943) PC 196

Women Member

- Widows of pre-deceased son are not legally entitled for inheriting the deceased's property even if they had

remarried, post deletion of Sec 24 of Hindu Succession Act 1956

- Ancestral property
- Property allotted at a partition
- Property jointly acquired by a coparceners
- Property acquired with the aid of coparcenary property
- Separate property of a coparcener thrown into family hotchpot and treated as coparcenary property
- Separate property of a coparcener blended with coparcenary property

Coparcenary Property

- Receiving gifts
- Receiving property through Will
- Issue – Any property inherited from maternal grandfather¹⁴

- Father is the Karta of the family
- After father senior most member of coparcenary can manage the affairs
- If senior most members gives up right of management, a junior member can act as Karta, with the consent of other
 - Narendra Kumar S. Modi v. CIT 105 ITR 109 (SC)
- Basic qualification to become Karta , a person to whom right of managership devolved must ne coparcener of the joint family

Karta

- Now daughter can also Karta
- Widow Mother can act as Karta?

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- Husband and wife
- Single male member and widows of deceased members
 - Ka;yamji Vithal Das 5 ITR 90 (PC)
- Single male along with wife and daughter
- Brothers and sisters
 - Bharatkumar Chinubhai 74 ITR 1 (Guj)
- Only one member – does not constitutes HUF
- Sole surviving coparcener marries, HUF comes into

existence
Who constitutes HUF

- Partition of larger HUF
 - Partial partition not allowed
- Devolution of interest in coparcenary property of a coparcener who dies intestate
- Inheritance through a specific bequest under will
- Reunion of separated coparceners
- Receipt of gifts
- Blending of individual property with the family

HUF property can be

- Clubbing u/s 64(2)

created?

- Doing joint labour for the benefit of HUF

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- On partition properties may be held separately or as tenants-in-common
- No transfer of property but is analogous to an exchange
 - Atrabansessa Bibi v. Safatullah Min (1916) 43 Cal 509
- Not an Act of conveying property
 - Indoji Jethaji v Kothapalli (1919) 54 IC 146
- Antecedent title possesses by each coparcener is transformed into separate titles of individual coparcener

Partition • Ammathayee alias Perumalappal v Kumaresan AIR (1967) SC 569

- Partition can be arrived by an agreement amongst the coparceners or through arbitration
- Agreement to separate is not required by law to be in writing
 - Bhimraj v. Income-tax Commissioner [1955] (AP) 172
- Memorandum recording facts of oral partition need not be registered
 - Digambar Adhar Patil v. Deram Girdhar Patil 1995 (4) Jt (SC)

Partition [Cont.]

- Mere agreement to divide does not requires registration. But if writing itself effects a division, it must be registered

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• Nani Bai v. Gita Bai AIR [1958] SC 1925 26/11/2016
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- A deed of partitioning share of income of firm, movable

- Unequal partition ?
 - CED v Kantilal Trikamlal [1976] 105 ITR 92 (SC)
 - Father
 - Wife
 - Sons
 - Daughters married / unmarried
 - Expenses of marriage of daughter
 - Brothers

Partition [Cont.]

- Practical difficulties in case not registered
- Separate Entry in Stamp Duty Act
- Reunion

- Fraud
- Mistake in allotment eg not joint property, partitioned
- Joint Property not partitioned
- Creditor obtained decree of a Court
- Partition not fair
- Widow of a deceased coparcener adopts son and partition took place before his adoption. Adopted son would have been entitled to a share. In such case adopted son entitled

to claim reopening

Reopening of partition

• Son in womb and born after death of a coparcener, reopening of partition happen before his birth

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- HUF is resident of India except when control and management of its affairs is wholly situated outside India.
- Control & Management means controlling and directive powers, de facto control & management and not merely right to control & manage
 - CIT v. Nandlal Gandalal 40 ITR 1 (SC)
- HUF NOR –
 - if its Karta has been NR in 9 out of 10 years or
 - has been in India during 7 previous years preceding that year for a period of 729 days or less

Residential Status

- Mere presence of Karta in India does not mean that he is exercising control in India
 - CIT v. PR. PL. Palaniappa Chettiar 13 ITR 269 (Mad)
- Where there is change in Karta, residential status of previous karta is also to be taken into account
 - S. Marimuthu Pillai v. CIT 13 ITR 186 (Mad.)
- Every Hindu living outside India, irrespective of whether holds an Indian, British, US or any other passport and regardless of whether or not he was born in India, is entitled to considerable tax savings through HUF

Residential Status

- If non-resident in India how would they be taxable in other country?

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- Remuneration received by Karta from Firm where HUF is partner
- Remuneration received by Karta from 3rd party
- Remuneration or commission received by the karta on account of personal qualification and exertions and not on account of investment of the family funds in company cannot be treated as income of HUF
 - K S Subbaih Pillai v CIT (1999) 103 Taxman 400 (SC)
 - Corollary – if on account of investment from HUF Funds –

Few consideration

- Gifts
 - By members from HUF
 - Vineetkumar Raghavjibhai Bhalodia [2011] 11 taxmann.com 384 (Rajkot)
 - By HUF from its members
 - Harshadbhai Dahyalal Vaidhya (HUF) [2013] 33 taxmann.com 483 (Ahmedabad - Trib.)
 - By HUF from relatives of members
- Bigger HUF & Small HUF

Few considerations

[Cont.]

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- HUF can hold shares in company
- HUF can be partner in Firm
 - Karta can also be partner in individual capacity as well as representative capacity
 - Remuneration for other members of family
- HUF can be partner in LLP
- HUF can create Trust
 - For charitable or religious obligation of family

Few considerations

[Cont.]



QUESTION?



THERE WILL ALWAYS BE SOMEONE WHO
SAYS THAT THEY CAN DO IT CHEAPER...

I thank you