Frequently asked Questions on Taxation of Hindu Undivided Family

by ***CA. Ajit Kr. Murarka***

Question No. 1 :

Whether expression "Hindu Undivided Family" has been defined in the Income Tax Act, 1961?

Answer :

Expression "Hindu Undivided Family" (HUF) has been used in many provisions of the Income Tax Act, 1961 but is not defined in this Act.

Expression "Hindu Undivided Family" has been defined under the Hindu Law as follows :

"Hindu Undivided Family is a family which consists of all males lineally descended from a common ancestors and includes their wives and unmarried daughters".

Question No. 2 :

Whether daughter is a member of the "Hindu Undivided Family" of her father?

Answer :

No doubt daughter is a member of the HUF of her father but she remains member till her marriage and after her marriage she becomes member of HUF of her husband and ceases to be member of HUF of her father.

Question No. 3 :

Whether a HUF is liable to pay income-tax?

Answer :

As per provision of Section 4 of the Income Tax Act, 1961, every **person** is liable to pay income-tax. Further according to Section 2 (31) of Income Tax Act, 1961, a **person** includes a HUF. Therefore, it is clear that HUF is liable to pay tax because income-tax is payable by every **person** and HUF is included in the definition of **person**.

Question No. 4 :

Is there any difference between the expressions "Hindu Undivided Family" and "Joint Hindu Family"?

Answer :

A "Hindu Undivided Family" is generally known as "Joint Hindu Family". Hence, there is no difference between the two expressions.

Question No. 5 :

What is the difference between "member" and "coparcener" of a HUF?

Answer :

A HUF generally consists of male members and female members but every member of a HUF not always becomes a coparcener.

Only a male member of a HUF can be a coparcener. A coparcener acquires by birth an interest in the joint family property. Further, only a coparcener has right to claim partition.

In other words, a coparcener is one who :

(a) is a male member;

(b) acquires by birth an interest in the joint family property;

(c) has right to claim partition.

Therefore, female members do not enjoy the right to claim partition but they are entitled to maintenance and marriage expenses out of the family property.

Hence it can be said that all the coparceners are members of the HUF but all members are not coparceners.

However it is important to note that above position has changed due to amendments in Hindu Succession Act, 1956. Amendments have been brought by introduction of Hindu Succession (Amendment) Act, 2005. These amendments are effective from 9th September, 2005. With effect from 9th September, 2005, the daughter of a coparcener shall have the following rights under Section 6 :

(a) The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son.

(b) The daughter has the same rights in the coparcenary property as she would have had if she had been a son.

(c) The daughter shall be subject to same liability in the said coparcenery as that of a son.

(d) The daughter is allotted the same share as is allotted to a son.

(e) The share of pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or a pre-deceased daughter.

(f) The share of pre-deceased child of a pre-deceased son or of a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or of a pre-deceased daughter.

Therefore, before amendments a daughter was not entitled to become a coparcener and consequently neither daughter had any right in the coparcenery property nor she was entitled to claim partition. But after the amendments a daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and has the same rights in the coparcenery property as she would have had if she had been a son.

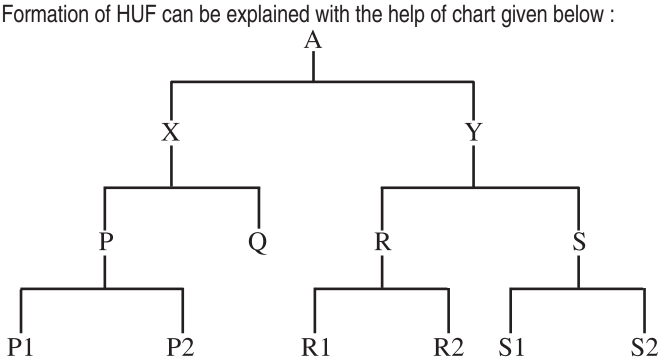
Question No. 6 :

When does a HUF come into existence?

Answer :

A HUF originates from a common male ancestor and consists of descendants of such common male ancestor in the male line, their spouses and unmarried daughters. Again every male descendants of that common ancestor can constitute a HUF with his own descendants. Therefore there can be a smaller HUF within a bigger HUF and that smaller HUF constitutes a branch of bigger HUF. Similarly branches can be formed by each of male descendants of the smaller HUF. In that case these branches becomes the sub-branches of bigger HUF. Thus a HUF may have a number of branches and sub-branches at a particular time.

Formation of HUF can be explained with the help of chart given below :



'A' is the common ancestor of this HUF. This HUF consists of following members:

X & Y = Sons of A

P, Q, R & S = Grandsons of A

P1, P2, R1, R2, S1 & S2 – Great grandsons of A

Branch headed by 'X' has two sub-branches, each headed by 'P' and 'Q'.

Similarly, branch headed by 'Y' has two sub-branches, each headed by 'R' and 'S'.

'Q' has no son but no doubt he constitutes a HUF with his wife and unmarried daughters, if any and he is sole coparcener of his HUF. However, with effect from 9th September, 2005, the daughter shall also be a coparcener.

Question No. 7 :

What is known as ancestral property?

Answer :

Ancestral property is a property which a man inherits from any of his three immediate male ancestors i.e. his father, grandfather and great-grandfather. Property inherited from any other relation cannot be treated as ancestral property.

Question No. 8 :

Can a HUF be created by a contract? How membership is acquired in a HUF?

Answer :

A HUF is creation of law and cannot be created by a contract i.e. it cannot be created by act of parties, except to the extent to which a stranger may be affiliated to the family by adoption. Membership of a HUF arises by birth. A male member continues to be member of the HUF until there is partition of the family. An unmarried female ceases to be member of the family in which she was born after her marriage.

Question No. 9 :

Is Hindu Law applicable uniformly throughout the country?

Answer :

No. There are two schools of thoughts by which Hindu Law has been made applicable in India. These school of thoughts are :

1. Dayabhaga School of Hindu Law &
2. Mitakshara School of Hindu Law

Dayabhaga School of Hindu Law prevails in West Bengal and Assam only. Under Dayabhaga School of Law, son does not acquire any interest by birth in ancestral property. He acquires such interest only after the death of his father. Hence under this school of law son does not enjoy the right to demand partition during the lifetime of his father. Therefore father enjoys the absolute right to dispose of the property of the family according to his own desire and hence it can be said that father does not form any coparcenery along with his sons. After the death of father, the sons become co-owners having definite shares in the property of the deceased and they cannot be treated as HUF unless they decide to live in a joint family and then the coparcenery arises between brothers. Thus the ***father should have a brother as coparcener to form HUF.***

Mitakshara School of Hindu Law applies to whole of India except West Bengal and Assam. Under this school of law, each son acquires by birth an equal interest with his father in ancestral property. The coparcenery fluctuates under this school of law i.e. coparcenery is enlarged at the time of each male birth and reduced with the death of each male member. However, with effect from 9th September, 2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son.

Question No. 10 :

Whether Hindu Law recognizes Jain, Sikh and Buddhist families as HUF?

Answer :

Hindu Law do not recognise Jain, Sikh, Buddhist families as HUF. However Jain, Sikh and Buddhist families are treated as HUF for the purpose of Income Tax Act, 1961.

Question No. 11 :

Whether Muslim and Christian families can be taxed as a HUF?

Answer :

Muslim and Christian families should be taxed as body of individuals.

Question No. 12 :

Whether a daughter-in-law can become a coparcener just like a daughter after introduction of Hindu Succession (Amendment) Act, 2005?

Answer :

No. Hindu Succession (Amendment) Act, 2005 does not empower a daughter-in-law to become a coparcener. Therefore, daughter-in-law, though a member of HUF, neither has any right in the coparcenery property nor she can claim partition.

Question No. 13 :

Can a HUF become a partner in a partnership firm?

Answer :

A HUF can become a partner in a partnership firm. However, when a karta (i.e. manager or head of the family) enters into a contract of partnership with a stranger, the other members of the family do not ***ipso facto*** become partners in the firm. In this case, family as a unit does not become a partner. The Karta can join others in partnership in dual capacity i.e. in his individual capacity as well as in representative capacity (i.e. as Karta of the HUF).

Question No. 14 :

Can there be a partial partition of a HUF?

Answer :

There can be partition amongst the constituents of the family or there can be partition of properties. Partition can be done in two ways :

Total or complete partition :

In case of total partition properties are divided amongst all the constituents of the family, and the family ceases to exist as an undivided family.

Partial partition :

In case of partial partition some of the constituents of the HUF go out of the fold, others remaining joint, or some of the properties of HUF are divided and balance remain joint.

Question No. 15 :

Who can claim partition? Who are entitled to get share in joint family property on partition?

Answer :

Partition can be claimed only by the coparceners. However, following persons are entitled to get share in joint family property on partition :

(a) all coparceners;
(b) a son in the womb of his mother at the time of partition;
(c) mother (she will get equal share if partition takes place between sons after the death of the father)
(d) wife (she will get share equal to that of a son at the time of partition between father and sons).

With effect from 9th September, 2005, the daughter shall also be entitled to equal share on partition as she has also been treated as coparcener like son.

Question No. 16:

When a HUF is assessable as HUF under Income-tax Act, 1961? Answer:

Income of a HUF may be assessed as income of HUF subject to the fulfillment of following two conditions:

1. Coparcenery:

There should be a coparcernership in the family. It implies that:

(a) The persons acquire their interest in the joint family property by birth (thus such persons include sons, grandsons and great grandsons as the holder of joint family property); and
(b) The persons have the right of claiming partition of such property.

2. **Joint Family Property** :

There should be a joint family property (i.e. ancestral property and/or property acquired with the aid of ancestral property and/or property transferred by its members).

Question No. 17:

Whether there must be more than one male member to form a HUF?

Answer :

In the case of ***Gowli Buddanna Vs. CIT [1966] 60 JTR 293 (SC),*** it was held by the Supreme Court that there need not be more than one male member to form a HUF.

Question No. 18:

Whether a HUF must have one male member ?

Answer:

In the case of ***CTT** Vs.* ***RM.AR.AR Veerappa Chettiar [1970] 76 ITR 467 (SC)***, it was held by the Supreme Court that it is not necessary for a HUF that there must be a male member in existence. Even after the death of the sole male member, so long as the property that was originally of the HUF remains in the hands of the widows of the members of the family and not divided among them, the joint family continues.

Question No. 19;

Whether income arising from a separate fund (kept out of joint family property for the marriages of unmarried daughters at the time of partition) can be assessed as income of the HUF ?

Answer:

In the case of ***CIT Vs. Basant Singh [1982] 10 Taxman 49 (Punjab A Haryana),*** it was held that at the time of partition between father and sons if certain sums are provided for the marriage of unmarried daughters then such sum exclusively belongs to the unmarried daughters. The said sum cannot be, in law, said to belong to the Karta. Consequently, the income earned on the said amount cannot be assessable as income of the HUF.

Question No. **20**:

Whether a widow can be karta of a joint family property ?

Answer:

In the case of ***CIT Vs. Seth Govindram Sugar Mills [1956] 571TR 510 (SC)***, it was decided by the Supreme Court that only a coparcener can be karta of a HUF. Since a widow cannot become a coparcener, she has no legal qualification to become the karta of a HUF.

Question No. 21:

Whether it is possible for a single unmarried person to form a HUF with the property received on partition?

Answer:

If an individual who receives a share on partition of joint family cannot constitute a HUF alone although he has potentialities of creating a HUF. Until he marries, he alone cannot be treated as a HUF.

In the case of C ***Krishna Prasad Vs. CIT[1974] 97ITR 493 (SC)***, it was observed by Justice Khanna that:

"The word 'family' always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. He or she would remain, what is inherent in the very nature of things, an individual, a lonely wayfarer till per chance he or she finds a mate".

Question No. 22:

Whether a father who is governed by Dayabhaga School of Hindu Law, can constitute a HUF with his wife and children ?

Answer:

Under Dayabhaga School of Law, son does not acquire any interest by birth in ancestral property. He acquires such interest only after the death of his father. Hence under this school of law son does not enjoy the right to demand partition during the lifetime of his father. Therefore father enjoys the absolute right to dispose of the property of the family according to desire and hence it can be said that father does not form any coparcenery along with his sons.

Considering the above it seems that a father who is governed by Dayabhaga School of Hindu Law, cannot constitute a HUF with his wife and children. Father can only be an individual, except in respect of inherited paternal property held jointly with his co-heirs. However, essential characteristic of a HUF, which is common to both Schools of Hindu Law (i.e Mitakshara and Dayabhaga), is "Sapindaship" and not the holding of a joint family property and, therefore, a father (governed by Dayabhaga School of Hindu Law), like any other Hindu Governed by Mitakshara School of Hindu Law, does comprise a HUF with his wife and children as "Sapindas", and that the denial of the right of the members to the inherited or separate property of the karta does detract from his position.

Question No. 23:

Can a female (mother of a son), along with her son manage HUF as karta of the family when her husband is also alive ?

Answer:

Property belonging to a HUF is ordinarily managed by the father or other senior member, for the time being, of the family. In the case of ***CIT Vs. Seth Govindram Sugar Mills [1956J 57 JTR 510 (SE),*** it was decided by the Supreme Court that only a coparcener can be karta of a HUF and not a mother who is not a coparcener of the HUF. It is, however, not necessary that only the father should act as karta. Any other senior male member can also manage the affairs of the HUF. But if father is unable to manage the affairs of the HUF due to some reasons and the son (s) is (are) minor, the mother may represent the family for the limited purposes like for the purposes of income-tax assessment and recovery of taxes.

Question No. 24:

Whether it is possible for an individual to transfer his self-acquired property to the HUF of which he is a member ?

Answer:

There is no restriction on an individual if he transfers his self-acquired property to the HUF of which he is a member.

For applying the "Doctrine of blending", however, there are certain preconditions:

(a) existence of coparcenery;

(b) existence of coparcenery property; and

(c) existence of a separate property of a coparcener.

The existence of a coparcenery is absolutely necessary before a coparcener can throw into common stock his self-acquired properties. The doctrine of throwing into the common stock is a doctrine peculiar to the Mitakshara School of Hindu Law where every coparcener is entitled to throw his separate property into the common stock.

However, Section 64 (2) of the Income Tax Act, 1961 provides that where an individual, who is member of the HUF :

(a) converts his separate property as the property of the HUF, or

(b) throws the property into the common stock of the family, or

(c) otherwise transfers his individual property to the family, otherwise than for adequate consideration, men the income from such property shall continue to be included in the total income of the individual and cannot be treated as income of the HUF.

Question No. 25:

Whether it is possible for a female member to blend her self-acquired property with that of the HUF ?

Answer:

The existence of a coparcenery is absolutely necessary before a coparcener can throw into common stock his self-acquired properties. The right of blending (i.e. impressing one's property with the character of joint family property) is, therefore, limited to coparceners. A female member of the family (not being a coparcener) cannot blend her self-acquired property with that of the HUF.

However, with effect from 9th September, 2005, The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. ■

ILLUSTRATION ON TAXATION OF HUF

From the following information submitted by R, the Karta of a HUF consisting of four members viz., R, S, T and U sharing the income equally, compute :

(a) The total income of the HUF and its members;

(b) The tax liability of the HUF and its members for the A.Y. 2010-11.

		Rs.
1.	Rent received from a joint family property let out	25,600
2.	Salary received by S from A Limited	1,66,000
3.	Profit from business of HUF	1,90,000
4.	Long-term capital gain on sale of gold belonging to HUF	30,000
5.	Short-term capital gain on sale of shares on 5-11-2009 through a recognised stock exchange held in the name of R (purchased out of family funds)	25,000
6.	Dividends received from units of UTI held in the name of R (purchased out of family funds) (Gross)	9,000
7.	Share of profit from a firm in which the Karta was a partner representing the HUF	40,000
8.	Donation to National Defence Fund (out of family funds)	10,000
9.	Director's remuneration received by T on account of his personal qualifications from a company in which shares are held by R, the Karta (shares purchased out of family funds)	1,88,000
10.	Dividends received by R on units of mutual fund (purchased out of his own funds)	9,000
11.	Short-term capital gains on sale of above units on 15-11-2009 through recognised stock exchange	1,64,000
12.	Payment made by cheque for insuring the health of U	5,000
13.	Amount deposited in PPF account in the name of Karta (out of family funds)	30,000

Solution :

Computation of Total Income and Tax Liability of HUF

(Assessment Year 2010-11)

	Rs.	Rs.
Income from house property :		
Net Annual Value (Rent received)	25,600	
Less : Statutory deduction (@ 30% of NAV)	7,680	17,920
Profit and gains of business or profession :		
Profit from business	1,90,000	
Share of profit from firm [Exempt under Section 10(2A)]	----------	1,90,000
Capital gains :		
LTCG on sale of gold	30,000	
STCG on sale of shares	25,000	55,000

<u>Income from other sources</u> :

Dividend from units of UTI held in name of R (purchased out of family funds) [Exempt under Section 10(35)**]	----------	----------
Gross Total Income		2,62,920
Less : Deductions under Section 80C to 80U :		
U/S 80C (on PPF)	30,000	
U/S 80D (on health insurance premium)	5,000	
U/S 80G (on donation to National Defence Fund : 100% of Rs. 10,000)	10,000	45,000
Total Income		2,17,920
<u>Tax on Total Income of Rs. 2,17,920</u> :		
Tax on LTCG of Rs. 30,000 @ 20% as per Section 112	6,000	
Tax on STCG of Rs. 25,000 @ 15% as per Section 111A	3,750	
Tax on balance income of Rs. 1,62,920 at normal rates	292	10,042
Add : Surcharge		Nil
		10,042
Add : EC @ 2%		201
Add : SHEC @ 1%		100
Tax Liability (rounded-off)		10,340

****<u>Section 10 (35)</u> :**

Like Section 10(34) (which exempts dividend received from domestic companies), Section 10(35) exempts income received on units of UTI and Mutual Funds covered under Section 10(23D).

<u>Computation of Total Income and Tax Liability of Members</u>

<u>(Assessment Year 2010-11)</u>

	R **Rs.**	**S** **Rs.**	**T** **Rs.**	**U** **Rs.**
Income from salaries		1,66,000	1,88,000	
Share of profit from HUF [Exempt U/S 10(2)]	-----------	-----------	-----------	-----------
Short-term capital gain on units of mutual fund	1,64,000			
Dividend on units of mutual fund [Exempt u/s 10(35)]	-----------			
Gross Total Income	1,64,000	1,66,000	1,88,000	Nil
Less : Deductions U/S 80C to 80U	Nil	Nil	Nil	Nil
Total Income	1,64,000	1,66,000	1,88,000	Nil
<u>Tax on Total Income</u> :				
Tax on Rs. 4,000 (Rs. 1,64,000 – Rs. 1,60,000) @ ***10%*** as per Section 111A (applicable in case of R only)	400	-----------	-----------	-----------
Tax on balance at normal rates	-----------	600	2,800	-----------
	400	600	2,800	Nil
Add : EC @ 2%	8	12	56	Nil
Add : SHEC @ 1%	4	6	28	Nil
Tax Liability (rounded-off)	410	620	2,880	Nil