

HINDU UNDIVIDED FAMILIES

DUAL STATUS IS PERMISSIBLE IN TAX LAWS

The Hindu law is applicable not only to the Hindus but also the Jains, the Sikhs and the Buddhists, as also converts or reconverts to these religions. Hence the tax shelter provided by the Hindu law is available to a large section of the Hindus. Arya Samajists, Brahmos, Lingayats, Radhaswamis, Satsang is, Swayamariyathais, self-respecters as opposed to Purohit cult have all been treated as movements in Hinduism and not outside it. To be a Hindu it is not necessary that a person should undergo any ritual. (The Supreme Court in the case of *Perumal v. Ponnuswamy* held that any person can become a Hindu after expressing his intention that he lives as a Hindu and that the community or caste into the fold of which he is ushered has accepted him as a member of that community or caste. A non-Hindu can become a Hindu also by undergoing the formality of conversion prescribed by a caste or community to which he converts.)

When one of the parents is a Hindu and he is brought up as a Hindu, he will be a Hindu. It is possible for non-Hindus like Khojhas, Cutchi Memons, the Bohras, Moplas and the Holai Memons who are Muslims to follow Hindu law of inheritance and succession subject to the provisions of the Shariat Act, 1937. Some Christian communities also follow the Hindu law of succession, but the status of a Hindu joint family cannot be claimed by them even if Hindu law of succession is followed.

Even a Hindu who declares for the purposes of Special Marriage Act, 1872 that he is not a Hindu does not cease to be a Hindu for purpose of succession as held in the case of *CIT v. Partap Chand Son* born of a family married under Special Marriage Act, even where one of them is a Christian, can be a Hindu, if brought up as a Hindu as held in the case of *CWT v. R. Sridharan* (SC)

BASIC CONDITIONS FOR HUF

In the case of *P. C. Balasubramanian* it was pointed out that a joint family is a creature of law and not of contract. An ancestral nucleus is the pre-requisite. The ancestral asset received even on family arrangement can be treated only as joint family property as was held in the case of *Arvind Chandulal v. CIT*. However, there should be at least two members to constitute a Hindu joint family as held in the case of *C. Krishna Prasad v. CIT*. Even if there be one male member along with family members, it can be a Hindu joint family either by survivorship as held in the case of *Gowli Buddanna v. CIT* or even on partition as held in *N. V. Narendranath v. CWT*.

ANCESTRAL PROPERTY

Ancestral property, however small it may be, can form a nucleus of a Hindu undivided family, where the income is separately got nurtured. Where the income is nil or insignificant, it will be better if such property is realised and deployed in revenue yielding avenues so as to have a separate taxable entity. Joint family nucleus has greatly helped to establish the status of joint family however small such nucleus might have been compared to the total outlay on investments. It has to be remembered that a joint family property cannot become individual property, since the rights of other members of the family are involved. The karta is only a manager of the joint family and he cannot appropriate the assets or income for his individual

benefit. On the other hand, nothing prevents him from blending his individual income and treating his individual investments as joint family assets.

EFFECT OF BLENDING / GIFTING OF PROPERTY

When an individual stamps his personal property with joint family character, blends or throws into common hotchpotch, the property belongs The hence forward to the joint family. No registered instrument is necessary for this purpose has held in the case of CIT v. Kanhaiya Lal.

A female member cannot blend her personal property with the joint family property as held in the case o Pushpa Devi v. CIT But she can gift her property so as to constitute it as HUF property as held in CITv. M. Balasubramanian.

Though generally a gift from a female is a gift of her individual property, where the gift is specifically for the joint family, the gifted amount has to be treated as joint family property. Even in a case where there was no specific direction by the lady to this effect, but she gave money for conduct of business to the senior-most member of the family for the benefit of all her sons, such gifted amount can be treated as joint family property as has been held in CIT v. K. Satyendra Kumar.

If an individual, who is the sole coparcener in the family, blends his individual property, such property Will become the joint family property, but it will continue to be assessed in individual hands, since he continues to exercise absolute power of alienation as sole coparcener as held in the case of Surjit Lal Chhabda v. CIT. Blending, however, now statutorily invites application of aggregation provisions under section 64.

There is a belief that there should be something in hotchpotch before a Hindu joint family could be recognised. It was in this context that it was thought that by mere act of blending individual property, a joint family cannot be created. The Supreme Court in the case of Surjit Lal Chhabda v. CIT had an occasion to deal with such a situation. The result was rather disappointing for the taxpayer, though the Supreme Court held that a joint family status can be created by the act of blending individual property or throwing it in the common hotchpotch (even when it is empty) and there by vesting it with joint family character. But all the same the Supreme Court held that in view of the absolute right of alienation which such individual continues to command in cases where there is no other male member, the Department is entitled to continue to assess the income from such blended property as individual property. Section 64(2) has now recognised the principle in the statute itself. It is, however, recognised that an act of blending can create a joint family without anything in the common hotchpotch. The joint family created by blending serves no immediate purpose since the income will continue to be assessed in the hands of the person who blends his property. It is now recognised that a property devised by will or gift with clear intention that the beneficiary should hold the property as karta of his joint family can only be treated as joint family property.

GIFT CAN BE MODE OF CREATION OF JOINT FAMILY

It is possible for a joint Hindu family to receive gifts as long as the intention of the donor to benefit the Hindu joint family and not the individual is patent and clear. In the case of *M.P.Periakaruppan Chettiar* the Supreme Court found that a mere statement in the gift deed to the effect that the gift was in favour of the donees and their respective heirs, executors, administrators and assigns did not evidence any intention to make a gift to the joint family. All

the same this decision recognised that there could be a gift to the joint family, if appropriately worded. Ordinarily, the presumption in any gift is that the intention is for personal benefit of the donee. The Supreme Court has recognised the principle that there can be a gift in favour of a Hindu Undivided Family, if such intention is clearly expressed, as held in the case of *C.M. Arunachala v. Muruganatha* in following words.

GIFT BY WILL

The same reasoning which enables the gift in favour of a Hindu joint family would justify creation of HUF by a will. In the case of *CIT v. Radhambal Ammal*, a will made by adoptive father in favour of his adopted son with a provision that the benefit will be for the donee and any son born to him after the marriage, it was held, indicated the intention to benefit the Hindu joint family. This decision is approved later by the Full Bench of the same High Court in the case of *CWT v/s. M. Balasubramaniam* where a statement that the gift in favour of the son was for the benefit of him self, his wife and children was treated as sufficiently indicative of the intention that the income should be assessed in the hands of the Hindu joint family so that immediately on marriage the property was assessable for wealth-tax and income-tax as joint family property.

SALARY TO KARTA

The splitting up of the income as between joint family and individual is a possibility inherent in dual status. While individual assets can get pooled with joint family assets by blending, the HUF income may also get diverted into individual hands where, for example, the karta gets salary from HUF for services rendered by him to the joint family. Such salary income is assessable in individual hands.

REMUNERATION WHEN BELONGS TO HUF

Remuneration drawn as a managing director of a company may well be assessable in the hands of the joint family, if such remuneration has been given not because of the contribution of the managing director as an individual but because of the investment (family fund) in the company and such directorship is a reward for such investments. It was so held in the case of *CTT v. Kalu Babu Lal Chand*. Even where there may be a personal exertion, it may still be income of the family, if such income is earned by detriment to the family fund as held in the case of *P.N. Krishna Iyer v. CIT*. Hence there may be many borderline cases, where it may be capable of being offered as joint family income without controversy, if care is taken to present the facts in the proper perspective even at the first instance. The Supreme Court has again held that if salary is part of return of the investment on the family, it is income of the HUF as held in *CIT v. Trilok Nath Mehrotra*.

CAN HUF BE A PARTNER IN PARTNERSHIP FIRM

Though a Hindu joint family as such cannot enter into a partnership, the *karta* can do so. In such a case, the partnership share will be assessable in the hands of HUF of which he is the *karta*. It was so held in the case of *CIT v. Seth Govindram Sugar Mills*. Any member of a joint family can enter into a partnership on behalf of the HUF. It is possible for a Hindu Joint Family to enter into a partnership with its members in their individual capacity even without a partition as between them.

In *Bagyalakshmi & Co.* it was pointed out that the status of a person, who becomes a partner in his capacity as karta is that of trustee as regards partnership law, which recognises only an

individual as a partner. In such a case, he has a dual capacity, that of an individual functioning in his personal capacity under partnership law vis a vis his co-partners and third parties and that of a joint family under Hindu law vis a vis other members of the family and direct tax laws.

EFFECT OF DEATH OF COPARCENER

On the death of the last coparcener, it is no longer assessable as a Hindu joint family. The decision of the Supreme Court in the case of *CIT v. RMARAR Veerappa Chettiar* to the contrary should, therefore, be treated as confined to the preexisting law. It is because all the female members under the Hindu Succession Act became absolute owner of their respective rights.

Where the karta has died and the widow and minor son have inherited the property, income is to be assessed as joint family property in the absence of an actual partition as held in *CIT v. Maharani Raj Lakshmi Devi*.

PARTITION ALSO MAY HELP TAX PLANNING

Ordinarily, dual capacity, helps to reduce tax. But where the HUF has a large income with many coparceners, the liability of the HUF will be such that it can be effectively reduced only by a full may help where all the members have not reached the maximum slab rate. There may be even instances where the liability could become a small fraction of former liability on partition. Where, however, the largeness of income is in respect of capital gains, on which a flat rate is applicable, a partition would not help. But even in such a case, the sale of the asset after partition may enable the reinvestment benefit for such of those members who do not have a house to avail of the benefit of section 54F and even otherwise under section 54EC and 54ED.

Section 171 of the Income-tax Act requires that a Hindu joint family hitherto assessed should continue to be assessed as such unless a partition has been recognised. It was once possible to have a partial partition. But an amendment to section 171 by the Finance (No.2) Act, 1980 by way of insertion of sub-section (9) to the said section has derecognised any partial partition made after 31st day of December, 1978, "Partial partition" for this purpose has been defined in the Explanation there to as a partition which is partial as regards the persons constituting the HUF or the properties belonging to the HUF or both.

Partial partitions had helped multiple joint families, but with partial partition not being possible, one can still have three interests, firstly, as a member of larger Hindu Undivided Family with his sons, secondly, with himself and his wife as smaller joint family after partition with his sons and thirdly his own individual assessment. Partial partition is now not recognised by law under section 171(9).

The most important point to be noted for recognition of a partition in a joint family which has been hitherto assessed is the condition that there should be a partition by metes and bounds. There should be a physical division of the property. While the Hindu law will be content to recognise partition by mere severance of status without a physical division, the tax laws, whether of income tax or wealth-tax, would require such physical division. The argument that it was not possible to physically divide the property among the coparceners and that, therefore, the property continues to be joint would be no answer to the requirement of physical division.

POTENTIAL FAMILY

An individual may acquire joint family property by survivorship or on partition. He has to be assessed only as an individual till his marriage, since a joint family implies plurality of membership. In the case of *T.S. Srinivasan v. CIT*. It was held that it cannot be held that a joint family comes into existence merely on a male child being conceived as presumed under the Hindu law, but only on the birth of a son, as HUF is not in existence prior to this date. But the question as to whether the HUF comes into existence on marriage itself was not raised in this case.

The generally accepted view is that the sole surviving coparcener on marriage holds the property as potential joint family, which comes into existence on marriage. It was so held in the case of *Prem Kumar v. CIT* But in the case of *CIT v. Shanker Lal Budhia* and *CIT v. Vishnukumar Bhaiy HUF* it has been held that a marriage by it self will make no difference and that till a son is born, the status will only be that of an Individual. But the Madras High Court in the case of *S. Periannan v. CIT* agreed with the more liberal view of the Allahabad High Court that the HUF comes into existence on marriage. Same view was taken in *CITv. Arun Kumar Jhunjhun-wala & Sons*.

REUNION OF FAMILY AFTER PARTITION

Is it possible for a family after having partitioned or partially partitioned to bring back to the HUF where a tax or other considerations would make such reunion advisable ? The Hindu law certainly permits the parties, who have effected partition, to reunite. Such an agreement need not necessarily be in writing. An oral agreement with clear intention of the parties to reunite would bring back a joint family. At the same time, there are certain disabilities in the sense that where one of the parties is a minor, it is not possible for a reunion since even the guardian or the parent cannot give consent for such reunion.

Even if only some of the parties reunite pooling with the assets allotted to them, there is no bar to a reunion as was held in the case of *Godavarthy Venkamma v. G. Venkatanarayana*. As long as all the properties subjected to partition are brought back by the erstwhile coparceners willing for reunion, there is a reunion as was held by the Madras High Court in the case of *CIT v. A.M. Vaiyapuri Chettiar*.