Technical Guide on Taxation of HUFs

Direct Taxes Committee

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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Foreword to the First Edition

As per the Income-tax Act, 1961, a Hindu Undivided family (HUF) is considered as separate legal entity and assessed to Income-tax as a distinct person and there are separate provisions for HUF for the purpose of computation of tax. The Income-tax Act,1961, also contains provisions for clubbing of income of a HUF in the hands of a member in certain cases. Businesses in India are largely family oriented which has both positive and negative aspects.

In legal parlance, a Hindu Undivided Family (HUF) is a joint family consisting of lineal descendant members from a common ancestor. It is considered as a separate tax entity that is automatically constituted whenever a marriage takes place. The senior-most male member of the family is ordinary regarded as the Karta of the HUF. The Income of a HUF is subjected to tax separately (not in the hands of members) and HUF is required to obtain a separate Permanent Account Number (PAN). It can earn income from all sources, except salary. Rental income can also be earned on ancestral or other property held by a HUF.

The Institute of Chartered Accountants of India (ICAI) has always been proactive in spreading the knowledge and augmenting the skills of its members. I am really happy to note that the Direct Taxes Committee (DTC) of ICAI has come out with this publication namely ***"Technical Guide on Taxation of HUFs"*** so as to assist the members in meeting their professional commitments in more effective manner.

I appreciate the efforts of CA. Chandrashekhar V. Chitale, Chairman, CA. Satish K. Gupta, Vice-Chairman, and all the members of Direct Taxes Committee who have worked selflessly for bringing out this publication in a timely manner for the benefit of all the stakeholders.

I am sure that this publication will help the members in supplementing their knowledge & discharging their professional commitments in a more effective manner.

Date: August 31, 2021 **CA. Nihar N. Jambusaria**

Place: New Delhi **President, ICAI**

Preface to the First Edition

Taxation of HUF being peculiar to this Country draws a lot of interest amongst tax payers. The prevailing social environment is leading to the melting of large HUFs and a movement towards nuclear families resulting in a need for arranging the affairs especially in family-owned businesses.

India is known for its big happy families; we epitomize the large family structure. As the members are well aware that the Hindu Undivided Family (HUF) is a separate tax entity that is automatically constituted when a marriage takes place. The income of an HUF is subject to tax separately (not in the hands of members) and an HUF is required to obtain a separate Permanent Account Number. An HUF can earn income from all sources, except salary. It may invest in a business and earn profits or earn capital gains. Rental income can be earned on ancestral or other property held by an HUF.

To elaborate on the matter of taxation of HUFs and provide guidance to the members, this publication will prove to be very useful. This publication covers laws and procedures relating to taxation of HUFs. Such a publication provides a great public service by making all the relevant information available in a simple and well-organised manner.

Further, we in the Direct Taxes Committee consider it pertinent to release this publication as "**Technical Guide on Taxation of HUFs**" to assist the fraternity in proper compliance & to remove the ambiguities of the professionals w.r.t provisions and procedures of HUF.

We are sincerely thankful to CA. Nihar Niranjan Jambusaria, President, ICAI and CA. (Dr.) Debashis Mitra, Vice-President, ICAI for being guiding force behind all initiatives being taken by the Committee.

We are pleased to place on record my sincere gratitude for the involvements by all the Committee members and our dear Council Colleagues of ICAI. We are sure that this effort of DTC of ICAI would go a long way in assisting our members in making utmost compliance of the new provisions.

Last but not the least, I appreciate the dedicated efforts of the CA. Shrutika Oberoi, Secretary; CA. Ravi Gupta, Executive Officer and CA. Ajay Yadav, Project Associate of Direct Taxes Committee for their technical and

administrative assistance in bringing out this first edition of the said publication in limited time.

CA. Satish K. Gupta
Vice-Chairman,
Direct Tax Committee, ICAI

CA. Chandrashekhar V. Chitale
Chairman,
Direct Tax Committee, ICAI

Date: August 31, 2021

Place: New Delhi

Acknowledgement

The Direct Taxes Committee of ICAI acknowledge the contribution made by CA. Chandrashekhar V. Chitale, Chairman, Direct Taxes Committee of ICAI for the purpose of developing the publication namely ***"Technical Guide on Taxation of HUFs".*** We place on record our gratitude for his contribution in enrichment of knowledge of the members.

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Chapter 1
A Hindu

The concept 'Hindu Undivided Family' or 'Joint Hindu Family' has Hindu as an important ingredient. It is, therefore, necessary that the persons who are part of HUF are all Hindu.

This leads tom the issue, as to who is Hindu?

The Income tax Act, 1961 includes Hindu Undivided Family as a 'person' in the definition of the term defined under section 2(31). However, the said does not define either Hindu Undivided Family or Hindu.

Let's understand whom we can call Hindu.

Courts

Hon. Supreme Court has observed that 'When we think of the Hindu religion, unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one god; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more'.

(Yagnapurushadjj V. Muldas Brudardas Vaishya Archived 1966 AIR 1119)

A dispute came before the Income tax Appellate tribunal, the Trust trust was set up with the object of "*worship of Lord Shiva, Hanumanji, Goddess Durga and maintaining of temple*" and "*to celebrate festivals like Shivratri, Hanuman Jayanti, Ganesh Uttasav, Makar Sankranti*". It applied for a certificate under section 80G. S. 80G(5) provides that the trust should be established for a "*charitable purpose*". Explanation 3 to s. 80G provides that "*charitable purpose*" does not include a purpose which is of a "*religious nature*". There is also a stipulation that the trust should not be expressed to be for the benefit of any particular religious community or caste. On rejected the application for registration on the ground that the Trust was set up for "religious" purposes. On appeal by the Trust to the Tribunal, it was held that:

The Objects

The objects of the assessee is not for advancement, support or propagation of a particular religion. Worshipping Lord Shiva, Hanumanji, Goddess Durga and maintaining the temple is not advancement, support or propagation of a particular religion. Lord Shiva, Hanumanji & Goddess Durga do not represent any particular religion. They are merely regarded to be the super power of the universe. Further, there is no religion like “Hinduism”. The word “Hindu” is not defined in any of the texts nor in judge made law. The word was given by British administrators to inhabitants of India, who were not Christians, Muslims, Parsis or Jews. Hinduism is a way of life. It consists of a number of communities having different gods who are being worshipped in a different manner, different rituals, different ethical codes. The worship of god is not essential for a person who has adopted Hinduism way of life. Therefore, expenses incurred for worshipping of Lord Shiva, Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose

The Supreme Court has observed that the word Hindu is derived from the word Sindhu, otherwise known as Indus river. The Persians pronounced this word Hindu and named their Aryan brethren 'Hindus'. Dr. Radhakrishnan has also observed that the Hindu civilisation is so called since its original founders or earliest followers occupied the territory drained by the Sindhu (Indus) river system corresponding to the North West provinces in Punjab. This is recorded in Rig Veda, the oldest of the Vedas. The people on the Indian side of the Sindhu were called Hindus by the Persians and later Western invaders. That is the genesis of the word Hindu. Thus, the term Hindu had originally a territorial and not a creedal significance. It implied residence in a well-defined geographical area. Today, the term 'Hindu' has lost its territorial significance. It is also not a designation of nationality. To Whom Hindu Law Applies: H

The Supreme Court of India in the landmark case of Sastri Yagnapurushadji vs Muldas Brudardas Vaishya (1966 AIR 1119, 1966 SCR (3) 242) expressly defined the term ‘Hindu’. This case is related to the Swami Narayan temple in Ahmedabad. There is a group of people called the Satsangi who were managing the temple and they restricted non-Satsangi Harijans from entering the temple. They argued that Satsangi is a different religion and they are not bound by Hindu Law. The Supreme Court of India held that the Satsangi, Arya Samajis and Radhaswami, all these belong to the Hindu religion because they originated under Hindu philosophy.

Legislation

The Constitution of India has defined Hindu.

The term "Hindu" has been defined in the Constitution under Article 25(2)(b) Explanation II as "Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly"

Codified Hindu Laws such as The Hindu Marriage Act, 1955 (HMA), Hindu Adoption and Maintenance Act, 1956 (HAMA), Hindu Minority and Guardianship Act, 1956 (HMGA) & Hindu Succession Act, 1956 (HSA) this Act applies to

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation. —The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

Sum Up

A person can be called as a Hindu, who:

- Is a Hindu by religion in any form.
- Is a Buddhist, Jaina or Sikh by religion.
- Is born from Hindu parents.
- Is not a Muslim, Parsi, Christian or Jews and are not governed under Hindu law.
- Lodge in India.

Only a Hindu can constitute Hindu Undivided Family (HUF).

Chapter 2
HUF – Meaning and Creation

Under Hindu Law, an HUF is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. An HUF cannot be created under a contract, it is created automatically in a Hindu Family. Jain and Sikh families even though are not governed by the Hindu Law, but they are treated as HUF under the Act. (Commentary on website of the Income tax Department)

The Court, in case of *Subhadra Devi Nevatia* v *Department of Income Tax* (ITA Appeal No.1298/Kol/2011), has thus observed: "The HUF consists of members of a joint family who are lineally ascendant or descendant of the individual. Outside the limits of coparcenary there is a fringe of persons, males and females, who constitute an undivided or joint Hindu family. Further, there is no limit to the number of persons who can compose it nor to their remoteness from the common ancestor and to their relationship with one another. It consists of a group of persons who are united by the tie of sapindaship arising by birth, marriage or adoption."

Product of Custom

As explained earlier, HUF is product of Hindu custom. Members of HUF should be related to each other as family. This happens by marriage, birth or adoption.

Under Hindu Law, an HUF is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. An HUF cannot be created under a contract, it is created automatically in a Hindu Family.

Let's assume that there is a person Shri Akash Patil. He gets married with Mrs. Akanksha. The HUF comes into existence. viz Shri Akash Patil HUF. In the HUF, Shri Akash Patil is a coparcener and member and Mrs. Akanksha is a member.

A daughter Asha is born. At this moment there are two coparceners Shri Akash Patil and Asha and one member Mrs. Akanksha.

Alternatively, a son Adarsh is born. Then at this moment there are two coparceners Shri Akash Patil and Adarsh and one member Mrs. Akanksha.

Alternatively, a daughter is adopted who is named Asha. At this moment there are two coparceners Shri Akash Patil and Asha and one member Mrs. Akanksha.

A daughter Asha is born and thereafter a son Adarsh is born. Then there are three coparceners Shri Akash Patil, Asha and Adarsh one member Mrs. Akanksha.

Let's further assume Asha and Adarsh get married, in due course of time and have children. Asha has husband Devendra Date and a son Devashish and Adarsh has wife Aditi and a son Amish. In such circumstances, the Shri Akash Patil HUF shall be comprised of Shri Akash Patil, Asha, Adarsh and Amish and two members Mrs. Akanksha and Mrs. Aditi. However, Asha's husband Devendra and a son Devashish shall not be members of Shri Akash Patil HUF. Asha, her husband Devendra and a son Devashish are members of Shri Devendra Date HUF, wherein Devendra and a son Devashish are coparceners and Asha is a member.

Tax Laws

In Direct Tax Laws one often conies across the terms 'Hindu Undivided Family' (HUF). In Hindu Law, the expression 'Hindu joint family' has been used. In *N.V. Narendranath* v. *CWT* [1969] 74 ITR 190. The Supreme Court, in this judgment, ruled that the HUF in tax statutes has the same meaning as Hindu joint family under Hindu Law. HUF is essentially a creature of law. It confers a status on its members which can be acquired by birth in the family or by marriage to a male member of the family. A HUF is a distinct entity for the purpose of tax and it is included in the definition of a person in section 2(31) of the Income-tax Act. As per Hindu Law, existence of joint estate is not an essential requisite to constitute a joint Hindu family and there can be joint families without owning any property. However, such families are of no relevance from the point of view of tax laws.

HUF cannot be constituted by the acts of parties. Thus, two brothers cannot join together to say that they have constituted a HUF. This way they can only form a partnership firm or AOP.

In *Surjit Lal Chhabda* v. *CIT* [1975] 101 ITR 776, the Supreme Court has confirmed this view by saying that a HUF with all its incidents, is a creature

of law and cannot be created by acts of parties except to the extent to which a stranger may be affiliated to the family by adoption. But the absence of an antecedent history of jointness between a person and his ancestors is no impediment to the person (appellant before the S.C.), his wife and unmarried daughter forming a Joint Hindu Family.

Features of HUF

The court judgments have unfolded various characteristics of HUF. The following is summary of certain important aspects.

Sole Male Member

A joint family can consist of a single male member and widows of deceased male members and the income-tax law does not require that a HUF, for being an assessable entity must consist of at least two male members - *Gowli Buddanna* v. *CIT* [1966] 60 ITR 293 /296 (SC) [Also *see Surjit Lal Chhabda* (*supra*)].

HUF can consist of a single male member, his wife and unmarried daughters [*N.V. Narendranath* v. *CWT* (*supra*)].

It can even consist of one male member and his unmarried daughter - *CIT* v. *Harshvadan Mangaldas* [1992] 194 ITR 136 (Guj.).

More than one person is required to constitute a HUF. A male surviving member of HUF (unmarried) or widower cannot form a HUF.

Only Female Members

HUF can consist of two female members without any male member - *CIT* v. *RM.AR.AR. Veerappa Chettiar* [1970] 76 ITR 467 (SC). Even a Hindu family might consist of only the widow of sole coparcener and his minor unmarried daughter, yet the family would continue to be a HUF because the widow, being a potential mother, could always adopt a son to her deceased husband and thereby continue the line.

The Hindu Succession Act has introduced far-reaching changes in the structure of Hindu Law of inheritance and succession, and a Hindu widow, by virtue of section 14 of that Act, may become a "fresh stock of descent" as the absolute owner of the property but as she has become the full owner of her husband's property, her children, if any, by her first husband, her adopted son, if she cares to adopt, and her children if she gets married again, may

form one joint family but none of them can have any right, by birth in her property and, hence, the HUF as ordinarily understood in Hindu Law cannot be brought into existence - *Rukmini Bai Rathor* v. *CWT* [1964] 54 ITO 430 (Ori.).

Creating a HUF

As seen earlier, creating a HUF is a misnomer. To talk of 'creation' of a HUF, literally means creating a tax entity.

A HUF consists of the common ancestor and all his lineal male descendants up to any generation together with the wife or wives (or widows) and unmarried daughters of the common ancestor and of the lineal male descendants. It has to be clearly understood that the existence of the common ancestor is necessary for bringing a joint family into existence; for this continuance common ancestor is not a necessity. The death of the common ancestor does not mean that the joint family will come to an end. Upper links are removed and new (lower) ones are added and in this manner, so long as the line does not become extinct or disruption is not brought about by partition, the joint family continues and can continue indefinitely, almost till perpetuity.

Thus, a HUF cannot be created. Therefore, when one talks of creating a HUF, one implies creating such an entity for tax purposes.

In this background, the word 'creation' can be associated with the HUF property. HUF property can be created by blending of one's personal property with the HUF property, conversion of one's personal property in HUF's property, by gifts, inheritance, will, etc.

A Hindu Undivided Family for tax purposes can only come into existence if it owns some property or earns some income which is taxable.

Broadly, there are seven ways in which a Hindu Undivided Family can become a taxable entity:

(1) On devolution of interest in coparcenary property of a coparcener who dies intestate.

(2) By inheritance through a specific bequest under a will.

(3) When there is partition in a larger Hindu Undivided Family.

(4) When separated coparceners of a HUF reunite.

(5) Through receipt of gifts.

(6) By blending of individual property with the character of Hindu Undivided Family property, *i.e.,* by throwing self-acquired property into the hotchpotch.

(7) Through Joint Labour for the benefit of HUF.

The position discussed above can be summed up as under:

(*i*) A HUF cannot be created by act of parties (except by adoption). It can come into existence by any of the ways discussed earlier.

(*ii*) It is not necessary that the HUF must own property.

(*iii*) Individuals owning separate properties cannot constitute a HUF by pooling together their separate properties in common pool.

(*iv*) For throwing properties into the hotchpotch, a HUF kitty is necessary, though it may be an empty kitty.

(*v*) A coparcenary is different from HUF.

A HUF exists with just two members one of whom is a coparcener. But for an entity to be taxed as a HUF, it should have at least two coparceners. For instance, if HUF consists of only the husband and wife, then there is only one coparcener. So it will not be taxed in the hands of HUF. It will be taxed in the hands of a sole coparcener. However, exception is in the case where the funds are received on the partition of larger HUF.

Creation?

Creation of HUF is a misnomer.

There is a common impression going on that any two Hindus of the same ancestor can join together and constitute a HUF entity for tax purposes failing to appreciate that a HUF cannot be created by acts of parties. On the contrary, there are a number of wrong impressions also going around that at least two male members are necessary to constitute a HUF for tax purposes, that a HUF must have some ancestral property in its kitty and the like. This chapter has dispelled such wrong impressions and has clarified the matter.

Being a taxable entity is advantageous for a family, In order to appear on tax record certain procedures are prescribed therefor. Permanent Account Number (PAN) is a starting point. There are other formalities that are

required to be performed like any other taxpayer. Important aspects out of these have been dealt with in various chapters in this book.

Deed?

Though it is not mandatory to have a deed for the formation of an HUF, it is advisable to execute one from a legal and taxation perspective. It should include details of the karta, members of the HUF consisting of coparceners, and other family members, the corpus as well as the business of the HUF.

HUF may be formed with or without a legal deed. From certain quarters it is stated that it is always advisable to pursue a business with a written document. With respect to a HUF, a legal deed consists of details of membership of the HUF, the source of funds, and the likes of it. The Deed acts as proof of the existence of the entity that has been formed.

The document should include a declaration by a family member for the name of the Karta, powers vested with the Kartha, and the entitlement of the Kartha to hold the transactions on behalf of its members. In addition to it, the document should state the capital that was invested in forming the HUF.

The Appendix has provided alternate drafts for the HUF Deed. Of course, these are recommendatory and not mandatory. One can employ any format of his choice or can proceed without any deed.

Chapter 3
Concept of Multiple HUFs

Bigger HUF/Smaller HUF

There can be a bigger family and smaller families on partition or otherwise.

It is possible that an individual can be a member of more than one HUF.

For example:

Let's assume that there is a person Shri Akash Avinash Patil. He gets married with Mrs. Akanksha. Let's further assume Asha and Adarsh get married, in due course of time and have children. Asha has husband Devendra Date and a son Devashish and Adarsh has wife Aditi and a son Amish. In such circumstances, the Shri Akash Patil HUF shall be comprised of four coparceners i.e. Shri Akash Patil, Asha, Adarsh and Amish and two members Mrs. Akanksha and Mrs. Aditi. However, Asha's husband Devendra and a son Devashish shall not be members of Shri Akash Patil HUF. Asha, her husband Devendra and a son Devashish are members of Shri Devendra Date HUF, wherein Devendra and a son Devashish are coparceners and Asha is a member.

Thus, in this example Adarsh shall be simultaneously member and coparcener of Shri Akash Patil HUF as well as of Shri Adarsh Patil HUF. Adarsh shall also be Karta of Shri Adarsh Patil HUF.

Asha shall be simultaneously member and coparcener of Shri Akash Patil HUF and only member of Shri Devendra Date HUF.

All these HUFs can have separate income and are assessed severally. Therefore, threshold limit as also exemptions and deductions can be separately enjoyed.

Multiple HUFs

It is to be noted that Multiple HUFs that were in existence earlier are different from Bigger/Mahor HUF and Smaller/Minor HUF and it should be noted that only Multiple HUF is not possible these days but it is possible to have Bigger HUF as well as smaller HUFs in the same family without any infraction of law.

Multiple HUFs was in practice in the States like Maharashtra and Gujarat, where by custom, a person used to write the first name of his father in his name as middle name and an unmarried daughter used to write the name of her father in her name as middle name and further, a married lady used to write the first name of her husband in her name as middle name.

However, provisions of Section 171(9) were introduced in the Income tax 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".

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 no longer 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.

Taxation Aspect

From the tax planning point of view, consider the following position:

Say (Gopal Chettiar) GC HUF is carrying on business with substantial turnover and the profit is substantial even after payment of salary, commensurate with the business needs and market conditions to Karta and other adult coparceners working in the business. It is presumed that the bigger GC HUF is headed by GC as Karta and it consists of his wife W, three sons S1, S2 and S3 and also 2 daughters D1 and D2. All of them are married with three daughters-in-law and grandchildren. Considering that the busines carried on is the only asset of this HUF, the capital of the business can be

partitioned between the coparceners. The amount that would be received by W, D1 and D2 would be assessed in their individual capacity. Capital received by N the sons S1 to S3 would form HUF with their respective wife and children.

Thus multiple HUFs would come into existence and tax liability can be reduced. [Ref. ***CIT* v. *K.T.S. Nagamanickam Chettiar*** [1984] 19 Taxman 121/148 ITR 115 (Mad), reiterated in the case of ***CIT* v. *K.T.S. Nagamanickam Chettiar*** [1994] 206 ITR 284 (Mad)].

Sum Up

If there is a family having A as a Karta and his wife AW and a son S and daughter D. Both son and daughter are married and having children. S is having a married son GS and married grandson GGS and both are blessed with families.

In this example:

Daughter D is simultaneously coparcener of A HUF and a member of her husband's HUF say, DH HUF. She will also be member of all HUFs of which her Husband DH is a coparcener i.e. HUF of his father, his grandfather and his great grandfather.

GGS is Karta of GGS HUF and coparcener of GS HUF [HUF of his father], S HUF [HUF of his grandfather] and A HUF [HUF of his great grandfather].

GS is Karta of GS HUF and coparcener of S HUF [HUF of his father], A HUF [HUF of his grandfather]

S is Karta of S HUF and coparcener of A HUF [HUF of his father].

This is concept of bigger and smaller HUFs simultaneously existing. Each HUF separately enjoying tax benefits provided for a person.

Chapter 4
Karta

Karta is head of the Hindu Undivided Family. He is also called manager.

Title "Karta" is usually used to describe the main family member and is traditionally inherited by men. The Karta occupies a position superior to that of other members and has full authority to manage property, rituals or other crucial affairs of the family.

Customarily, an adult male member manages the affairs of the HUF. He is called as Karta or Manager of the family. Further, it should be understood that customarily, a co-parcener can become Karta. The senior most member of the family assumes position of Karta of HUF.

It is possible that such a senior most member may give up his right of management and a junior member may by consent, be appointed as Karta.

Minor as Karta

As regards, junior male members, as long as a senior member is available, any junior member cannot become Karta. Of course, when all the coparceners agree to the junior member occupying managerial position, a junior member of HUF can become Karta. This view has been re-affirmed by the Narendra Kumar v. CIT [AIR 1976 SC 1953]. If it turns out that a minor is the only one left to be manager, he can as long as a capable guardian represents him.

Section 21 of the Guardians and Wards Act, 1890 recognises the competence of minors to occupy managerial position in an undivided family. [Sarda Prasad v. Umeshwar Prasad (1963) Pat 274]

Female as Karta

The Delhi high court while hearing a case of **Mrs. Sujata Sharma Vs Shri Manu Gupta (**Appeal Number: CS(OS) 2011/2006**)** pronounced that "If a male member of a Hindu Undivided Family (HUF), by virtue of his being the first-born eldest, can be a Karta, so can a female member. The court finds no restriction in law preventing the eldest female co-parcenor of an HUF, from being its Karta.

The ruling came on a suit filed by the eldest daughter of a business family in north Delhi staking claim to be its Karta on the passing of her father and three uncles. The eldest son of a younger brother declared himself to be the next Karta. But, he was challenged by the daughter of the eldest brother.

The family consisted of four brothers, with the surviving eldest shouldering the responsibility of Karta. Trouble began when the brothers passed away. The eldest son of a younger brother declared himself to be the next Karta, but was challenged by the daughter of the eldest brother who is also the senior most member of the family.

The term co-parcenor refers to rights derived in Hindu law to be the joint legal heir of assets in a family. Traditional Hindu view, based on treatises such as Dharmshastra and Mitakshara school of law, recognises only male inheritors to ancestral property. Amendments to the Hindu Succession Act in 2005 introduced section 6 that levelled the playing field for women.

Article 236 of the Mulla Hindu Law defines "Karta":

Manager - Property belonging to a joint family is ordinarily managed by the father or other senior member for the time being of the family: The Manager of a joint family is called Karta. In a HUF, the responsibility of Karta is to manage the HUF property. He is the custodian of the income and assets of the HUF. He is liable to make good to other family members with their shares of all sums which he has misappropriated or which he spent for purposes other than those in which the joint family was interested. His role is crucial. He is entrusted not only with the management of land/assets of the family but also is entrusted to do the general welfare of the family.

His position is different from the manager of a company or a partnership. The reason behind it is that though the coparcenery deals with lands, assets/property but in an entirely different fashion. When a Karta is bestowed with such a position it is something, which takes place under the operation of law.

Powers

K*arta* has absolute power to manage the property belonging to HUF. This power cannot be challenged in a court. Any coparcener, who is not satisfied with the decisions of Karta can demand partition of family property at any point of time.

However, this power of alienation of Karta of HUF property is, as per Mitakshara law and rulings of various courts,is subject to requirement of consent of all the other coparceners for alienation unless:

(i) there is a legal necessity (*Dev Kishan v. Ram Kishan*, AIR 2002 Raj 370), or

(ii) it is for the benefit of estate (*Balmukund v. Kamlavati*, AIR 1964 SC 1385).

The *Karta* may also alienate property without consent of the coparceners for the performance of indispensable duties.

A decision taken by the *karta* in these special circumstances cannot normally be challenged in the court. However, where such a challenge is brought before the court, the burden of proof will lie on the Karta to prove that there was in fact presence of legal necessity, benefit of estate or indispensable duties.

Further, if the *karta* alienates the HUF property for purposes other than the three mentioned above, without taking consent of all the other coparceners, the alienation becomes voidable at the instance of any one of the coparceners.

Gift

The Supreme Court has examined the question in the case of Guramma Bhratar Chanbasappa Deshmukh and Ors. etc. v. Mallappa Chanbappa and Anr. etc., AIR 1964 Supreme Court 510 and has held that it was competent for a Hindu father to make a gift of immovable property to a daughter if the gift is of a reasonable extent having regard to the properties held by the family.

The Orissa Court in the case of Tara Sahuani and Ors. v. Raghunath Sahu and Anr., AIR 1963 Orissa 51, upheld the power of a Hindu father in making a gift of ancestral immovable property if the extent of gift is reasonable.

Chapter 5
One Person & His HUF

Family-meaning thereof:

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 perchance he or she finds a mate. A family consisting of a single individual is a contradiction in terms. Section 2(31) treats a HUF as an entity distinct and different from an individual and it would, be wrong not to keep that difference in view.

Therefore, the issue arises what is locus standi of custom on a single person and his HUF?

One Person Family?

Hon. Supreme Court, in case of C. Krishna Prasad *v. CIT* [97 ITR 343 SC] considered a case where the Assessee, along with his father, 'K' and brother 'C', formed a HUF up to 30-10-1958 when there was a partition between father and two sons. In the said partition the Assessee, a bachelor, got some house properties and vacant sites. Up to the Assessment Year 1963-64, the Assessee was assessed in the status of an individual. However, in course of assessment proceedings for the relevant assessment year he claimed that he should be assessed in the status of HUF. The revenue authorities rejected the Assessee's claim. On reference, the High Court also agreed with the departmental authorities.

Hon. Supreme Court thus held:

The Assessee, at present, was the absolute owner of the property which fell to his share as a result of partition and he could deal with it as he wished. There was admittedly no female member in existence who was entitled to maintenance from the above-mentioned property or who was capable of adopting a son to a deceased coparcener. Even if the Assessee - in future introduces a new member into the family by adoption or otherwise, his present full ownership of the property cannot be affected. Such a new member on becoming a member of the co-parcenary would be entitled to such share in the property as would remain undisposed of by the assessee.

As things were at present in the instant case, there could be hardly any doubt that the Assessee was an individual and not a family. hence, the appeal having no merit, was to be dismissed.

One Coparcener Family?

What is fate of the family property in the hands of a single coparcener?

The Supreme Court has addressed in the case of *Gowli Buddanna* [60 ITR 293 (SC)] and decided as under:

"Property of a joint family, therefore, does not cease to belong to the family merely because the family is represented by a single coparcener who possesses rights which an owner of property may possess. In the case in hand the property which yielded the income originally belonged to a Hindu undivided family. On the death of Buddappa, the family which included a widow and females born in the family was represented by Buddanna alone, but the property still continued to belong to that undivided family and income received therefrom was taxable as income of the Hindu undivided family." (p. 302)

Similar issue of property wherein there was a single coparcener thereafter came for decision of the Supreme Court in the case of *N. V. Narendranath* [74 ITR 190(SC)]. While rendering judgment, the Supreme Court, ruled:

". .. In this connection, a distinction must be drawn between two classes of cases where an assessee is sought to be assessed in respect of ancestral property held by him : (1) where property not originally joint is received by the assessee and the question has to be asked whether it has acquired the character of a joint family property in the hands of the assessee, and (2) where the property already impressed with the character of joint family property comes into the hands of the assessee as a single coparcener and the question required to be considered is whether it has retained the character of joint family property in the hands of the assessee or is converted into absolute property of the assessee. . . ." (p. 193)

The Court concluded its order by stating that when a coparcener having a wife and two minor daughters and no son receives his share of the joint family properties, such properties in the hands of the coparcener belong to the HUF of himself, his wife and minor daughters.

Such property cannot be assessed as his individual property.

Conclusion

One thing significant which follows from the above is that the assessment in the status of a Hindu undivided family can be made only when there are two or more members of the Hindu undivided family.

Can a single male constitute HUF?

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. (Refer CIT vs. Parshottamdas K. Panchal (2002) 257 ITR 96 (Guj). In cases where the property held by the person who claims it to be his own, had in fact been held by a joint family earlier and is ipso facto capable of being held by other sharers as well in future if and when the family comes into existence and a son, whether by birth or adoption, is added thereto, such property continues to retain the character of joint family property, even when the family is reduced to a single male member as in the case of a sole surviving coparcener. Though such a sole surviving coparcener may be assessable as an individual as he cannot be said to have a family, unless there are, in fact female joint family members in the family, the character of the property continues unaltered as joint family property though for the time being it is not shared with any other member of the family and may or may not be subject to any charge in favour of anyone else for any purpose. When the assessee got married and acquired a family that family constituted a Hindu undivided family and the ancestral property which the assessee had received at the partition became the property of that Hindu undivided family. In cases where the property even at the time it vested in the hands of the family had the character of ancestral property the absence of a son, who can claim partition, does not render what is joint family property, individual property. The test is not as to whether his issues are male or female. The test is whether the property was ancestral. Therefore an individual who receives ancestral property at partition and who subsequently acquires a family, but had no male issues would hold that property only a property of the Hindu undivided family. (Refer W.P.A.R Rajagopalan vs. C.W.T (2000) 241 ITR 344(Madras).

Property of Single Member

In cases where the property held by the person who claims it to be his own,

had in fact been held by a HUF earlier and is ipso facto capable of being held by other sharers. Iin future, if and when the family comes into existence and a son, whether by birth or adoption, is added thereto, such property continues to retain the character of joint family property, even when the family is reduced to a single male member or the case of a sole surviving coparcener.

Such a sole surviving coparcener is assessable as an individual as he cannot be said to have a family. Still, the character of the property continues unaltered as HUF property though for the time being it is not shared with any other member of the family. The moment such a sole coparcener gets married and acquires a family that family constitutes a Hindu Undivided Family. Thereafter, property which the sole coparcener had received at the partition became the property of his Hindu Undivided Family. In cases where the property even at the time it vested in the hands of the family had the character of ancestral property the absence of a son, who can claim partition, does not render what is joint family property, individual property. The test is not as to whether his issues are male or female. The test is whether the property was ancestral. Therefore an individual who receives ancestral property at partition and who subsequently acquires a family, but had no male issues would hold that property only a property of the Hindu undivided family. [W.P.A.R Rajagopalan vs. C.W.T (2000) 241 ITR 344(Madras)].

Chapter 6
Husband-Wife HUF

Hon. High Court of Gauhati in case of Commissioner of Income-tax *v.* Arun Kumar Jhunjhunwalla & Sons [[1997] 93 TAXMAN 26 (Gauhati)] has thus held:

13. It is now abundantly clear that in order to constitute a joint family, it is not always necessary that there should be two male coparceners. Even prior to the Hindu Succession Act, 1956 in a joint family property a wife or other female members were entitled to maintenance under the Hindu Women's Right to Property Act, 1937. This Act introduced an important change in the law relating to the rights of women.

Succession dame into force from 14-4-1937. This Act gave at least limited right to property to certain classes of the women members of the joint family. This limited right has been converted to a full right as per section 14 of the Hindu Succession Act. Besides, under section 6 of the Hindu Succession Act, this aspect has also been dealt with by providing the manner of devolution of interest in the coparcener property. Section 8 gives right in the property of a male Hindu which is to be devolved according to the section as mentioned in the said Act. However, from the above provisions of the Act, a Hindu is also empowered to dispose of other property which is capable of being disposed of by him in the Indian Succession Act, 1956 but all these provisions indicate that a female has also a right over the property. In our opinion, a coparcener does not have an unfettered right of disposal of property under the present law. In *Mulchand Sukmal Jain's* case (*supra*) this Court also held that "a joint Hindu family consists of all persons lineally descendant from a common ancestor and includes their wives and unmarried daughters) family may consist of single male member and widows of deceased male members or unmarried daughters".

Considering the discussions made above, we are of the opinion that the said Arun Kumar Jhunjhunwalla after his marriage could duly form an HUF and the assessee can be recognised as an assessee in the status of a HUF and not as an individual. In this connection, the learned appellate Tribunal was justified in coming to the conclusion that the assessee got status of a HUF family.

As per Hindu law, ancestral property means property acquired by forefathers. Therefore, any property which is received by the coparcener on partition is always considered as ancestral property. However, it is to be noted that if the coparcener is unmarried on the date of partition then income from such property would be assessed in his hands in individual capacity till he gets married, reason being that single person cannot constitute family.(C Krishna Prasad-CIT 97 ITR 343 SC.) It was held by the apex court that once a property gets the character of HUF/ancestral property, it continues to have such character even though holder of estate may be single. Till he gets married, he is the absolute owner and can dispose it in any manner he likes. Therefore, in the absence of family, the income from such property is liable to be assessed in individual capacity. In case, he gets married before the end of the year then, such income would be assessed in hands of HUF consisting of himself and his wife.

Chapter 7
PAN for HUF

Permanent Account Number – PAN is the key for any income tax process.

HUF as a tax entity has to commence its journey with undergoing process for obtaining PAN.

The Karta should apply to obtain a PAN Card, which is an important document for pursuing financial transactions. The application for PAN must be made in Form 49A, either online through the NSDL website or manual means.

The PAN Card must be used by the entity for the filing of income tax returns and claiming applicable deductions. The application for PAN and income-tax return should consist of the signature of the Karta.

Name of the entity should be combination of two factors viz. name of karta and Hindu Undivided Family as a suffix. For example, Shri. Akash Avinash Patil has a wife, a daughter, a son, a daughter in law and a grandson as members. Then its name can be Shri. Akash Avinash Patil Hindu Undivided Family or Shri. Akash Avinash Patil HUF.

Along with application for PAN, an affidavit about HUF should be enclosed. A specimen of Affidavit is enclosed in the Appendix hereunder appearing.

After application for PAN, in due course of time, PAN shall be allotted. This is the key for the further process of opening of bank account, making investments, starting business, etc. This will lead to the income earning process of the HUF. That is an essence of HUF from tax planning context.

Form 49A

Application for PAN is made in Form No. 49A, prescribed by the CBDT. Important aspects should be kept in mind.

Sr. No. 1 name is required to be stated, which should end with word HUF or Hindu Undivided Family.

Sr. No. 5 Date of Birth/Incorporation to be stated as date of marriage of the Karta or Manager

Sr. No. 10 status to be stated as Hindu Undivided Family

Sr. No. 13 Source of income – It cannot be salary. Out of other sources, please consider appropriate ones based on current and proposed income sources.

Sr. No. 16 declaration should be signed by Karta or Manager of the HUF

Instructions for filling Form No. 49A are also stated beneath the Form and the same should be carefully read and observed. It also mentions how old certain documents like electricity bill, landline telephone bill, water bill, etc. cannot be more than three months old.

Remember

PAN is the key for any entity to enter the world of income tax. After obtaining PAN, the entity or HUF can open any bank account. Thereafter, it can commence activities like investment in property – movable or immovable – entering into business.

It is, therefore, necessary to apply for and obtain PAN for HUF.

Chapter 8
Residential Status

Taxability of a person is largely dependent on residential status. Section 6 of Income Tax Act contains the provisions related to determination of residential status.

There are two types of residential status being resident and non-resident in most country's tax law like of Indian Tax law. However, Indian Tax Law also created further classification of status of Resident for a person being 'natural person' or individual.

Clause (*42*) of Section 2 of the Income tax Act, 1961 (the Act) defines "resident" to mean a person who is resident in India within the meaning of section 6.

Clause (*30*) of Section 2 of the Act, "non-resident" means a person who is not a "resident", and for the purposes of sections 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of clause (*6*) of section 6.

Scope of total income

5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(*a*) is received or is deemed to be received in India in such year by or on behalf of such person; or

(*b*) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(*c*) accrues or arises to him outside India during such year :

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6)* of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source

derived which—

(*a*) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(*b*) accrues or arises or is deemed to accrue or arise to him in India during such year.

Chapter 9
Residential Status of HUF

To determine the residential status of a HUF, it is first necessary to ascertain whether the HUF is resident or a non-resident. When the HUF is a resident, then the next step is to ascertain whether it is resident and ordinarily resident or is resident but not ordinarily resident.

Part I : Determining whether HUF is resident or non-resident:

Sub-section (2) of Section 6 provides that a Hindu undivided family 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.

Thus, for the purpose of Income-tax Law, a HUF will be treated as resident in India, if the control and management of the affairs of the HUF is located partly or wholly in India.

If the control and management of the affairs of the HUF is wholly located outside India than it will be treated as non-resident.

Part II : Determining whether HUF is resident and ordinarily resident or resident but not ordinarily resident:

Clause (b) of sub-section (6) of Section 6 provides that a Hindu undivided family is said to be "not ordinarily resident" in India in any previous year if its manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.

In all other cases the HUF is "resident and ordinarily resident."

It will be appreciated that *sub-section (6) of Section 6 provides that* if a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

Residential Status of Karta or Manager:

A resident HUF will be treated as resident and ordinarily resident in India during the year if its manager (*i.e.* karta or manager) satisfies both the condition given in section 6(1) of the Act.

A resident HUF whose manager (*i.e.* karta or manager) satisfies any of the conditions for "resident but not ordinarily resident" the HUF will be treated as resident but not ordinarily resident and vice versa.

*Sub-section (1) of Section 6 provides that a*n individual i.e. karta or manager (contextually) is said to be resident in India in any previous year, if he —

(*a*) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(*c*) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

The following two explanations have been attached to the aforesaid provision.

Explanation 1.—In the case of an individual,—

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted;

(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted [20][and in case of [21][such person] having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted].]

Explanation 2.—For the purposes of this clause, in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.[22]

Sub-section (1A) of Section 6 provides that notwithstanding anything contained in (1) above, an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

Thus, under any one of the two aforesaid criterion, an individual being karta or manager of an HUF shall be resident or non-resident.

Whether Karta is resident and ordinarily resident or resident but not ordinarily resident:

This issue is to be addressed as follows:

Clause (b) of sub-section (6) of Section 6 provides that A person is said to be "not ordinarily resident" in India in any previous year if such person, being an individual i.e. Karta or Manager of HUF, who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.

In all other cases the Karta is "resident and ordinarily resident."

Is HUF always be a resident of India

It is not necessary that a HUF must always be a resident of India. In case the control and management of the HUF are situated outside India, the HUF would be a non-resident. Where the affairs of the HUF are managed from outside India, the HUF would be a non-resident.

Karta of HUF sits outside India. HUF is managed by the other members residing in India. Will HUF be a non-resident?

The residential status of a HUF is determined not on the basis of where the Karta resides but on the basis of where the HUF is managed from. In a case, though the Karta resides outside India, the HUF is managed by members from India and hence the HUF will be a resident of India.

If Karta visits India even for a day and manages affairs of HUF, it will become resident in India.

As per the provisions of section 6(2) of the Act, an HUF is said to be resident in India in any previous year in every case except where during the year the control and management of its affairs is situated outside India. The Place of Effective Management (POEM, in short) was introduced for corporates few years back only, but for HUFs, they have been there from day one, in a simple way.

Residential status of HUF

The Supreme Court in the case of *CIT* v. *Nandlal Gandalal* [1960] 40 ITR 1 (SC) held that if a coparcener becomes a partner on behalf of a joint family with strangers in a firm which carries on business in taxable territories, that by itself will not determine residence of family unless control and management of firm is at least in part, with HUF.

The Supreme Court in the case of ***V. VR. N.M. Subbayya Chettiar* v. *CIT*** [1951] 19 ITR 168 (SC) dismissing the case of the assessee held as under-

"The words used in section 4A(b) of the 1922 Act(akin to section 6 of the Act) do clearly show firstly, that, normally, a HUF will be taken to be resident in the taxable territories, but such a presumption will not apply if the case can be brought under the second part of the provision. Secondly, the word 'affairs' must mean affairs which are relevant for the purpose of the Act and which have some relation to income. Thirdly, in order to bring the case under the exception, one has to ask whether the seat of the direction and control of the affairs of the family is inside or outside (then) British India. Lastly, the word 'wholly' suggests that a HUF may have more than one 'residence' in the same way as a corporation may have.

As regards the issue as to whether the central control and management of the affairs of the assessee's family had been shown to be divided in the instant case, the mere fact that the assessee had a house in British India, where his mother lived could not constitute that place the seat of control and management of the affairs of the family. Nor could one attach much importance to the fact that the assessee had to stay in British India for 101 days in a particular year. He was undoubtedly interested in the litigation with regard to his family property as well as in the income-tax proceedings, and by merely coming out to India to take part in them, he could not be said to

have shifted the seat of management and control of the affairs of his family, or to have started a second centre for such control and management. The same remark must apply to the starting of two partnership businesses, as mere 'activity' could not be the test of residence.

There could be no doubt that the onus of proving facts which would bring his case within the exception which is provided by the latter part of section 4A(b), was on the assessee. The assessee was called upon to adduce evidence to show that the control and management of the affairs of the family was situated wholly outside the taxable territories, but the correspondence to which the Assistant Commissioner referred and other material evidence which might have shown that normally and as a matter of course the affairs in India were also being controlled from Colombo were not produced. The position therefore, was that on the one hand, there was the fact that the head and Karta of the assessee's family who controlled and managed its affairs permanently lived in Colombo and the family was domiciled in Ceylon. On the other hand, there were certain acts done by the Karta himself in British India, which, though not conclusive by themselves to establish the existence of more than one centre of control for the affairs of the family, were by no means irrelevant to the matter in issue and therefore could not be completely ruled out of consideration in determining it. In these circumstances, and in the absence of the material evidence, the finding of the Assistant Commissioner that the onus of proving such facts as would bring his case within the exception had not been discharged by the assessee and the normal presumption must be given effect to, appeared to be a legitimate conclusion. In that view, the appeal was to be dismissed."

Thus, when a coparcener enters into partnership with strangers, it cannot be concluded that Hindu undivided family exercises controlling power of management over partnership-firm. Therefore, if a coparcener becomes a partner on behalf of joint family with strangers in a firm which carries on business in taxable territories, that by itself will not determine residence of family unless control and management of firm is at least in part, with HUF.

Chapter 10
Assessment of HUF

HUF is a person under income tax Act [Section 2(31)]. It is different than the persons constituting the HUF. Separate income can be earned by HUF. Therefore, it is necessary to have separate assessment of this entity.

The following guide is provided by the website of the Income tax Department concerning assessment of HUF.

An HUF is recognized as a separate assessable entity under the Act. Its income may be assessed if following two conditions are satisfied:

(i) There should be a coparcenership. In this connection, it is worthwhile to mention that once a joint family income is assessed as that of HUF, it continues to be assessed as such in subsequent assessment years till partition is claimed by coparceners.

(ii) There should be a joint family property which consists of ancestral property, property acquired with the aid of ancestral property and property transferred by its members.

Ancestral Property: Ancestral property may be defined as the property which a man inherits from any of his three immediate male ancestors, i.e. his father, grandfather and great grandfather. Therefore, property inherited from any other relation is not treated as ancestral property. Income from ancestral property held by following families is taxable as income of HUF:

a) A family of widow mother and sons (may be minor or major);

b) Family of husband and wife, having no child;

c) Family of two widows of deceased brothers;

d) Family of two or more brothers;

e) Family of uncle and nephew;

f) Family of mother, son and son's wife;

g) Family of a male and his late brother's wife.

Property obtained by daughter from joint family property would be her absolute property. Any income therefrom is chargeable to tax in her hands in

the individual status only. This will also apply to any legal heir obtaining property in the capacity of a descendent.

Auther's Comments:

The HUF having separate income is required to furnish return of income

Income Computation

There are no separate rules for computation of income for HUF. It is computed in a manner similar to any other Assessee.

HUF is not a natural person. Therefore, it cannot be employed. For salary income, employer-employee relations are necessary. As such, HUF cannot have income from salary. For similar reasons, HUF cannot earn income from profession. In order to practice any profession, there is need of a professional qualification, which cannot be available for a HUF.

HUF can earn income from House Property when it acquires any house property. With own capital. HUF can earn income from business as also capital gain. With deposit, loan, shareholding, etc. income from other sources can be earned by HUF.

Deductions under Chapter VI A can be availed by the HUF.

The resultant income is subjected to tax.

Where HUF has agricultural land, it can earn tax free income from agriculture. Similarly, any tax free investment can be acquired by HUF and can earn tax free income, for example, tax free RBI Bonds, etc.

Tax Liability

The tax liabilities in this regard are to be seen from two angles. 'Ilie first is general tax liability upon regular assessment and second is tax liability upon partition as envisaged u/s 171 of the Income-Tax Act, 1961. in respect of tax liability arising to HUF assessees upon partition, Section 171(6), (7) and (8) contain specific provisions as to who are liable for such liability.

Section 171(6) in no uncertain terms states that any member of the HUF is jointly and severally liable for the tax liability of HUF assessees. Section 171(7) provides that in case the liability is proposed to be realized from the members, the Assessing officer has to recover it from the members in proportion to the assets received by the particular member on partition

whether partial or total. Once it is collected from the individual members in proportion to the assets received by them and even after such realization if any demand remains, the same can be collected from any member with whom any asset is available. Section 171(8) specifies the quantum of tax liability which is capable of being realized in relation to Section 171 of the Act.

Part V of the Second Schedule contains Rule 73. Provisions regarding arrest and detention of the defaulter and the Explanation to this rule 73 clarifies that "for the purposes of this rule, where the defaulter is a Hindu Undivided family, the karta thereof shall be deemed to be the defaulter".

It can be summed up that tax liability of all the members of HUFs in relation to HUF is limited to the extent of the property/assets received on partition. It doesn't extend beyond and individual property of the member is not amenable to the recovery of taxes against the HUF.

Chapter 11
Capital Formation

Essential Ingredient

In order to earn income, there should be a source.

A person can work and earn salary income. House property – residential or commercial or factory building or godown, etc. – owner earns income from house property. For business income, business should be carried on. Professional qualifications are necessary for earning income from profession. Capital gains are earned on sale of any capital asset. Income from other sources like interest, dividend, rent, etc. requires ownership of asset.

From the context of HUF, it is not a natural person and as such cannot earn income from salary or profession.

Ownership of house property, business, capital assets, deposit, shares, property or assets lead to other incomes. However, to gain ownership of these property, availability of capital is a must.

In nut shell, for tax planning, HUF as a separate entity is fancied by tax payers. This can happen only when HUF earns separate income. Such income is possible for HUF only with ownership of assets. Ownership of assets is possible only if HUF has capital.

Thus, capital formation for HUF is a must – from taxation perspective.

Sources of Capital

Broadly, there are seven ways in which a Hindu Undivided Family can source capital:

(1) Inheritance through a specific bequest under a will.

(2) Partition in a larger Hindu Undivided Family.

(3) Receipt of gifts.

(4) Blending of individual property with the character of HUF property

(5) Joint Labour for the benefit of HUF.

It is necessary to identify source of funds clearly with the Hindu Undivided Family, as opposed to Karta or any other member of the HUF. Because, taxpayers are interested in having an entity that lightens burden to tax by sharing or earning separate income and paying tax on it. Such separate income affords advantages of threshold exemption, tax at lower slabs, deductions for investments (LIP, PPF, Housing Loan, NSC, etc.) and certain incomes (interest, etc.).

Identification of income with the Hindu Undivided Family is possible only through availability of capital at HUF's disposal. It is, therefore, important that availability of capital should be clearly demonstrated with the HUF. This aspect is closely examined by the tax authorities.

Capital added through Income Generation

From the capital created by the HUF, it can earn further income and generate more capital. The HUF can earn income from all sources (except Salary) and the income so earned would help the **HUF create more capital**. Some examples of sources from where a HUF can earn more income are:-

1. Through any Business
2. Investing in Shares and Mutual Funds,
3. Investing in Real Estate
4. Investing in fixed deposits
5. Through Rental Income
6. Various other sources

Taxation

The income earned by the HUF would be taxable as per the Income Tax Slabs and the HUF is also required to file income tax returns just like Individuals. All income tax deductions are also available to HUF just like they are available to an Individual.

Income from Business

Moreover, if the turnover of the business of the HUF is more than the limit specified under Section 44AB i.e. Rs. 50 Lakhs/ Rs 1 Crore, it would also be required to get an audit conducted by a Chartered Accountant.

With the existing capital in hand, the HUF can engage in creating additional

income and generate further capital. HUF is allowed to earn from all legitimate ways except by way of salary. It can engage in business, investing in real estate and market linked investment options such as shares, earn income through rent etc. The HUF should file Income Tax Returns and income earned would be taxed as per the progressive slabs. The deductions available to HUFs are akin to the ones available to individual taxpayers.

The deductions and exemptions available to HUF are more or less the same as the ones available to individuals under various sections of the IT act. For example, the HUF can invest in long term infra bonds and claim deductions u/s 80CCF or avail deductions in the income earned u/s 80D for mediclaim premium paid towards HUF members.

In short, income earned by the HUF adds to the capital of the HUF. Through such accumulated funds, further income can be earned.

Gift

If gift is received by HUF, it adds to capital of the family. It goes without saying that gift is out of natural love and affection. This aspect can be questioned by the Income tax Department. The HUF will have to establish this aspect in no uncertain manner.

If a gift is received from members of the HUF, then the income generated from these funds would get clubbed and taxed in the hands of the member making the gift. Whatever income is earned out of amount gifted to the HUF, such income is included in the income of the doner member. This process of clubbing of income shall continue for ever.

The aspect to be noted is that income from the amount gifted is liable for such an inclusion or clubbing. Clubbing does not apply to income earned on amount of income.

However, if this amount of gift from members of the HUF, is invested in tax-free instruments, the members making the gift will not have to bear extra tax burden as the income is already tax free.

And on maturity of this instrument, the HUF can invest the money anywhere and in any way in which it likes and the income won't be clubbed. In other words, Income generated from Income won't get clubbed.

Borrowings

It is also possible to borrow funds on behalf of the Hindu Undivided Family.

Borrowing can be from external agencies or internally from members.

In external agencies there can be bankers, lenders, friends, relatives and will-wishers, etc. Of course, HUF is not a person under the general law and therefore, any member of the HUF will have to borrow on behalf of the family.

Family members, from out of own funds can place deposit or lend money to the HUF of which he or she is a member. Member vis-à-vis Hindu Undivided Family is an associate enterprise. Therefore, care is necessary to ensure that the transaction is at arm's length. Payment of adequate compensation or interest will help proving this point. Repayment of deposit or loan is also another aspect in this direction.

Funds borrowed can be deployed for income earning process.

Chapter 12
Property Received on Succession

Succession to property of deceased is in two kinds:

(i) Intestate i.e. without making a Will or

(ii) Testamentary i.e. by making a Will

It also possible that the deceased has made a will. However, all items of property have not been mentioned or some of the items of property of the deceased have remained to be mentioned. In such circumstances, property that has been stated in the will, shall be inherited by the successors as per prescription of will and the balance property shall be inherited on the principles of intestate succession.

Criterion for intestate succession i.e. where will has not been executed or certain property of the deceased has remained to be included in the will, in case of death of a Hindu person is governed by law laid down in the Hindu Succession Act, 1956.

Intestate Succession i.e. without making a Will

Where a male Hindu receives any property on intestate succession, then it will be his individual property and not property of the HUF to which he belongs.

This principle has been borne out by Supreme Court in judgment of CWT v. Chander Sen [161 ITR 370 (SC)]

The Court ruled that it was necessary to bear in mind the preamble to the Hindu Succession Act, 1956, which states that it is an Act to amend and codify the law relating to intestate succession among Hindus. Therefore, in view of the preamble to the Act, it is not possible when Schedule to that Act indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own individual family is incorrect.

Section 8 should be taken as a self-contained provision laying down the scheme of devolution of the property of a Hindu dying intestate. Accordingly, the property which devolved on a Hindu on the death of his father intestate

after the coming into force of the Hindu Succession Act, did not constitute HUF property consisting of his own branch including his sons

Therefore, it was to be held in the present case, that the sums standing to the credit of the deceased belonged to his legal hair in his individual capacity and not to the HUF, and thus, the some could not be included in the net wealth of the HUF.

While elaborating this principle, the Supreme Court thus explained:

"It is necessary to bear in mind the Preamble to the Hindu Succession Act. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

In view of the preamble to the Act, *i.e.,* that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore, as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 would be HUF in his hands *vis-a-vis* his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and *vis-a-vis* son and female heirs with respect to whom no such concept could be applied or con templated. It may be mentioned that heirs in Class I of Schedule under section 8 included widow, mother, daughter of predeceased son, etc.

Before we conclude we may state that we have noted the observations of *Mulla's Hindu Law,* 15th edn., dealing with section 6 at pages 924-26 as well as *Mayne's Hindu Law,* 12th Edn., pages 918-19 : The express words of section 8 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, *inter alia,* to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored.

Testamentary Succession i.e. by making a Will

HUF can receive properties and other assets through a will from any person. An important thing to be kept in mind while drafting a will is to specifically mention in the will the portion of asset which are bequeathed to a Hindu Undivided family.

In absence of any specific reference to the HUF, it may be difficult to characterize the property received by way of a will as HUF Property. Certain self-acquired properties of his father by way of a will were inherited by him. A question arose whether the Assessee inherited the same in the Status of HUF property or devolved unto him in his individual capacity. The Hon'ble Court in this regard observed as under:

"Property gifted or bequeathed by a father to his son cannot become ancestral property in the hands of the son simply by reason of the fact that he got it from his father. The father is quite competent when he makes a gift or a bequest to provide expressly either that the son would take it exclusively for himself or that the gift or bequest would be for the benefit of his branch of the family headed by the son. If there, are express terms or provisions to that effect in the deed of gift or will, the interest which the son would take in the properties would depend on the terms of the grant. In the absence of clear words, the question would be one of construction of the gift deed or the will.

CIT vs Shambhu Ram Soni reported at (1982) 138 ITR 373 (Del)

Therefore, clear mention of Hindu Undivided Family is necessary in the document of will. This will make a tax sense.

An issue, whether a HUF can be created by Will for tax purposes is amplified in one judgment.. It has been decided that a HUF can be created by Will. The Punjab and Haryana High Court in CIT v. Ghanshyam Das Mukim [1979] 118 ITR 930 , has observed that a valid Will can be made in favour of the HUF. In this case, the mother of Ghanshyamdas left a Will and provided therein for passing of certain properties to the HUF of his son who had only wife and a daughter at that time. The Court not only held that there could be a valid Will in favour of the HUF but also rejected the contention of the revenue that no HUF could be created by Will. It was further held that it was not necessary for the creation of a Hindu Undivided Family that there must be in existence already a nucleus of Hindu Undivided Family property as joint and undivided

family is the property of a joint Hindu family. This conclusion was drawn by the Honourable Court by relying on the Supreme Court decision in the case of Surjit Lal Chhabda (supra).

There had been a controversy whether a Will made in favour of a Hindu Undivided Family which is not in existence at the time of execution of the Will or which does not have any HUF nucleus may be taken as valid or not, but now one can find answer to it in the decision of the Punjab and Haryana High Court in Ghanshyamdas Mukim's case (supra). The Madras High Court decision in CIT v. M. Balasubramaniam [1981] 132 ITR 529 is also to the same effect.

Section 30 of the Hindu Succession Act expressly provides that a male Hindu can dispose of his interest in coparcenary property by Will.

The proposition that a specific bequest of even self-acquired property in favour of the HUF of the legal heir would make the property HUF property in the hands of the heir has been explicitly approved and laid down in two decisions of the Supreme Court in C.N. Arunachala Mudaliar's case (supra) and M.P. Periakaruppan Chettiar v. CIT [1975] 99 ITR 1 (SC).

Thus, one should remember that:

Will by can be made in favour of any person including a HUF.

Properties can, thus, be passed on to a HUF.

It can be successfully passed on to the joint Hindu families of the sons and / or daughters of the testator, thus, giving each of them separate assessable entities for the purposes of the Income-tax Act, 1961.

The properties can be bequeathed to HUFs of grandsons or granddaughters.

Chapter 13
Gifts

HUF can be created (for tax purposes) by gifts from family members and strangers. In other words an entity useful from tax perspective can be brought into existence by accepting gifts. Because, capital needed for earning income is thus, augmented.

Property gifted by an outsider can bring into existence capital for a coparcenary or a joint Hindu property. In Pushpa Devi v. CIT [1977] 109 ITR 730 (SC), it has been decided that a HUF can accept gift from a person who is not a coparcener. However, for creating a valid taxable entity, the HUF must comprise of more than one member because a family cannot comprise of one person only - [C. Krishna Prasad v. CIT [1974] 97 ITR 493 (SC). Also Seethammal v. CIT [1981] 130 ITR 597 (Mad.)].

A person can give his self-acquired property in gift to his sons. In this context, the Supreme Court has said in its decision in the case of C.N. Arunachala Mudaliar v. Muruganatha Mudaliar AIR [1953] SC 495 that if the gift is meant for the HUFs of sons, this intention must be made clear at the time of making the gift. Because, in that case, gift received from father was considered by the done as capital of his HUF. However, the claim was rejected by the Assessing Officer for want of any documentary evidence. Court upheld decision of the AO.

From the various decisions of the Supreme Court, for example, Pushpa Devi's case (supra), and C.N. Arunachala Mudaliar's case (supra), it follows that if a gift is made with the clear and unequivocal declaration that it is being made for the benefit of the family, such gifted property would bear HUF character.

The decisions of the Madras High Court in Satyendra Kumar v. CIT [1983] 140 ITR 840, CIT v. Radhambal Ammal [1985] 153 ITR 440 and CIT/CWT v. M. Balasubramanian [1990] 182 ITR 117 (FB) support and approve the view that with a clear intention of getting the amount to a HUF, a HUF may be created even in the absence of HUF nucleus at the time of gifting.

There should be a clear declaration of intention through affidavit or in any other way that the gift is made to the HUF of a particular person consisting of

himself, his wife and children and not to him as an individual. In C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar [1954] SCR 243, it was held that the Court would have to collect the intention of the donor from the language of the document taken along with surrounding circumstances in accordance with the well known canons of construction.

Other conditions that have to be kept in view in this regard are:

(a) The character of gift should be genuine and it should be validly made. If it is made by the karta of any HUF, it should be only within the reasonable limits.

(b) There is no specific bar to a gift by the father to the HUF of his son, his wife and minor children. In making gift provisions of section 64 have to be kept in view for the assessing authority is likely to take the view that it is an indirect transfer to the son's wife or son's minor children which though is disapproved by the Calcutta High Court in CIT v. S.N. Malhotra [1989] 178 ITR 380 can lead to litigation. In such situations it may be advisable to take the gifts from the grandparents, uncles, brother-in-law and other relations who may not be the members of the family and even from the friends of the karta.

As regards gifts by strangers, there is no prohibition in accepting the same under the Hindu Law by the karta of the HUF. Speaking about throwing of separate property by a coparcener into common hotchpot of HUF, Hegde, J. in Goli Eswariah v. CGT [1970] 76 ITR 675 (SC) has observed:

> "This separate property of a Hindu ceases to be a separate property and acquires the characteristics of a joint family or ancestral property not by any physical mixing with the joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his stock is a unilateral act. There is no question of either the family rejecting it or accepting it. By his individual volition, he renounces his individual right in that property and treats it as a property of the family. No longer he declared his intention to treat his self-acquired property as that of the joint family property than property assumes the character of joint family property. When a coparcener throws his separate property into the common stock, he makes no gift under Chapter VII of the Transfer of Property Act. In such a case, there is no donor or donee. Further, no question of acceptance of the property arises."

What has been said of blending would equally apply to property given by way of gifts by members of HUF or strangers.

How gift is to be made and its implications

If a gift is made with the clear and unequivocal declaration that it is being made for the benefit of the Hindu Undivided Family of donee as distinguished from the donee individually, such gifted property would bear the character of HUF property.

It is not necessary that the donee is a married person and/or has a son or daughter. It is also not necessary that he should already have in existence some HUF property. Thus, a gift to a HUF which has no property of its own, can be validly made.

Pitfall in Gift to HUF

While making gift of property to HUF, section 64(2) has to be kept in view while making gifts to HUFs.

If an individual transfers, say, a sum of Rs. 1,00,000 to his own HUF and the same is invested on interest, then section 64(2) would be invoked. Interest income on Rs. 1,00,000, say, of Rs. 6,000 or Rs. 5,000 will be included in taxable income of the individual who threw the amount in the common hotchpot or gifted Rs. 1,00,000 to HUF.

However, it is incorrect to state that this provision debars or obstructs the creation of HUF assets where none existed before. What it does is to merely ensure that income from the assets so transferred or gifted would be assessed in the hands of the donor individual and not in the hands of the HUF. Utilising the assets and income therefrom for carrying on business or trade, and earning income from these would not be barred by section 64(2).

Further, section 64(2) does not apply to the income subsequently generated by the utilisation of the income of Rs. 6,000 or Rs. 5,000. If this amount is utilised for setting up a business which would yield some more income, then this income would belong only to HUF and will be assessed in the hands of HUF. Section 64(2) will not apply to such income from income from gifted property.

There can be ways to by-pass section 64(2). In T.N. Kumar v. IAC [1988] 26 ITD 23 (Mad.), a case before the ITAT, the HUF consisted of the father and his seven sons. All of them threw their individual assets into the common

hotchpot. On the next day, by an agreement of partition, the total amount was divided equally amongst them, five of whom had their smaller HUFs, while the remaining three had no sons. The ITO applied section 64(2) and assessed the income from the partitioned property in the hands of each in the status of individual. It was held that section 64(2) can only apply to conversion of the individual property into the property of a nuclear family consisting of the individual, his spouse and minor children and cannot cover the creation of smaller HUF by splitting the larger HUF by partition.

In case the smaller family has another male child or coparcener, the income received by such smaller HUF would not be assessable in the hands of the karta in the status of individual. It was observed that while applying the deeming provisions of section 64(2), it must be held that its scope will not cover when assets are created, in a HUF and by subsequent partition and division of assets. Section 64(2) would apply to conversion of the individual property into the property of what may be called another small HUF consisting of the individual, his spouse and minor children. The deeming provisions cannot be extended to cover the joint family other than that to which the property was transmitted by conversion. Income of such a smaller family cannot be covered under section 64(2).

CIT v. Khimji Nenshi [1991] 59 Taxman 278 (Bom.), the Court has held that there should be a nexus between the converted property and the income which is so derived. Thus, where the assessee impressed Rs. 30,000 out of his personal funds as property of HUF of which he was karta and soon thereafter became a partner in two firms in his representative capacity as karta of his HUF, it was held that share income derived directly or indirectly from converted property could not be clubbed with the income of individual who transferred the money.

Under section 64(2), a gift made by a female member of HUF will also be covered by the provisions of section 64(2). Hence, to this extent, the decision of the Supreme Court in Pushpa Devi's case (supra) can be said to have been diluted.

Gift Deed

One can understand importance of documentary evidence in tax proceedings. It is, in this background considered necessary that there should be some document to evidence receipt of gift by HUF.

Therefore, Gift Deed is executed by the Doner and accepted by the Karta on behalf of the Donee HUF. However, it is seen in a number of cases, such a gift deed is executed on a stamp paper of Rs. 500 – a basic amount of stamp duty for agreement under stamp duty law.

It should be noted that the subject of stamp duty is a state subject as far as transfer of property by way of Gift.

In the State of Maharashtra, entry for stamp duty on gift is as follows:

Article 32 of Maharashtra Stamp Act

Entry	GIFT, Instrument of—not being a Settlement (Article 55) or Will or Transfer (Article 59).
Duty	The same duty as is leviable on a Conveyance under clause (a), (b), 6, 7or (c) as the case may be, of Article 25, on the market value of the property which is the subject matter of the gift: Provided that, if the property is gifted to a family-member being the husband, wife, brother or sister of the donor or any lineal ascendant or descendant of the donor, then the amount of duty chargeable shall be at the rate of 3 per cent. on the market value] of the property which is the subject matter of the gift, 10. Provided further that, the if the residential and agricultural property is gifted to husband, wife, son, daughter, grandson, granddaughter, wife of deceased son, the amount of duty chargeable shall be rupees five hundred.
	Besides, certain cess for LBT, Metro, etc. are applicable from time to time.

In the state duty for Conveyance – Entry 25 is as follows:

(a) if relating to movable poperty - 3 per cent. of the market value of the property.

(b) if relating to immovable –on market value of property or consideration whichever is higher – rangong from 4 per cent to 5 per cent.

In the State of Maharashtra, entry for stamp duty on gift is as follows:

Article 32 of the Indian Stamp (Goa Amendment) Act, 2013

Entry	GIFT Instrument of, not being Settlement (No 58) of Will or Transfer (No. 62.)
Duty	The same duty as is levrable on a conveyance under clause (a) or (b), as the case may be of Article 22 for a consideration equal to the value of the property which is subject matter of gifts

In the state duty for Conveyance – Entry 22 is as follows:

(a)	CONVEYANCE, other than a conveyance specified in clause (b), not being a transfer charged or exempted under article No. 62.	
	when the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50/-	Three rupees.
	where it exceeds Rs. 50/- but does not exceed Rs.100/-	Five rupees.
	where it exceeds Rs. 100/- but does not exceed Rs. 200/-	Ten rupees.
	where it exceeds Rs. 200/- but does not exceed Rs. 300/-	Fifteen rupees.
	where it exceeds Rs. 300/- but does not exceed Rs. 400/-	Twenty rupees.
	where it exceeds Rs. 400/- but does not exceed Rs. 500/-	Twenty five rupees.
	where it exceeds Rs. 500/- but does not exceed Rs. 600/-	Thirty rupees.
	where it exceeds Rs. 600- but does not exceed Rs. 700/-	Thirty five rupees.
	where it exceeds Rs. 700/- but does not exceed Rs. 800/-	Forty rupees.
	where it exceeds Rs. 800/- but does not exceed Rs. 900/-	Forty five rupees.
	where it exceeds Rs. 900/- but does not exceed Rs. 1,000/-	Fifty rupees.

	and for every Rs. 500/- or part thereof in excess of Rs. 1,000/-.	Thirty five rupees.
(b)	CONVEYANCE (Not being a transfer charged or exempted under Article No. 62) so far as it relate to immovable property.	
	Where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 200/-	Fifteen rupees.
	Where it exceeds Rs. 200/- but does not exceed Rs. 300/-	Twenty rupees.
	Where it exceeds Rs. 300/- but does not exceed Rs. 400/-	Thirty rupees.
	Where it exceeds Rs. 400/- but does not exceed Rs. 500/-	Forty rupees.
	Where it exceeds Rs. 500/- but does not exceed Rs. 600/-	Forty five rupees.
	Where it exceeds Rs. 600/- but does not exceed Rs. 700/-	Fifty rupees.
	Where it exceeds Rs. 700/- but does not exceed Rs. 800/-	Sixty rupees.
	Where it exceeds Rs. 800/- but does not exceed Rs. 900/-	Sixty five rupees.
	Where it exceeds Rs. 900/- but does not exceed Rs. 1,000/-	Seventy five rupees.
	and for every Rs. 500/- or part thereof in excess of Rs. 1,000/-	Forty rupees.

In the State of Gujarat, entry for stamp duty on gift is as follows:

Article 28 of the Bombay Stamp Act, 1958

Entry	GIFT-Instrument of not being a Settlement (No. 52) or Will or Transfer No. (56)
Duty	The same duty as is leviable on a conveyance under article 20 market value of the property which is the subject-matter of the gift.

	Provided that where an instrument of gift contains any provision for the revocation of the gift the value of the property which is the subject matter of the gift shall, for the purposes of duty, be determined as if no such provision were contained in the instrument

Some other states:

Delhi	4% for men and 6% for women
West Bengal	● For the transfer to a non-family member: 5% of the property's market value in panchayat areas, and 6% of market value in municipal areas ● For the transfer to a family member: 0.5% of the market value of the property
Uttar Pradesh	2% of the market value of the property
Karnataka	● For the transfer to a non-family member: 5% on the market value of the property + surcharge + cess and 1% registration fee ● For the transfer to a family member: Rs.1000 + surcharge + cess and fixed registration fee of Rs.500
Andhra Pradesh	Stamp Duty: 2% f the market value of the property Registration Charges: 0.5% f the market value of the property
Tamilnadu	Stamp Duty: 7% of the market value of the property Registration Fee: 1% of the market value of the property
Madhya Pradesh	● For the transfer to a non-family member: 5% of the market value of the property ● For the transfer to a family member: 2.5% of the market value of the property
Telangana	Stamp Duty: 5% of the market value of the property Registration Fee: 0.5% of the market value of the property
Rajasthan	Stamp Duty: 6% of the market value of the property Registration Fee: 1% of the market value of the property

Thus, gifts can bring HUF into being from commercial and tax sense and also increase capacity for earning income.

Chapter 14
Investments

The investments by a Hindu Undivided Family (HUF) are made by the karta either in his own name or in the HUF's name. This is because, HUF is not a person under the general law.

The Karta, investing funds of the HUF, must carry out the investments on behalf of the HUF and needs to submit the relevant documents. The know your customer (KYC) process is mandatory for all types of investments, for which a nonindividual KYC form needs to be filled by the karta

KYC Documentation

- The PAN of HUF,
- The PAN of Karta, if investment is proposed in his name
- List of co-parceners,
- bank pass-book/statement in the name of HUF,
- address proof
- photograph, proof of identification, etc. of Karta
- Deed of declaration of HUF, if available

must be submitted at the time of KYC.

Source for Investment

Payment for investment should be made from bank account of the HUF. This will demonstrate that the investment is of HUF and as such, income belongs to HUF.

Demat Account

The HUF Demat account is managed by Karta on behalf of the co-parceners. The Demat account opening form, along with the documents mentioned above, need to be submitted for opening the account.

The Karta should sign the form under the HUF stamp.

Shares/Mutual funds

For mutual fund investments, the PAN and KYC acknowledgement must be submitted. The PAN has to be submitted of the HUF if the investment is made in units or other financial products.

Small schemes

The HUF as an entity cannot invest in government's small savings schemes, such as the PPF, NSC, monthly income schemes, recur ..

Movable assets

HUF is also entitled to own and hold all kind of movable assets such as:

1. Shares and debentures
2. Derivatives
3. Valuable articles, things, drawings, paintings
4. Precious metals, stones (gold, silver, diamond, pearls, etc.)
5. Deposits with Banks and Others
6. NSCs
7. Deep discount bonds
8. Investment in Units of Mutual funds
9. Zero coupon bonds
10. Indira Vikas Patras
11. Kisan Vikas Patras
12. Cash
13. Stocks and debtors forming part of business assets.
14. Life Insurance policies (in the name of Karta and/or member)
15. Vehicles, gadgets, etc.

The above list is not exhaustive and in present age of globalization, more and more avenues are opening up on a daily basis.

Immovable Property

Immovable properties of all kinds like land, building, and any other types of immovable property which is attached to earth.

All such immovable assets are capable of being registered in the name of the Karta of HUF. In some cases these are registered in the name of HUF, as well by registering authorities, however, whether this holds good in law needs to be examined.

Sum Up

There is no bar on HUF in holding any kind of Movable and immovable assets. Investment may be held in the name of the Karta though the beneficial interest lies with the HUF. When the funds for such investment are provided by HUF, beneficial interest is of the HUF.

It is advisable to make a statement of beneficial interest being of the HUF. Books of account and documents like financial statements, balance sheet, receipts and payments statement, etc. of the HUF should include such investments. Submissions and documents filed with the Income-tax department should also bare out this fact. Burden to prove that property standing in the individual name of any person and he is not his absolute property but it is property of the HUF is on the HUF.

Income from Investments

The entire income from investments made by the HUF belongs to HUF, which goes without saying.

Therefore, it will form part of return of income of the HUF.

Kindly remember

a) The HUF accounts cannot be opened with joint holders.

b) No nominee can be appointed for the HUF accounts.

Chapter 15
Proprietorship Business

If one considers general law, Hindu Undivided Family is not a person.

Section 2 (31) of the IT Act, 1961 defines "Person" and according to it, Person includes "A Hindu Undivided Family". If you go through the CST Act or VAT Act of the State, you will find that the term "dealer" is defined normally as " dealer" means any person including ..... , etc.

The business of HUF can be set up based on capital at the disposal of the HUF. Taking 'risk' is one important feature of business. Therefore, capital is the basis for HUF to engage in business. In business one has to enter into contract and 'person' under general law is required for entering into business. HUF is not 'person' under general law and as such cannot enter into any contract.

Therefore, there should be some person engaging in contract with any other person in the course of setting up and running of business.

However, there is no bar in Karta of HUF running a proprietary business for and on behalf of the family.

A question arises whether a HUF can become a proprietor of a business enterprise. Proprietor is an owner of any concern and there is no legal bar in such a case. In case it is proposed to make a HUF as a Proprietor of any business concern, the best way would be to have a trade licence in such a name wherein it is clearly indicated that the HUF is the Proprietor of business concern. Once the trade licence is obtained, the other formalities like opening of the account can be done and then the business as usual can be carried on.

A Proprietorship concern is not governed by any specific law as such and therefore, there is no bar on HUF becoming a Proprietor of any concern or firm. In such a case it is advisable to make a declaration of the members as to carrying on business as its Proprietor. In the rubber seal it may be clarified that the HUF is proprietor.

It may be noted that the bank account of the Proprietorship business of which HUF is the Proprietor can be opened in any name which the HUF wants and the HUF can be the Proprietor of such business name. To illustrate, say, if

the name of the Business is FORTUNE Enterprises which is a proprietorship concern of HUF namely

For FORTUNE Enterprises

Shri. ……

Karta for Rajesh Kumat HUF

Proprietor

Thus, a proprietorship concern is not governed by any specific law as such, and therefore, there is no bar on HUF becoming a proprietor of any concern.

Chapter 16
HUF and Partnership

What is Partnership?

1. In India, the Indian Partnership Act, 1932 governs 'partnership' and holds the field on the subject. Section 4 of the said Act provides that "Partnership" is the relation between persons who have agreed to share the profits of business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".

2. Thus, in order to constitute 'partnership. Every partner should be a 'person'.

HUF as a Partner

3. HUF is undoubtedly a "Person" within the meaning of section 2(31), it is however, not a juristic person for all purposes. Only 'person' can enter into any contract or agreement. Partnership is a contract or an agreement. As such, HUF *cannot* enter in to an agreement of partnership either with another HUF or Individual. This has also been held by Hon. Supreme Court in Ram Laxman Sugar Mills vs. CIT [1967] 66 ITR 613. However, further the Court, in this judgment, also held that it is open to the manager of a Joint Hindu family, as representing the family, to agree to become a partner with another person.

4. A partnership is a creature of contract. Under Hindu law, a joint family is one of status. HUF cannot be created under any contract. It is creation of customs. The income-tax law gives the Income-tax Officer power to assess the income of a person in the manner provided by the Income-tax Act, 1961. A contract of partnership has no concern with the obligation of the partners to others in respect of their share of profit or in property of the partnership. It only regulates the rights and liabilities of the partners. A partner may be the karta of a joint Hindu family or he may be a trustee. He occupies a dual position. Qua the partnership, he functions in his personal capacity; qua the third

parties, in his representative capacity. This dual position of a partner "qua the partnership" and "qua the third parties" is clearly recognised by the Supreme Court in CIT v. Bagyalakshmi and Co., [1965] 55 ITR 660.

5. The correct legal position regarding a HUF being represented in a partnership firm has been dealt with by the Supreme Court in CIT v. Sir Hukumchand Mannalal and Co. [1970] 78 ITR 18. There the Supreme Court observed:

"Members of a Hidu undivided family are under no disability in the matter of entering into a contract inter se or with a stranger. A partnership will not be invalid merely because two or more of its partners are members of a Hindu undivided family and represent the interest of the family."

6. Thus, where HUF desires to join in any partnership firm, as a partner, it can do so by requesting manager or karta to join the firm, as a partner. For example, Shri. Anand Joshi HUF is interested in joining as partner in a partnership firm Deccan Traders. Then, Shri. Anand Joshi HUF cannot join Deccan Traders, as a partner. Shri. Anand Joshi HUF will be required to request its manager or karta i.e. Shri. Anand Joshi to join in Deccan Traders as a partner to represent Shri. Anand Joshi HUF. He has to contribute capital from funds belonging to Shri. Anand Joshi HUF. Though, it is not necessary to contribute capital, we will see in this chapter that when HUF is becoming beneficiary, it is good policy to contribute to capital of firm.

Partner in Dual Capacity

7. As seen above, HUF, though not a legal person, can be represented by some person in the partnership. However, the question arises, as to whether there can be a partnership of an individual and his HUF where he represents the HUF as its Karta?

8. In the decision of the Patna High Court in Rai Bahadur Lokenath Prasad Dhandhania v. CIT [1940] 8 ITR 369 the deed of partnership was drawn up between A in his individual capacity of the one part and the joint Hindu family (consisting of A and his two sons) of which A was the karta, of the other part and an application was filed for registration of the firm. The ITO refused registration of the firm on the

ground that of no firm as defined in a s. 2 (6A) of the Act of 1922 existed. The Patna High Court held that there was no partnership in law which could have been registered by the ITO. It must be observed that, on the facts of this Patna case, there was no third partner apart from the individual and the karta of the family with whom the partnership firm could be formed. So far as the Partnership Act is concerned, it would look to one individual, in whatever capacity he could become partner. It may be that he may be a partner in more than one capacity but so long as there is one or more outsiders or one more individual coming in besides that person becoming a partner in a dual capacity, there would be no objection to the constitution of a valid partnership.

9. However, as held in case of Lachhman Das v. CIT [1948] 16 ITR 35, the Privy Council held that there can be a valid partnership between a karta of a HUF representing the family on the one hand and a member of that family in his individual capacity on the other.

10. The Bombay High Court in CIT v. Raghavji Anandji and Co. [1975] 100 ITR 246, held that where the partnership deed of a firm consisting of eleven partners was signed by one of the partners in two capacities-as an individual and as the karta of a HUF-the partnership was valid and was entitled to registration under s. 26A of the Indian I. T Act, 1922.

11. This decision of the Bombay High Court was followed by the Kerala High Court in CIT v. Mandath Motors [1979] 120 ITR 644. The facts before the Kerala High Court were that one of the partners of a firm died. He had constituted by his will his three sons as representatives of his estate who were to carry on the partnership in his place along with the other partners in the original deed which provided that the death of a partner would not operate to dissolve the firm. This was permissible and quite consistent with the provisions of the partnership deed as well as s. 37 of the Indian Partnership Act. In accordance with the devolution of interest, the three heirs had constituted one of the other partners as their representative to carry on the business of partnership by their power-of-attorney. That partner had joined the reconstituted partnership in a dual capacity as a partner himself, and as representing the three heirs of the deceased partner. It was held that this could not, in the circumstances, be regarded as an invalidating factor affecting the genuineness or validity of the

partnership. The reconstituted firm was genuine and was entitled to registration, and the Kerala High Court followed the decision in Raghavji Anandji and Co.'s case [1975] 100 ITR 246 (Bom). The Kerala High Court held that this decision was strictly in point and even if the question of the validity of the partnership deed by reason of one partnr having signed twice in the document were to arise for consideration, the High Court would have been prepared to hold that that circumstance by itself, on the facts and circumstances disclosed, would not invalidate the partnership document or disclose a sufficient ground for cancellation of registration.

12. Where two coparceners of a Hindu undivided family were two of the five partners of a firm and they represent the interest of the family it was valid in law and that the firm could be granted registration under section 26A of the Income-tax Act, 1922."

13. It was further held in the light of the earlier decisions of the Supreme Court in CIT v. A. Abdul Rahim & Co. [1965] 55 ITR 651 and CIT v. Bhagyalakshmi and Co. [1965] ITR 660; that in considering an application for registration of a firm the ITO is not concerned to determine in whom the beneficial interest in the share in the partnership vests. In the decision of Commissioner Of Income-Tax vs Panna Devi Saraogi [1970] 78 ITR 18 (Cal)] the Court observed as follows:

"The Indian Contract Act imposes no disability upon members of a Hindu undivided family in the matter of entering into a contract inter se or with a stranger. A member of a Hindu undivided family has the same liberty of contract as any other individual; it is restricted only in the manner and to the extent provided by the Indian Contract Act. Partnership is, under section 4 of the Partnership Act, the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all; if such a relation exists, it will not be invalid merely because two or more of the persons who have so agreed are members of Hindu undivided family."

Capital

14. Partnership is relationship between persons to carry on business on by all or any of them acting for all. HUF is not a ‘person’ under general law. Therefore, for any HUF it is not possible to physically participate in carrying on business of the firm.

15. The sharing of risk is one of the attributes – an important one – that is a foundation stone of the edifice of partnership. The inherent disadvantage of the sole proprietorship in financing and managing an expanding business paved the way for partnership as a viable option. Partnership serves as an answer to the needs of greater capital investment.

16. Section 13 of the Indian Partnership Act, 1932 is on Mutual Right And Liabilities. It provides that

'Subject to contract between the partners –

……

(c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits.

Thus, there is mention of capital In the Partnership Act, as well.

17. Even the Income tax Act has made mention about capital contribution by HUF. It is for the purpose of taxation of interest on partner's capital and for ascertainment of capital gains from transfer of property from partner to partnership firm.

18. Sub-section (3) of section 45 thus provides:

'The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset'.

Thus, the income tax law has related income aspect for capital contribution by partner in partnership. Contribution of capital is an important factor to decide stake of a partner in the partnership firm. As HUF cannot contribute skill or labour, the very participation of HUF in the partnership can be challenged. Contribution of capital is the befitting answer to this issue.

19. Therefore, in order to substantiate beneficial ownership over income from partnership firm to the fold of HUF, it is suggested to subscribe capital from the corpus of kitty of the HUF. This is significant because, HUF is provided with beneficial interest in the firm's income from the perspective of managing income tax outflow at a lower level.

20. Share in profit be a partner in partnership, per se, in not liable to tax. However, interest on capital is taxed in the hands of the partner. Further, vesting of property in and income from partnership with the HUF creates possibility of earning separate income by HUF. This is a contributing factor in a long run.

Status of HUF in Firm

21. Status of HUF in Firm has been explained by Hon'ble Supreme Court. In it's judgment the Court observed that a firm is a compendious way of describing the individuals constituting the firm. HUF, directly or indirectly, cannot become a partner of a firm because the firm is an association of individuals. Even if a person nominated by the HUF joins a partnership, the partnership will be between the nominated person and the other partners of the firm. If a karta or any other member of the HUF joins a partnership, he can do so only as an individual. His rights and obligations vis-à-vis other partners are determined by the Partnership Act and not by Hindu Law. Whatever may be the relationship between an HUF and its nominee partner, in a partnership, neither the HUF nor any member of the HUF can claim to be a partner or connected with the partnership through a nominee.

    [Rashiklal & Co. vs. CIT reported in 229 ITR 458 (1998) (SC)]

22. So far as the firm and its other partners are concerned, it is the Karta who alone is in law recognised as a partner and whatever arrangements he may have with his joint family with regard to the share of income, they are essentially arrangements between him and his family with regard to which the firm as such does not enter into the picture at all. These principles are now settled and reference may be made to the following judgments of the Supreme Court (1) Firm Bhagat Ram Mohanlal v. CEPT (1956) 29 ITR 521 (SC); CIT v. Nandlal Gandalal (1960) 40 ITR 1 (SC); (2) Ram Laxman Sugar Mills v. CIT (1967) 66 ITR 613 (SC);(3) CIT v. Bhagyalakshmi & Co. (1965) 55 ITR 660 (SC); and (4) Rashiklal & Co. v. Commissioner Of Income

Tax, Orissa (1998) 229 ITR 458 (SC).

23. From the court judgments it can be concluded that an HUF as such cannot be a partner in a firm. However, it is allowed that the manager or karta acting on behalf of the HUF to enter into a valid partnership with a stranger or with the karta of another family. It is also possible to nominate any member other than karta or even a stranger to join as a partner as a nominee of the HUF. In such an event, under the general law, it is the manager or karta, in his individual capacity is considered as a partner. No other member of the HUF represented by the manager or karta or the HUF that represented, can be considered as a partner. However, profits, income and other benefits earned or received by the manager or karta are considered to be exclusive income of the HUF that the manager or karta represents.

24. For example, in a partnership firm Deccan Traders, Shri. Anand Joshi is a partner representing his HUF. He has to contribute capital from funds of HUF. Whatever profit coming to share of Shri. Anand Joshi, from the perspective of firm belongs to him. However, as Shri. Anand Joshi is a partner in representative capacity, the ownership and enjoyment of share of profit vests with the HUF he represents.

25. It is also possible for the Shri. Anand Joshi HUF to request wife or son or daughter of Shri. Anand Joshi to join as a partner in Deccan Traders as it's nominee. Moreover, Shri. Anand Joshi HUF request any friend of family members or a third party to join as a partner in Deccan Traders as it's nominee.

Income from Firm

26. Income of a 'partnership' is shared with the partners. In fact, definition of the partnership, itself reads: "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. [Section 4 of the Indian Partnership Act, 1932]

27. In the case of CTT v. Jhabarmal Agarwalla, [1990] 184 ITR 431, a Division Bench of the Gauhati High Court, of which one of us (Dr. B.P Saraf J.) was a member, after considering the decision of the Supreme Court in CTT v. Bagyalakshmi and Co., [1965] 55 ITR 660 and also of the Allahabad High Court in the case of Madho Prasad v. CIT, [1978]

112 ITR 492 has held that in a case where the karta of a Hindu undivided family is a partner in his representative capacity, the income does not arise to him. The income arises to the Hindu undivided family and, by virtue of the provisions of the Income-tax Act, 1961, it is assessable in the hands of the Hindu undivided family. We are in agreement with the view taken in that case by the Gauhati High Court.

28. High Court held that qua the HUF, individual was representative and he must account to the HUF for whatever share of profits he received from the partnership firm in his capacity as representative of the HUF and that money which he received was the income of the HUF and must be assessed separately as HUF income. [Commissioner Of Income-Tax vs Budhalal Amulakhdas 1981 129 ITR 97 (Guj)]

29. It can be concluded that where any person is a partner in the partnership firm, representing HUF, profit from the firm coming to his share belongs to the HUF that is being represented by him. It will be exclusive income of the HUF.

Remuneration to Partner

30. The income tax law provides that 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 constitutes allowable deduction for the partnership firm. Ceiling on quantum of deduction and formalities for being eligible for deduction are also prescribed.

31. Under section 10(2A) of the Income tax Act, 1961, exemption is provided for income from partnership for a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm. It has been clarified that for the purpose of this exemption, the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits.

Deduction to Firm

32. The Supreme Court in case of Prem Nath and Ors. v. Commissioner of Income Tax , considered several decisions on the question of

remuneration received by a member of the HUF who has joined a partnership as representing the HUF and in which the assets of the joint family are invested. The Supreme Court reviewed the case law and concluded that if there is a 'real and sufficient' connection between the joint Hindu Undivided Family, who is the partner, and the remuneration paid, then the remuneration is taxable as the income of the HUF. On the facts of that case, it was held that since Prem Nath was a working partner and there was no evidence on record to suggest that the remuneration agreed to be paid was not for services rendered to the partnership, it was held that the income received by Prem Nath was remuneration for services rendered by him and not the HUF.

33. In Electric and Dental Stores v. Commissioner of Income-tax, it was held that if a particular partner or partners possess special qualifications for which they are paid salary, irrespective of existence of profits and over and above their share of profits, the payment of salaries could be allowed as a deduction. The dual capacity of a partner-cum-employee, though suspect, is possible, and to the extent that the person is in truth an employee, the salary is deductible from the profits of the partnership

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

35. Thus, where nominee of a HUF, who is a partner in the firm, qualifies as a ‘working partner’ in terms of section 40(b) of the Income tax Act, remuneration paid to him or her qualifies for deduction on compliance of the other conditions specified in the saic clause. It will be appreciated that in terms of section 40(b) of the Income tax Act, ‘working partner’ means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner.

Remuneration as HUF Income

36. There is general principal that remuneration is compensation for services rendered or labour. However, under certain circumstances, it can be name given to compensate extra investment.

37. The Supreme Court in CIT vs. Trilok Nath Mehrotra & Others [231 ITR 278] has held as under:

"If a member of a Hindu Undivided Family joins a partnership and he is given a salary for managing the firm or rendering special services to the firm, the salary will be his individual income. But if his salary is really a part of the return for the investments made by the Hindu Undivided Family in the partnership firm, the salary income would be added to the income of the Hindu Undivided Family."

38. There is no warrant for the assumption that in the eye of law, the Karta of the HUF cannot be a working partner while representing the HUF. The conclusion would appear to go against the long line of decisions of the Supreme Court [for instance, please see V.D. Dhanwatey v. CIT (1968) 68 ITR 365 (SC), CIT v. Gurunath Dhakappa (1969) 72 ITR 192 (SC), Commissioner Of Income Tax, Bangalore v. Shri D.C Shah . (1969) 73 ITR 692 (SC); and Rajkumar Singh Hukumchandji v. CIT (1970) 78 ITR 33 (SC)], wherein the dispute arose as to whether the salary paid by the firm to the Karta of the joint family, where the Karta represents the joint family as partner, is his individual income or the income of the joint family. It was held that if a member of the HUF joins a partnership and is given salary for rendering services to the firm, the salary will be his individual income, but if the salary is really and in truth a part of the return for investment made by the HUF in the firm, it would be added to the income of the HUF.

39. Of course, when remuneration is canvassed to relate HUF investment and thus, inform of the HUF, undoubtedly it will be identified with the HUF. However, the partnership firm making payment of such a remuneration shall not be able to get the deduction there for. This is because, in order to qualify for deduction section 40(b) provides that it should be paid to a "working partner", which means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner. Thus, remuneration identified with investment shall not qualify the condition of payment to 'working partner'.

Taxation of Remuneration

40. Remuneration received by the partner would be assessable in the individual assessment of the assessee when there was no direct nexus

between the joint family funds & the salary received and where the salary was paid for the special skill and personal exertion of the Karta. *[CIT v. Rajgopal (2003)132 Taxman 39 (Mad.)]*

41. 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.

Taxation of Interest

42. As explained above, interest paid to any partner on funds contributed by him to the partnership is his income. It is taxable. This is applicable with equal force to HUF, as a partner that is represented by someone else. For the firm, to get deduction in Section 40(b) has the in a provision concerning deduction for interest on partner's capital from partnership firm, two explanations to the said clause are:

Explanation 1.—Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as "partner in a representative capacity" and "person so represented", respectively),—

(i) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;

(ii) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause.

Explanation 2.—Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.

43. Here the law clarifies that individual or any other person represents HUF in the partnership as a partner, then how the interest outflow shall be dealt with. The possibilities that individual or any other person who represents HUF, providing funds to the partnership firm from out of

capital of the HUF and out of the person's own resources.

44. For example, Shri. Avinash is a partner in Gajanan Data Services, a partnership firm. Shri. Avinash is representing Shri. Avinash Date HUF in the said partnership firm. In this background,

(i) Shri. Avinash has contributed Capital of Rs. 10 lakh from corpus of Shri. Avinash Date HUF in the firm Gajanan Data Services.

(ii) Shri. Avinash has paid Rs. 3 lakh from his own savings to Gajanan Data Services.

(iii) Sou. Anita, wife of Shri. Avinash has deposited Rs. 5 lakh Gajanan Data Services as a deposit.

(iv) Shri. Avinash from funds received from Sou. Akshata Deshpande, daughter of Shri. Avinash, has deposited Rs. 4 lakh Gajanan Data Services as a deposit.

Gajanan Data Services has paid interest at the rate of 15% p.a. on the above amounts, which were available with the firm for the complete year.

The issue is deduction for interest paid by the firm in above cases and taxability of interest in the hands of recepients.

Reply:

(a) Sr. No. (i): Rs. 1,50, 000 on contribution from corpus of Shri. Avinash Date HUF:

- Rs. 1,20,000 shall be allowed as deduction for the firm, being simple interest @12% p.a. and Rs. 1,20,000 shall be included in taxable income of Shri. Avinash Date HUF
- Rs. 30,000 shall NOT be allowed as deduction for the firm, being simple interest, in excess of @12% p.a. and Rs. 30,000 shall not be included in taxable income of Shri. Avinash Date HUF and shall be exempt under section 10(2A) of the Income tax Act.

(b) Sr. No. (ii): Rs. 45,000 on contribution from savings Rs. 3 lakh of Shri. Avinash:

- Rs. 45,000 shall be allowed as deduction for the firm, and Rs. 45,000 shall be included in taxable income of Shri.

Avinash individual. Although Shri. Avinash is karta o Shri. Avinash Date HUF, contribution is from his own funds. [Ref.: Explanation 1 to Section 40(b) of the Act.]

(c) Sr. No. (iii): Rs. 75,000 to Sou. Anita, wife of Shri. Avinash

- Rs. 75,000 shall be allowed as deduction for the firm, and Rs. 75,000 shall be included in taxable income of Sou. Anita. Although Sou. Anita is member of Shri. Avinash Date HUF, contribution is from her own funds and nothing to do with the said HUF.

(d) Sr. No. (iv): Rs. 60,000 to Shri. Avinash from funds received from Sou. Akshata Deshpande, daughter of Shri. Avinash.

- Rs. 60,000 shall be allowed as deduction for the firm, and Rs. 60,000 shall be included in taxable income of Sou. Akshata Deshpande. Although Shri. Avinash has deposited funds, the source if from his daughter. [Ref. Explanation 2 to Section 40(b) of the Act.]

Chapter 17
HUF & Company

Shareholder

Who can be shareholder in a company? Under the Companies Act, 2013, any person can become a shareholder. However, the said Act is silent on the matter of defining the term 'person', as has been defined under the Income tax Act, 1961.

Reference can be made to the definition as given in the General Clauses Act, 1897.

Section 3(42) of the General Clauses Act, 1897 defines the word person as follows:-

(42) "person" shall include any company or association or body of individuals, whether incorporated or not:

This definition is an inclusive definition and not an exclusive definition. Therefore, one understands that the word person is of wide import. However, the Companies Act, 2013 doesn't directly refer to the HUF becoming shareholder or promoting a company.

Prohibition of Association

Under Section 464 of the Companies Act 2013, no association and partnership consisting of more than 100 persons shall be formed unless it is registered. If it is not incorporated than it will be considered as illegal association of members under companies act 2013. Any unregistered association or partnership shall not be formed with more than 50 members under Rule 10 of Companies (Miscellaneous) Rules, 2014 as Notified on 1st April 2014. However, limited liability partnership is exception to this rule.

Section 464(1) of Companies Act 2013 is not applicable in the case of a Hindu undivided Family. Because, sub-section (2) of Section 464 of Companies Act 2013 provides that 'Nothing in sub-section (1) shall apply to a Hindu undivided family carrying on any business.'

However as per the Rule 10 of Companies (Miscellaneous) Rules, 2014, if two or more Hindu family firms carry on business if their association is more than 50 then it will be considered as illegal association.

While calculating the members under Hindu Family Firms as per the law ignore the Minor members from such family, but if they attain the majority, they will be considered as Member.

Under old law similar provision was existing. Section 11 of the Companies Act, 1956 dealing with the Prohibition of Association and partnership exceeding certain number unless it is registered as a company refers to HUF in a negative way. Section 11(3) of the Companies Act, 1956. is as follows:

A HUF is considered as an individual person but not a juristic person for all purposes. Shares of a company can be registered in the name of *Karta* as “xx HUF”. Hence, a HUF can become a shareholder of a company.

Investment in Shares

Possibility of HUF making investment in shares of a limited liability company has been extensively considered by the Court in case of Vickers Systems International Limited v. Mahesh P. Keshwani [(1992) 13 Com Cases 317 (CLB)].

Th Court observed that there is no doubt that the Hindu undivided family has no legal entity distinct and separate from its members. In terms of Section 41(2) of the Companies Act, 1956, only a person, who agrees in writing, can become the member of a company. There is no definition of the word "person" in the Companies Act and, therefore, the definition in Section 3(42) of the General Clauses Act is considered here. In Jabbar v. State of U. P., AIR 1966 All 590, while considering the definition of "person" in Section 11 of the Indian Penal Code which defines the word "person" as defined in Section 3(42) of the Central General Clauses Act, it was observed that (at page 593) ;

"This is hardly a definition. It seems to be only an indication of the intention of the Legislature to use the word 'person' in a fairly wide sense so as to include even an artificial entity which may or may not be an animate being."

The Court further held that in some of the decisions in the context of the Income-tax Act, it has been held that the Hindu undivided family is not a juristic person for all purposes although it is a person for the purposes of the provisions of the Income-tax Act or that for certain purposes it is a legal entity although acting through the karta. In the case of transfer of shares by a shareholder to another, the only question to be examined is whether the transfer deed has been validly executed in accordance with the provisions

of Section 108 of the Companies Act, 1956 and submitted to the company for registration of transfer as provided in Section 110 of the said Act. Section 108 enables execution of a transfer deed by or on behalf of the transferor or the transferee. In the case of a Hindu undivided family, it is represented by its karta and in the present case, the transfer deed has been signed by the respondent as karta of Mahesh P. Keswani, Hindu undivided family. Under Section 153 of the Act, a company cannot take notice of any trust on its register of members. In the case of a Hindu undivided family, if the shares are held in the name of the karta of the Hindu undivided family it cannot be equated with trust property held by a trustee. A Hindu undivided family means persons constituting the family and all such persons are owners of Hindu undivided family property. The karta is one of the coparceners. There is no legal bar on a Hindu undivided family investing its monies in shares and securities and the Companies Act does not prohibit membership of Hindu undivided family. We have also noted that in respect of shares held by a minor, it has been held in a number of cases that there is nothing objectionable if the shares are registered in the name of the minor represented by his guardian. Similar is the position in the case of a Hindu undivided family and the shares can be registered in the name of "A" as karta of the Hindu undivided family.

The Court directed the company that the impugned shares shall be registered in the name of Shri Mahesh P. Keswani as karta of Mahesh P. Keswani, Hindu undivided family and the company shall give effect to these directions.

Although the decision has been rendered under the old law i.e. the Companies Act, 1956, there is no alteration of this position for investment in shares of a company by HUF.

Definition Section

The Companies (Significant Beneficial Owners) Amenclment Rules, 2019 issued under the Companies Act, 2013 includes section 2, a definition section, provides meaning of various terms for the purpose of the said Act. Clause (h) defining significant beneficial owner has a reference to HUF.

Explanation III to the said clause, inter alia provides as follows:

For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of

the following criteria, in respect of a member of the reporting company, namely: - ……. (ii) where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF.

Thus, at least, the Companies Act, 2013 recognizes HUF.

HUF as a Promoter of Company

Section 3 of the Companies Act, 2013 provides that a company may be formed for any lawful purpose by

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company; or

(c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Thus, for incorporating a Company, existence of a 'person' is essential requirement. However, the Companies Act, 2013 is silent on definition of the term 'person'.

From the discussion made earlier, it is noticed that HUF is not a 'person' under the general law. As such, it cannot be a promoter of any company.

Shares of HUF

In all these cases the registered shareholder remains the Karta of the HUF and HUF as such cannot become registered shareholder. This is in view of the decision of the Apex Court in the case of *CIT vs C.P. Sarathy Mudaliar, (1972) 4 SCC 531,* 535 [(1972) 83 ITR 170] wherein it was held that it is well, settled that an HUF cannot be a shareholder of a company. The shareholder of a company is the individual who is registered as the shareholder in the books of the company.

Thus, HUF as member HUF is not a juristic person, although it is a person for purposes of the Income-tax Act, 1961. HUF is represented by its Karta. There is no legal bar on HUF to invest its money in shares and securities and the Companies Act does not prohibit membership of HUF. In case of an HUF, the shares can be registered in the name of 'A' as Karta of HUF.

Income

When HUF is the beneficiary of shares held in a Company, dividend income and capital gain of transfer of shares shall be income of the HUF and not of the nominee representing the HUF.

Deemed Dividend

The concept of 'Deemed Dividend' has been enacted to curb tax planning or tax avoidance. As per the provisions of clause (e) of Section 2(22) of the Income-tax Act, 1961 loans, advances given to shareholder or any payment on his behalf is considered as income of the shareholder, if he is having not less 10% ownership interest in the said company. The said section 2(22)(e) reads as under:

"Dividend includes:

……..

(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits."

It is seen that it is the Karta who is the registered owner of the shares which can beneficially belong to the family. In such a case a question arises whether deemed dividend income can be assessed in the hands of HUF in respect of loan given by a Company to the Karta who is the registered shareholder.

Thus, if the loan is advanced to the HUF when the shares are registered in the name of Karta but the beneficial ownership lies with the family, the issue of deemed dividend in the hands of individual or HUF needs discussion.

Similarly, in it is held that, if the loan is advanced to the HUF when the

shares are registered in the name of Karta but the beneficial ownership lies with the family, the concept of deemed dividend in the hands of HUF will come into play. This is held by the Apex Court in the case of CIT vs Rameshwarlal Sanwarmal (1971) 82 ITR 628(SC). However, an opposite view was taken in the case of CIT vs C.P.Sarathy Mudaliar (1972) 83 1TR 170(SC) where the Apex Court held that it is well settled that a HUF cannot he a shareholder of a Company. The shareholder of the Company is the individual who is registered as a shareholder in the books of the Company. The HUF cannot be registered as a shareholder in the books of the Company. It further went to hold that the provisions of Section 2(6A) (e) of the 1922 Act gives an artificial definition of dividend and the same must receive a strict construction and in the light of said reasoning, it was held that loan given to HUF even where the beneficial ownership. of shares lies with it and the shares are registered in the name of Karta cannot be assessed as Deemed dividend in the hands of HUF. The said divergence or anomaly in the decisions when pointed out before the Apex Court in the case of Rameshwarlal Sanwarmal vs CIT(1980) 122 ITR 1 (SC), the Apex Court held that there was no conflict between the decision of 82 ITR 628(SC) and 83 ITR 170(SC) referred to hereinabove.

This was in view of the fact that the Court had not been called upon to decide the question whether on a proper construction of Section 2(6A) (e) of 1922 Act, a loan advanced to the beneficial owner of shares would be liable to be included as Deemed dividend or not. Finally in 122 ITR it was held that the loan to HUF in such cases was not liable to be included as deemed dividend in the hands of HUF.

The controversy has been set to rest by Hon. Supreme Court, recently. In case of Gopal and Sons (HUF) Vs. CIT, Kolkata-XI, Civil Appeal No. 12274 Of 2016 dated January 4, 2017 **has held as follows:**

The argument that as the shares are issued in the name of the Karta, the HUF is not the “registered shareholder” and so s. 2(22)(e) will not apply to loans paid to the HUF is not correct because in the annual returns filed with the ROC, the HUF is shown as the registered and beneficial shareholder. In any case, the HUF is the beneficial shareholder. Even if it is assumed that the Karta is the registered shareholder and not the HUF, as per Explanation 3 to s. 2(22), any payment to a concern (i.e. the HUF) in which the shareholder (i.e. the Karta) has a substantial interest is also covered.

On the basis of above ruling, it is thus clear that the Karta is not the beneficial owner of the shares, though he being registered owner of shares, any loan given by the Company to the Karta would be liable to be treated as Deemed dividend in the hands of HUF provided other conditions as specified in the Section 2(22) (e) are met.

Chapter 18
Partition of HUF

Meaning

Partition means division of property. Where the property is capable of admitting a physical division, share of each member is determined by making physical division of the property. On the other hand, where the property is not capable of physical division, partition shall mean such division as the property may admit.

Though partition can be claimed only by coparceners, the following persons are also entitled to their share in the property:

(*a*) A son in the womb of mother at the time of partition;

(*b*) Mother (gets equal share if there is partition between sons after the death of father); and

Assessment after partition (Section 171):

Once income of a joint family is assessed as income of a HUF, it will continue to be assessed as such until one or more coparceners claim partition. Such claim must be made before the relevant assessment year. The Assessing Officer, on the receipt of such claim, must make an enquiry after giving due notice to the members and record a finding whether there has been a partition and, if so, the date of partition.

Income of the family from the first date of the previous year till the date of partition is assessed as income of HUF and, thereafter, income from the property which was subject to partition is assessed as individual income of the recipient members. If, however, the recipient member forms another HUF along with his wife and son(s), income of the property which was subject to partition is chargeable to tax in the hands of new HUF.

Partition – Total or partial:

Under the Hindu law, an HUF is entitled to effect a partition which may be total or partial.

(i) *Total partition* – where an HUF undergoes a total partition, the entire joint family property is divided amongst all coparceners and the family ceases to exist as an HUF.

(ii) *Partial partition* – A partial partition, on the other hand, may be partial as regards the persons constituting the joint family or as regards the properties belonging to the joint family or both.

(*a*) In a partial partition, as regards the persons constituting the family, one or more coparceners may separate from others and the remaining coparceners may continue to be joint.

(*b*) In a partial portion, as regards the property, a joint family may make a division and severance of interest in respect of a part of joint estate while retaining their status as a joint family and holding the rest of the properties as joint and undivided property.

Effect of partial partition [Section 171(9)]:

After the enactment of section 171(9), partial partition is not recognised under the Act. The provisions of section 171(9) is applicable on satisfaction of two conditions, firstly, the partial partition should have taken place after December 31, 1978 and secondly, such partition must have taken place in an HUF which was assessed as a HUF before.

- If the above two conditions are satisfied, such family will continue to be assessed as if no such partial partition has taken place,*i.e.*, the property or source of income will be deemed to be belonging to the HUF and no member will be deemed to have separated from the family.
- Each member or group of members of such family immediately before such partial partition and the family will be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under the act by such HUF, whether before or after such partial partition.
- The several liability of any member or group members of such family will be computed according to the portion of the joint family property allotted to him on such partial partition.

Nature of the property received on partition

The nature of the joint family property on partition shall continue to be property of the HUF as and when the recipient person is married. Hence the character of the property shall remain that of the HUF property.

However, if person recipient of property is unmarried then, the property received on partition shall be assessed as individual property. On marriage, it will automatically be considered as property of his HUF. Income therefrom shall be separately assessed as HUF income.

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 vs. Parshottamdas K. Panchal (2002) 257 ITR 96 (Guj).

Example:

A has wife and families of two sons B and C. A HUF has property of certain property.

There is total partition of the property. So, property shall be received by A, B and C and towards maintenance wife of A will get certain portion. (whatever property is received by B and C shall be property of B HUF and C HUF and not individual property)

However, if only one son, say B separates from A HUF and takes cash of Rs. 1 cr. It will be property of B HUF. It is invested by B HUF in a fixed deposit or savings account and interest of Rs. 6 lakh is received, then it will be included in income of A HUF and B HUF shall not be required to include this income in its total income. Further, deduction under section 80TTA can be claimed by HUF based on savings bank interest income that is clubbed. If Fixed deposit matures and debentures or shares are acquired, then income earned by B HUF from debentures or shares shall also be clubbed in income of A HUF.

If B HUF acquires house property for Rs. 1 cr. and rent of Rs. 6 lakh is received, then it will be included in income of A HUF after considering deductions of municipal taxes, those allowable under section 24, etc. and B HUF shall not be required to include this income in its total income. If is is self-occupied property of B HUF, then annual value shall be 'nil' and though, principally, clubbing provisions apply, arithmetically nothing shall be added.

This clubbing of income takes place because, partial partition is not recognised under the Income tax Act.

However, if there was total partition, then the provisions of clubbing do not attract.

Unequal Partition

Where property is not shared in equal proportion by the members of the HUF, will it be considered as gift? This question arises to many.

Any coparcener or member of a Hindu Undivided Family does not have any definite share in the family property before partition and division. No coparcener or member be said to diminish directly or indirectly the value of his property or to increase the value of the property of any other coparcener by agreeing to take a share lesser than what he would have got if he would have gone to a court to enforce his claim (Refer CGT vs. N.S Getti Chettiar 91971) 82 ITR 599(SC).

Therefore, unequal partition by the members of the HUF, cannot be considered as gift.

As such it can be a sound mechanism of tax planning by giving larger share to the less financially sound co-parcener and lesser share to the affluent.

Documentation

In order to establish partition or provide proof thereof, it is necessary to record fact of partition on a document. It is necessary that stamp duty prescribed under the stamp duty legislation of the state government or union territory (by the Central Government) is complied with.

Appendix I
Affidavit for HUF

I, Shri. Akash Avinash Patil son of Shri. Avinash Patil, aged 58 years, resident of 11, Apple Apartments, 885, Sadashiv Peth Pune 411030 and as Karta of my Hindu Undivided Family (HUF) affirm on oath and declare as under :-

1. That I am Karta of our HUF which is known as Shri. Akash Avinash Patil (HUF).

2. That as on today, name of coparceners (including name of Karta) our above said HUF, their father name and their addresses are as under :-

S.No.	Name of Coparceners	Name of Father	Address
1	Shri. Akash Avinash Patil	Shri. Avinash Patil	11, Apple Apartments, 885, Sadashiv Peth Pune 411030
2	Sou. Akanksha Akash Patil	Shre. Amar Atre	11, Apple Apartments, 885, Sadashiv Peth Pune 411030
3	Sou. Asha Devendra Date	Shri. Akash Avinash Patil	11, Apple Apartments, 885, Sadashiv Peth Pune 411030
4	Adarsh Akash Patil	Shri. Akash Avinash Patil	11, Apple Apartments, 885, Sadashiv Peth Pune 411030
5	Sou. Aditi Adarsh Patil	Shri. Adarsh Akash Patil	11, Apple Apartments, 885, Sadashiv Peth Pune 411030
6	Amish Adarsh Patil	Shri. Adarsh Akash Patil	11, Apple Apartments, 885, Sadashiv Peth Pune 411030

3. This further to state that Shri. Akash Avinash Patil is Karta or Manager of Shri. Akash Avinash Patil HUF. The other coparceners of the HUF

are (i) Sou. Asha Devendra Date – daughter of Karta, (ii) Adarsh Akash Patil – son of Karta and (iii) Amish Adarsh Patil – grandson of Karta. There are two members of the HUV, viz. (i) Sou. Akanksha Akash Patil – wife of Karta and (ii) Sou. Aditi Adarsh Patil – daughter-in-law of Karta.

4. That the above said HUF is in existing since 05/05/1985, being date of marriage of the Karta - Shri. Akash Avinash Patil.

Place : Pune .....

Date : 04/04/2021 Deponent

Verification

I, Shri. Akash Avinash Patil son of Shri. Avinash Patil, do hereby verify that as per my best knowledge above mentioned contents of this affidavit are true and correct and nothing was hidden there from.

Place : Pune .....

Date : 04/04/2021 Deponent

Appendix II
Deed of Partnership

THIS DEED OF PARTNERSHIP is made at PUNE on this thday of ……., 2021 of

'MAHATASHTRA ENTERPRISES'

By and Between

3. **SHRI. AMIT AMAR BHOSALE**

as a Karta of his Hindu Undivided Family

having PAN ……

Residing at 1234, Shivaji Nagae,

Deccan Gymkhana, Pune – 411004

.... Being Party of the First Part

Whereas:

A. The Party of the First Part and the Party of the Second Part having experience and interest in activity of civil construction and considering scope for such business in and around state of Maharashtra, decided to set up and carry on business of civil construction and allied activities in the name and style 'Maharashtra Enterprises'.

B. Considering need of resources and sharing risks of business, it was decided by the Party of the First Part and the Party of the Second Part to request the Party of the First Part and the Party of the Third Part to join in the partnership, as a partner.

C. Shri. Amit Amar Bhosale Hindu Undivided Family, having sufficient capital and desirous of sharing risks and rewards of partnership business, agreed to accept offer of the Party of the First Part and the Party of the Second Part.

D. The parties hereto discussed terms and conditions for partnership and unanimously agreed upon certain terms and conditions for setting up and carrying on partnership business.

E. Shri. Amit Amar Bhosale Hindu Undivided Family, having PAN …….. informed the Party of the First Part and the Party of the Second Part that Karta of the said Hindu Undivided Family i.e. Shri. Amit Amar Bhosale shall represent Shri. Amit Amar Bhosale Hindu Undivided Family in the partnership firm, to which these two parties agreed.

F. ……

G. ……

Deed

IN WITNESS WHEREOF THE PARTIES HEREINTO HAVE set their hands on the day and month of the year first here mentioned hereinabove.

1. Signed and delivered by the within named Shri ABC

(Party of the First Part)

2. Signed and delivered by the within named Shri ABC

(Party of the Second Part)

3. Signed and delivered by the Within named Shri. Amit Amar Bhosale (as a Karta of his Hindu Undivided Family)

(Party of the Third Part)

Signatories to this Deed of Partnership have put their respective signatures on this Deed in our Presence.

Sr.No.	Name of witness	Age	Address	Signature
1.				
2.				

FORMAT-I

DECLARATION

	I, Ram Dashrath Joshi son of Shri. Dashrath Bramha Joshi, Aged about …. Years Residing at 'Ayodhya', 10, Sadashiv Peth, Pune 411030	
Am making this declaration of my free will concerning my Hindu Undivided Family of which I am Karta		

I do hereby declare the following -

1. That I am Karta of Shri. Ram Dashrath Joshi Hindu Undivided Family.
2. That the said Shri. Ram Dashrath Joshi H U F has received gift of Rs. 1,00,001 (Rupees one lac one) by way of CHEAUE from my FATHER Shri. Dashrathrao Joshi [PAN ……..] on the occasion of my birthday/ Dasara/Diwali*
3. This amount of Rs. 1,00,001 (Rupees one lac one) constitutes "corpus" of Shri. Ram Dashrath Joshi Hindu HUF.
4. That the HUF at present is consisting of the following members-

   a) Shri _____,

   b) Smt. _____,

   c) Kumari _____

   That the above statements are true to the best of my knowledge & belief. Declare this on _____

WITNESS: Signature

1. ———————————— ————————————

2. ———————————— ————————————

FORMAT- II

AFFIDAVIT

I, CDR, son of Late DDR residing at Chowringhee Road, Kolkata-700 071 do hereby solemnly affirm and declare as follows: -

1. That my father DDR died instate on 12th August, 2011 leaving behind certain properties as listed in the annexure.
2. That out of the said properties, the property at Chowringhee Road, Kolkata-700 071 was acquired by him by way of inheritance from my grandfather and was ancestral property.
3. That upon death of my father, I along with my-wife, my sister, my son and my mother have become entitled to the said property at Chowringhee Road as per the provisions of the Hindu Succession Act, 1956.
4. That the staid ancestral property has devolved on the HUF consisting of myself, my mother, wife, sister, son etc.
5. That my wife, my son, my mother and my sister have signed this affidavit as a witness to the facts as aforesaid and as an acceptance of the said facts.
6. That the Statements made hereinabove are true to the best of my knowledge and belief and nothing is false.

Declared at Kolkata

This 1/08/2019

Witness and confirmatories

1.
2.
3.
(CDR)
DECLARANT.

Appendix III
Deed of HFU

FORMAT- III

DECLARATION OF GIFT MADE BY _____
TO THE HINDU UNDIVIDED FAMILY OF _____

I, _____ residing at _____ _____, do hereby declare and affirm as under:

1. That out of natural love and affection borne by me towards the Hindu Undivided Family of _____, I have made a gift of Rs._____ (Rupees _____ only) as per the following details:

   By Cheque No._____, dated _____, drawn on Bank _____, _____ Branch, in favour of _____ HUF.

2. The above Gift has been duly accepted by _____, as Karta of his Hindu Undivided Family and has been duly acknowledged hereunder.

3. This Declaration of Gift is made to record the fact that I have made this Gift in favour of the Donee as above, who now has the absolute right, title and interest in the gifted amount.

Date: _____, 200__ _____

(Signature of the Donor)

ACKNOWLEDGEMENT OF GIFT

I, _____, hereby acknowledge having received the above gift made to my Hindu Undivided Family by _____.

Date: _____, 200__ _____

(Signature of the Donee as Karta of his HUF)