HUF

CREATION, MANAGEMENT & TAX IMPLICATIONS OF HINDU UNDIVIDED FAMILY

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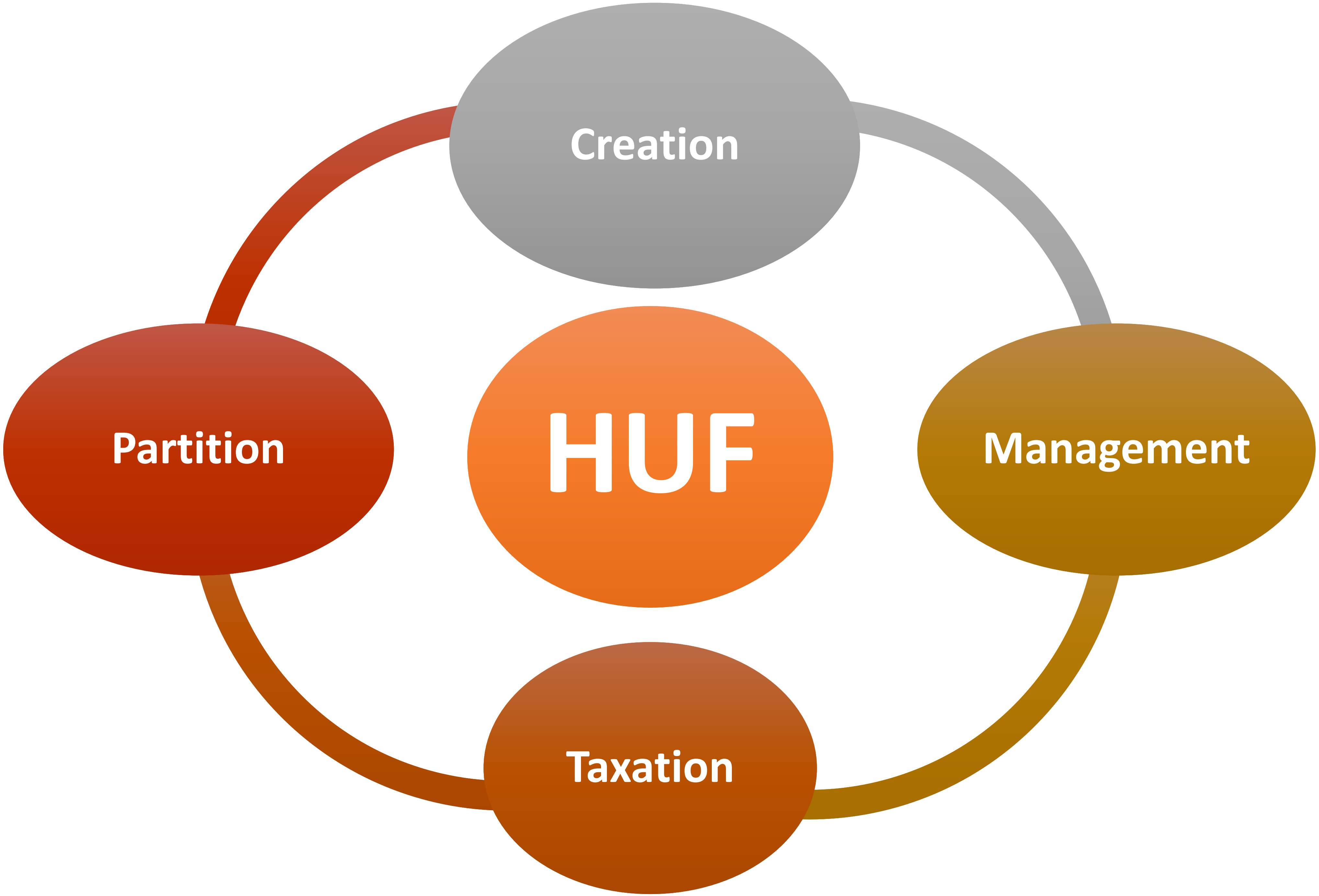

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FORMATION OF HINDU UNDIVIDED FAMILY

- A HUF can come into existence prior to passing of the Hindu Succession Act in the year 1956 by a person inheriting property from his paternal ancestor's up to four degrees.
- However, after the year 1956, an HUF can come into existence only if a person throws his property into a common hotchpotch.
- After 1956, an HUF, does not come into existence on account of inheritance of ancestral property.

(Dayanand Rajan vs. Ram Lal Khattar, Delhi High Court, RFA no. 1064/2017 dated 3rd January, 2018)

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FORMATION OF HINDU UNDIVIDED FAMILY

- **Can a single male member after his marriage form a HUF?**

YES [CIT v. RM. AR. AR. Veerappa Chettiar (1970) 76 ITR 467 (SC)]

- **Can Male member with wife & unmarried daughter form HUF ?**

YES [Surjit Lal Chhabda v. CIT (1975) 101 ITR 776 (SC)]

- **HUF cannot be created by act of parties but a corpus can be created for an already existing HUF through the medium of a gift or will etc.**

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MODES OF CREATION OF HUF

- Blending of individual property with HUF character
- Gifts
- Will
- Partition
- Reunion

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CREATION OF HUF BY BLENDING

- HUF can be created by impressing one’s self acquired property with the character of HUF property by bringing in to existence.
- If a **Coparcener makes a declaration blending his individual property with that of HUF** or impresses such property with the character of HUF property or throws the property in the common hotchpot – **such property becomes HUF property** and loses the character of individual or separate property.
- **The clubbing provisions under Section 99(3) of ITA 2025 [Erstwhile Section 64(2)] shall apply.**
  - The income arising from such converted property will be deemed to be income of the transferor individual.
  - On Partition of such property, in case such property is allotted to the wife of such individual the income arising there from shall continue to be taxed in the hands of the transferor individual.

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CREATION OF HUF BY GIFT FROM NON-MEMBER

- HUF cannot be created for the first time by a gift from the stranger.
- HUF created by Gift from a member, will be subject to the clubbing provisions u/s 64(2)
- HUF created by Gift from father-in-law or Mother in law in favour of the family of son-in-law is most common practice. In terms of section 56(2)(x), even if the gift exceeds INR 50,000/-, No tax implication will arise.
- If HUF already exists, gift can even be made by a stranger to such HUF.
- The gifted property will be HUF property if the gift is made to HUF.
- Intention of donor & the character of the gifted property will depend on the construction of the gift deed.

GIFT BY HUF TO NON-MEMBERS

- Karta is not entitled to give any gifts to strangers, except for pious purposes. [*Gangadhar Narsingdas Agarwal (HUF) Vs CIT (1986) 162 ITR 320 (Bom)*]

- A coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest. It is said to be void. [*Thamma Venkata Subbamma Vs Thamma Ratanamma & Ors. (1987) 168 ITR 760 (SC)*]

- Gift to a stranger of a joint family property by the manager of the family is void. Manager has no absolute power of disposal over HUF property. [*Guramma Bharatar Chanbasappa Deshmukh Vs Mallappa Chanbasappa AIR 1964 SC 510*]

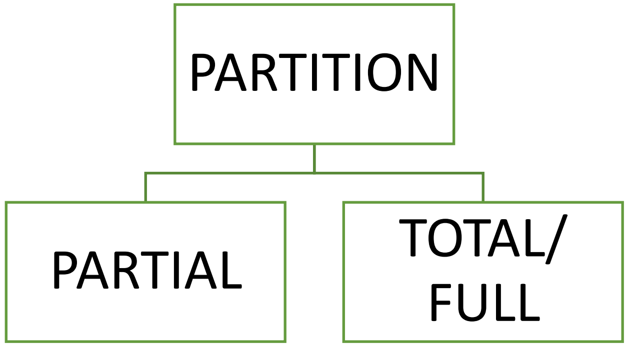
CREATION OF HUF BY WILL

- A person can create an HUF through a valid will bequeathing property to be held as HUF property.
- No existing HUF is needed - the bequest itself brings the HUF into existence.
- At least two members must exist to constitute an HUF on receipt of the property.
- The property gets the character of HUF property from the date of bequest.

(CIT v. Ghanshyam Das Mukim, 118 ITR 930)

CREATION OF HUF BY PARTITION

- Partition is the severance of the status of Joint Hindu Family, known as Hindu Undivided Family under tax laws.
- Under Hindu Law once the status of Joint Hindu Family is put to an end, there is notional division of properties among the members and the joint ownership of property comes to an end. However, for an effective partition **as per Hindu law, it is not necessary to divide the properties in metes and bounds.**
- **But under tax laws for an effective partition division by metes and bounds is necessary**. There should be physical partition of the property and not the notional partition.



CREATION OF HUF BY PARTITION

❖ Partition under Hindu law, can be total or partial.

❖ In total partition all the members cease to be members of the HUF and all the properties cease to the properties belonging to the said HUF.

❖ **Case Study:** A father and his two sons and a daughter currently constitute a HUF and a decision is undertaken to undergo complete partition. In the above scenario, the son can have a smaller HUF along with his wife. The daughter, however, will have exclusive ownership over the partitioned share in her favour.

Daughter is a Co-Parcener in HUF

- A three-judge bench of the Supreme Court in the case of Vineeta Sharma v. Rakesh Sharma & Ors. [Diary No.32601 of 2018] observed as follows:
- There was lack of clarity regarding the amended section which deals with devolution of interest in coparcenary property due to conflicting judgments of the Supreme Court in Prakash & Ors. v. Phulavati & Ors. [(2016)2SCC36] (Phulavati) and Danamma@ Suman Surpur & Anr. v. Amar & Ors. [(2018) 3 SCC 343] (Danamma).
- **The SC in the latest judgement now decided that "The coparcenary rights are conferred on the daughter if she is alive on the date of 2005 Amendment irrespective of her date of birth.**
- **In effect, after the 2005 amendment a daughter will no longer be treated on a separate footing from a son. The Court has clarified that the father need not be alive on the date of the 2005 Amendment for the daughter to be able to claim her coparcenary right."**

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HUF PARTIAL PARTITION NOT RECOGNISED

- It may be partial vis-à-vis members, where some of the members go out on partition and other members continue to be the members of the family.

- However, Tax Laws do not recognize partial partition of property or/and persons after 31-12-1978 as per Sub-Section (9) to Sec. 171 of the I.T Act, 1961 [Now sub-section 8,9,10 of section 315].

- In terms of Section 171(9) of the ITA 1961, in case the partition of HUF assets is not a complete partition i.e. of the entire assets with metes and bounds, **the income of the assets transferred by way of a partial partition, will continue to be assessed as income of the HUF.** This provision do not interfere into the legal rights of the HUF member who received the property in partial partition.

CREATION OF HUF BY PARTITION

- Under Hindu law partition may be either total or partial.
- A partial partition may be as regards person who are members of the family or as regards properties which belong to it.
- Where there has been a partition, it is presumed that it was a total one both as to the parties and property
- When there is a partition between brothers, there is no presumption that there has been partition between one of them and his descendants.
- It is, however, open to a party who alleges that the partition has been partial either as to persons or as to property to establish it.
- Partition can be brought about
    - by a father during his lifetime between himself and his sons by dividing properties equally amongst them,
    - by agreement or
    - by a suit or arbitration.
    - A declaration of intention of a coparcener to become divided brings about severance of status.

Apoorva Shantilal Shah vs CIT, SC, Civil Appeal No. 1370 of 1974 dated 12th January, 1982

TAX IMPLICATION OF PARTITION

- In order to be acceptable or recognizable partition under section 171 the partition should be complete with respect to all members of HUF and in respect of all properties of HUF and there should be actual division of property as per specified shares allotted to each member. – *Mohanlal K. Shah (HUF) v. ITO 1 SOT 316.*

- "If the properties belonging to a HUF are not partitioned at all by dividing it among the members, even though capable of division, then the members of the family cannot say that so far as those properties are concerned, they stand divided." - *Commissioner of Income-tax v Venugopal Inani [1999] 107 Taxman 258 (SC)*

- "It must be held that though for the purpose of HUF, section 6 of the Hindu Succession Act, would govern the rights of the parties but insofar as income-tax law is concerned, the matter has to be governed by section 171(1)." - *Additional Commissioner of Income-tax v. Maharani Raj Laxmi Devi [1997] 91 Taxman 20 (SC)*

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TAX IMPLICATION OF PARTITION

- **Setting apart certain assets of HUF in favour of certain coparceners on the condition that no further claim in properties will be made by them is nothing but a partial partition and not a family arrangement not recognised in view of s. 171(9) –** ***ITO v. P. Shankaraiah Yadav 91 ITD 228.***

- **The property received by a coparcener on partition of the HUF is the HUF property in his hands vis-à-vis the members of his branch i.e. with his wife and a daughter. –** ***N.V. Narendranath v. CWT, 74 ITR 190 (SC)***

TAX IMPLICATION OF PARTITION

Kalloomal Tapeshwari Prasad (HUF) v. CIT

[1982] 133 ITR 690, Supreme Court

"*To claim a partition within four corners of the Income-tax Act, certain additional requirements as provided u/s 171 are required to be fulfilled. Interpreting section 171, it has been held by it that Hindu Law does not require that the property in every case be partitioned by metes and bound or physically into different portions to complete a partition. Disruption of status can be brought about by any of the modes recognized under Hindu Law and it is open to the parties to enjoy their share of the property as tenants in common in any manner known to law according to their desire. But the Income Tax Law introduced certain additional conditions of its own to give effect to the partition under section 171. A transaction can be recorded as a partition u/s 171 only if, where the property admits of a physical division, a physical division of the property has taken place.*"

Note : It may be appropriate to mark the division on the map of common properties and divisions clearly marked is enough. Common passage or certain facilities can be there .

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CREATION OF HUF BY REUNION

- Reunion refers to the reconstruction of divided HUF on partition.
- Essentials of reunion are:

  I. There must have been previous state of union

  II. There must have been partition in fact

  III. The reunion must be effected by the parties

  IV. Entire property existing on day of reunion have to be brought back

  [*CIT vs. Vaiyapuri Chettiar (1995) 215 ITR 836 (Mad)*]

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WHO IS A KARTA?

- Karta means manager of joint family and joint family properties. He is the person who takes care of day to day expenses of the family looks after the family and protects the joint family properties.
- *The senior most male coparcener* - Even if the Karta becomes aged, infirm, ailing, or even a leper, he may continue to be KARTA. Where the senior most member is not Karta, the next senior member (as may be decided by the family) takes over as Karta. In the absence of adult male member, the senior most female member of the house can act as Karta.
- If the senior most member gives up his right a junior coparcener can become Karta of the HUF with the consent of all other members. [*Narendra Kumar J. Modi Vs CIT (1976) 105 ITR 109 (SC)*]

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WHO IS A KARTA?

- There can be more than one Karta of a HUF [*Darshan Vs Prabhu ILR (1946) All 692 (Allahabad HC)*]
- The power of alienation cannot be exercised by anyone except by Karta, where the joint family property can be alienated for the following three purposes only: Legal necessity, Benefit of the family or Acts of Indispensable duty.
- Karta is not bound to pay income of joint family in any fixed proportion to other members. This means that the Karta need not divide the income generated from the joint family property equally among the family members. He can discriminate one member from another and is not bound to treat everyone impartially.

CO-PARCENERS

- **Birthright:** A coparcener automatically obtains a direct ownership stake in the joint family property by virtue of their birth or adoption.
- **Partition Rights:** Only a coparcener can demand a legal partition (division) of the HUF property to claim their specific share.
- **Eligibility:** Under the Hindu Succession (Amendment) Act, both male and female lineal descendants (up to four generations) are classified as coparceners

Member

- **General Status:** A member includes every individual who is a part of the HUF. This encompasses the common ancestor, all lineal descendants (both male and female), and their spouses.

- **Maintenance Rights:** Members who are not coparceners (such as a daughter-in-law married into the family) do not have a birthright in the ancestral property.

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SOURCES OF INCOME FOR HUF

Sources of Income for HUF:-

- Ancestral property.
- Assets received on partition.
- Gifts received by HUF.
- Property acquired from HUF funds.
- Business carried on by HUF.
- Investments made from HUF funds

Do’s & Don’ts of HUF - Karta, Members

For Karta

Do's

- Act in the best interest of all HUF members.
- Maintain proper accounts and records.
- Represent HUF before tax authorities and other institutions.
- Make prudent investment and business decisions.
- Ensure transparency in major transactions

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Don'ts

- Do not misuse or misappropriate HUF assets.
- Do not use HUF funds for personal purposes.
- Do not ignore rights of coparceners (including daughters).
- Do not ignore tax and legal compliance requirements.

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Do’s & Don’ts of HUF - Karta, Members

For Members

Do's

- Maintain separate **PAN, bank account, and books** for HUF.
- Keep proper records of gifts, investments, property, and income.
- Use only genuine HUF assets/funds for HUF transactions.

Don'ts

- Do not mix personal and HUF funds.
- Do not treat HUF property as personal property.
- Do not transfer self-acquired assets to HUF solely for tax savings (Section 99(3)) [Erstwhile Section 64(2)].
- Do not claim personal expenses as HUF expenses, beyond as permitted by the Karta in the family interest.
- Do not create sham HUF arrangements for tax avoidance.
- **HUF with Karta being a CA in practice can not carry on business (Council has recently permitted undertaking agricultural activity by such HUF)**

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Gift Received by HUF — Is it Taxable?

- Gift from a **MEMBER** → fully exempt, no monetary limit as per Section 56(2)(x) [Now 92(2)(m)]
- Gift from a **Non-Member** → taxable if total gifts in the year exceed ₹50,000.
- **"Relative" for HUF includes its members.**
- Only gift received by HUF from its member of HUF is not chargeable to tax;
- Thus, where assessee HUF received gift of 75,000 equity shares from mother of Karta of assessee HUF, not being member of assessee HUF, said sum would be chargeable to tax under section 56(2)(vii).

[Subodh Gupta (HUF) v. PCIT, [2018] 89 taxmann.com 418 (Delhi - Trib.)]

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Gift by HUF — When Permitted?

- **Elementary proposition that Karta of HUF cannot gift or alienate property except to the extent recognized under Hindu Law, namely necessity etc –**
  - ***CGT v. P. Hanumanthappa 68 ITR 363,***
  - ***K.P. Gupta v. CIT 233 ITR 456***
- **Reasonable limits depends upon facts - *CGT v. B.V. Narasimharaju 101 ITR 74***
- **Karta can make reasonable gifts to daughters – *Sushil Kumar & Sons v. ITO 234 ITR 98***

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Gift by HUF — When Permitted?

- **Gift on Marriage Occasion is valid –** ***S. Lakshmamma v. Kotayya AIR 1936 Mad. 825.***
- **Gift of immovable property should be for pious purpose –** ***CIT v. Ram Gopal Rajgharia 123 ITR 693***
- **Where gift is not for religious purpose or consists of the whole or large portion of joint family property , the transaction is voidable only at the instance of other coparceners & not strangers –** ***Imperial Bank of India vs. Maya Devi AIR 1935 Lahore 867***
- **Gift to Strangers void –** ***Guramma v. Mallappa AIR 1964 SC 510.***

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Gift Received from HUF — Is it Taxable?

- Receipt of a Gift by a member from his HUF – Whether Taxable u/s 56(2)(x) or Not?
- ‘Total Partition’ or ‘Partial Partition’ of HUF Property is not considered ‘transfer’ as per Section 47(i)
- Section 10(2) specifically exempt ‘any sum received by an Individual as a member of HUF where such sum has been paid out of the income of the family or in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family’.

Gift Received from HUF — Is it Taxable?

"If two views are possible, the one beneficial to the assessee has to be adopted. For this proposition the learned authorised representative relied upon the judgment of the hon'ble apex court in ***Union of India v. Onkar S. Kanwar [2002] 258 ITR 761 (SC)****."*

"Therefore, in our considered view, the "relative" explained in Explanation to section 56 (2)(vi) of the Act includes "relatives" and as the assessee received gift from his "Hindu undivided family", which is "a group of relatives", the gift received by the assessee from the Hindu undivided family should be interpreted to mean that the gift was received from the "relatives" therefore the same is not taxable under section 56(2)(vi) of the Act, we hold accordingly." ***[Vineetkumar Raghavjibhai Bhalodia Vs. ITO, 2011 SCC OnLine ITAT 2749]***

Income Received from HUF by Member

- As per section 10(2) of the Income Tax Act, 1961 any sum received by an individual from Hindu Undivided Family of which he is member is exempt from tax.
- Member of joint family living apart from the other members does not affect his/her position in law to claim the right as per section 10(2).
- **"For getting exemption under section 10(2) two conditions are to be satisfy. Firstly, he is a member of the Hindu undivided family and secondly he receives the sum out of the income of such Hindu undivided family may be of the earlier years."**

[Vineetkumar Raghavjibhai Bhalodia Vs. ITO, 2011 SCC OnLine ITAT 2749]

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RESIDENTIAL STATUS - HUF

- HUF is treated as resident in India in every case except where during that previous year the control and management of its affairs is situated wholly outside India
- Hence the residential status would depend upon the location from which control and management is exercised by Karta or Manager

Taxation of HUF

- **Where members of HUF become the partners in a firm by investment of family funds & not because of any Special Services rendered by them - income will belong to HUF –** ***D.N. Bhandarkar v. CIT 158 ITR 724.***
- **Where property was purchased by members of HUF with loan from the HUF, which was later on repaid, income from such property would be assessable as individual income of the members -** ***L. Bansidhar and Sons v. CIT 123 ITR 58 (Delhi).***

Taxation of HUF

HUF is taxed as a separate taxable person and gets its own basic exemption limit.

₹4 Lakhs

Basic exemption

For FY 2025-26, the HUF need not to pay income tax up to income level of INR 4,00,000/-

ITR-2

No Business Income

For Individuals/HUFs not having income from business or profession.

ITR-3 / 4

Business Income

ITR-3 for business/profession, and ITR-4 in eligible presumptive cases.

Note:

- The ₹4,00,000 basic exemption applies under the new tax regime. Under the old regime, the limit was ₹2,50,000. The HUF must consciously choose and declare the applicable regime while filing.
- HUF with tax liability above ₹10,000 must pay advance tax. Karta is responsible for this compliance.

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DEDUCTIONS & EXEMPTIONS

Section 10(2)

Amount received by a member from HUF can be exempt in the member's hands.

OLD SCHEME

Chapter VI-A

HUF may claim eligible deductions like sections 80C and 80D, subject to conditions.

House property

Standard deduction and interest rules can apply under sections 22 to 24 where relevant.

Note: Exemption or deduction is not automatic. It depends on facts, ownership, source of income, and conditions of the relevant section.

DEATH OF KARTA - TAX PERSPECTIVE

Partition issue separate from Death of Karta

Death of Karta will not necessarily result in partition of HUF*

No Automatic Closure of Tax Assessment

Death of Karta will require replacement of new Karta

Succession in management

Another eligible member may act as Karta depending on family law facts.

*Subject to Section 6 of Hindu Succession Act, requiring a notional partition for distribution of share on death of any member among his legal heirs

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THANK YOU

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