

Hindu Undivided Family (HUF)

A fresh perspective with important & recent case laws



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Background:

U/s 4 of the Income Tax Act, 1961 income tax is payable by “every person”. U/s 2(31), Person is defined to include a Hindu Undivided Family (HUF). Section 3 of the Wealth Tax Act, 1957 also indicates that wealth is chargeable to tax in respect of net wealth of any HUF.

Definition:

The expression “Hindu Undivided Family” has not defined under the Income Tax Act or in any other statute. When we dissect – essentials are (1) One should be Hindu, Jains, Sikhs and Buddhists are considered as Hindus but not Muslims or Christians; (ii) There should be a family i.e. group of persons – more than one and (iii) They should be undivided i.e. living jointly and having commonness amongst them. All these three essentials are cumulative. It is a body consisting of persons lineally descended from a common ancestor and includes their wives and unmarried daughters, who are living together, joint in food, estate and, worship (not now necessary).

Case Laws:

HUF without Females

A Single male coparcener without a female member does not constitute a HUF. The only way by which a single coparcener can constitute a HUF is to marry a woman. He and his wife would constitute a HUF. Premkumar vs. CIT (1980) 121 ITR 347 (All.)

Females and Gift:

A Female member (Wife) can gift her property so as to constitute it as HUF Property. CIT vs. M. Balasubramanian (1990) 182 ITR 117 (Mad.) Daughters are now coparceners. Hence, now, they can throw their individual assets into family hotch potch subject to the provisions of Sec.64(2).

An HUF need not consist of two male members- even one male member is enough :

The plea that there must be at least two male members to form an HUF as a taxable

entity, has no force. – *Gauli Buddanna v. CIT*, 60 ITR 347 (SC); *C. Krishna Prasad v. CIT* 97 ITR 493 (SC) and *Surjit Lal Chhabda v. CIT*, 101 ITR 776 (SC)

A father and his unmarried daughters can also form an HUF, *CIT v. Harshavadan Mangaldas*, 194 ITR 136 (Guj.)

How does a HUF come into existence ?

The concept of Joint Family under Hindu law as well as the HUF in Income Tax Act, 1961 is broadly the same. HUF is purely a creature of law and cannot be created by an act of parties (except in case of adoption and reunion). A HUF is a fluctuating body, its size increases with birth of a member in the family and decreases on death of a member of the family. Hindu Undivided Family (HUF) is a legal expression which has been employed in taxation laws as a separate taxable entity. It is the same thing as “Joint Hindu Family”. It has not been defined under the Income Tax Act, as it has a well defined connotation under Hindu Law.

Case Law:

Only one co-parcener or member cannot form an HUF

Family is a group of people related by blood or marriage. A single person, male or female, does not constitute a family.

The Hon'ble Supreme Court held in *C. Krishna Prasad V/s CIT* (1974) 97 ITR 493 (SC) that the word “Family” always signifies a group. Plurality of persons is an essential attribute of a Family. A Single person, male or female, doesn't constitute a family.

However the property held by a single co-parcener does not lose its character of Joint Family property solely for the reason that there is no other male or female member at a particular point of time. Once the co-parcener marries, an HUF comes into existence as he alongwith his wife constitutes a Joint Hindu Family as held in the case of *Prem Kumar v. CIT*, 121 ITR 347 (All.)

Daughter will also be a coparcener:

W.e.f. 09/09/2005, due to the amendment of the Hindu Succession Act, the daughter of coparcener by birth shall become a coparcener in her own right in the same manner as son and she has equal share that of a son. Hence, with effect of this amendment, a daughter does not cease to be a member of an HUF of her father even after her marriage. She can also become a member of her husband HUF.

Case laws:

Can there be a HUF with only female members?

Yes. Under Hindu Law it is not predicated of a Hindu joint family that there must be a male member. So long as the property which was originally of the joint Hindu family

remains in the hands of the widows of the members of the family and is not divided among them, the joint family continues. Joint Family continues even in the hands of females after the death of sole male member. Even after the death of the sole male member so long as the original property of the Joint Family remains in the hands of the widows of the members of the family and the same is not divided amongst them; the Joint Hindu Family continues to exist.

(Refer CIT v/s. RM AR. AR. Veerappa Chettiar (197)) 76 ITR 467(SC)

HUF with only Female Members – A Hindu widow being the sole surviving member cannot constitute a HUF. Gangamma vs. Agl. ITO (1991) 188 ITR 1 (Ker.). After the Amendment in the Hindu Succession Act, in 2005, a Hindu Widow and her unmarried daughter can constitute a HUF, even when the widow had not adopted a son since, daughter is also a coparcener.

Rights on Income & assets of the HUF:

HUF property and income are considered to be property and income of joint family and not of Karta. So Karta as a signing authority becomes manager of the joint family assets and income but he does not become owner of the joint family property. Karta is only manager of HUF and has rights related to management of HUF assets but this doesn't mean that he owns HUF assets. He is just manager of HUF property.

Coparceners and Members of HUF : What is the difference?

Coparceners are those members which have become members of the HUF by birth. So all the coparceners are members but all the members are not coparceners. Wife becomes member by marriage so she is only member of HUF and she is not coparceners of HUF. Coparceners have a right to claim partition of the HUF, while members do not.

Can a woman become Karta of an HUF?

Earlier the answer was NO. But in the recent landmark judgment of Mrs. Sujata Sharma Vs Shri Manu-Gupta, Delhi HC Justice Najmi Waziri said - "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 coparcener of an HUF, from being its Karta." This judgment was concluded taking note of section 6 of the Hindu Succession Act, 1956 (which was amended in 2005), giving equal rights to a daughter in her father's property. In his decision, Waziri stated, "Now that this disqualification has been removed by the 2005 Amendment, there is no reason why Hindu women should be denied the position of a Karta." Since the daughter can also be a coparcener w.e.f. 09/09/2005, it may be presumed that daughter can also be Karta of her father's HUF.