

HINDU UNDIVIDED FAMILY

Q-1. What is HUF?

Ans. : HUF includes those persons who acquired by birth an interest in joint family property.

Q-2. Dose HUF include the wives and daughters of the abovesaid persons?

Ans. : Yes. A family consists of all persons lineally descended from a common ancestor and include their wives and unmarried daughters.

Q-3. Does HUF arise from a contract?

Ans. : No HUF arises only from status.

Q-4. Who is a coparcener?

Ans. : The persons who acquire by birth and interest in joint family property. The test of Coparcener is that coparcener enjoys right to enforce partition.

Q-5. What are the schools of law under HUF.

Ans. : **Daaya bhaga** : It prevails only in west Bengal & Assam. Here a son acquires right in the family property not on his birth but on the death of his father.

Mitaaakshara : Under the school of law each son by birth acquires an equal interest with his father in the ancestral property. This law prevalent all over India.

Q-6. Can female members can enforce partition?

Ans. : Female members do not enjoy right to enforce partition, through they are entitled to maintenance out of the family property.

Q-7. What is ancestral property?

Ans. : It is the property, which a man inherits from any of his three immediate male ancestors , i.e., father , grand father and great grand father.

Q-8. Should there be two male members?

Ans. : There need not be necessarily more than one male member to form a HUF along with female members.

Q-9. Will a joint undivided family be assessed as HUF?

Ans. : Yes. CIT v. Smt. Champa Kumari Singhi(1972)83 ITR 293(SC).

Q-10. Is there HUF in Kerala??

Ans. : No.

Q-11 What is a smaller HUF?

Ans. : A son can have smaller HUF with his wife and children, while he continues to be a member of his father's HUF. In his father's HUF, he is mere a member, and his own, he is a karta.

Q-12. How does HUF concept deal with females?

Ans. : Women members are not treated as coparcener of HUF.

A daughter after her marriage has no right at all in assets of HUF.

After the death of karta, if there is no male member, the wife of karta not becomes a karta.

If a Karta dies, leaving behind his widow and minor son, even then, wife is not permitted to become a karta.

Q-13. Can there be HUF with only female members?

Ans. : Yes. As so long as the property which was originally of the joint Hindu family remains in the hands of the widows of the member of the family and is not divided, HUF can continue with female members.

Q-14. When will HUF status be recognize under Income -Tax Act?

Ans. : There should be a coparcener.

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.

Q-15. What happens on the death of a sole male member?

Ans. : Even after death, so long as the property which was originally of HUF remains in the hands of widows and is not divided among them, the joint family continues.

Q-16. Can individual members be assessed in respect of HUF'S Income?

Ans. : So long as HUF exist, individual members can not be separately assessed in respect of HUF'S income. ITO v. Bachu Lal Kapoor (1966) 60 ITR 74 (SC).

Q-17. Can Karta gift HUF property?

Ans. : Gift by karta of HUF, a movable property or an immovable property within reasonable limits in favour of his daughter is permissible on the occasion of her marriage.

Q-18. Is oral partition among HUF permissible?

Ans. : Yes Hans Raj Agarwal (2003) 259 ITR 265/126 Taxman 603 (SC).

Q-19. Can the ITO enquire about details of partition?

Ans. : Yes it is his duty to know the exact portions of the division among the members and to hold an inquiry into the claim. Lakmichand Bajinath v. CIT (1959) 35 ITR 416 (SC).

Q-20. Should the partition be recorded by ITO?

Ans. : The partition is not valid and the HUF is assessable to the tax as such, unless the finding is recorded by the AO by an order under section 171 Addl CIT v. Maharani Raj Laxmi Devi (1997)224 ITR 582/91 Taxman 20 (SC).

Q-21. Assessee gets certain property from HUF but has no son. What is the status?

Ans. : Where the assessee has life, but no child got certain property on partition of bigger HUF, it was held that assessee's claim for HUF status (smaller HUF) was valid. CIT Krishna kumar (1982) 10 Taxman 292 (MP).

Q-22. What happens when a single coparcener with no male issue acquires HUF property?

Ans. : The property will belong to him as his separate property and he could validly gift it to his wife and daughters. CIT v. Admiralty Flats Motel (1982) 133 ITR 895 (MAD)

Q-23. What happens when karta is a partner in a partnership firm gets salary?

Ans. : Unless the remuneration has direct nexus with investment of funds of the family, it will be treated as personal income of karta. Laxman Das v. CIT (1982) 138 ITR 628/(1983) 12 Taxman 58 (all).

Q-24. What happens when a member who is a partner in a firm gets a salary?

Ans. : It is his individual income. Unless it is the part of the return on investment of HUF. CIT v. Trilok Nath Mahrotra (1998) 98 Taxman 462 (SC).

Q-25. What happens when assessee's father settled his self-acquired property in favour of assessee with some condition?

Ans. : The property is assessable as individual property of assessee even though it is subsequent partition of HUF such property is treated as HUF property. CIT v. CG. Venkatasubben (1999) 150 Taxman 352 (Mad)

- What happens when a single coparcener with no male issue
- Q-26.** acquire HUF property? Can a HUF pay salary to karta for looking after his affairs?
- Ans. :** Yes. Provided it is genuine and not excessive and under a valid bona fied agreement . Jugal Kishore Baleo v. CIT (1967) 63 ITR 238 (SC).
- Q-27.** Can a HUF pay salary to karta for looking after its interest in a firm?
- Ans. :** Yes, CIT v. Prakash chand Agarwal (1982) 11 Taxman 55 (MP)
- Q-28.** Who can claim share in partition?
- Ans. :** All coparceners.
A son in the womb of his mother at the time of partition
Mother.
Wife.
- Q-29.** Will section 171 have application on a Hindu family not assessed as HUF so far?
- Ans. :** No. CIT v. Kantilal Ambalal (1991) 59 Taxman 232 (Guj)
- Q-30.** Can partial partition take place in HUF?
- Ans. :** Partial partition is not recognized under Income tax Act as per section 171(9)
- Q-31.** Can a HUF become a partner in a firm?
- Ans. :** No it can do so only through its karta. CIT v. Seth Govindram sugar Mills (1965) 57 ITR 510 (SC).
- Q-32.** Can a widow be a karta of joint family?
- Ans. :** As the widow is not coparcener, she has no legal qualification to become a karta. CIT v. Seth Govindram Sugar Mills (1965) 57 ITR 510 (SC)
- Q-33.** Can female member blend her property with that HUF?
- Ans. :** The right of blending is limited to coparcener. Pushpa Devi V. cit (1997) 109itr 730 (sc)
- Q-34.** X has obtained property on partition of HUF. He has daughter but no son. Can the property treated as HUF property?
- Ans. :** Yes. There is no requirement like that, in HUF, there must be at least two male members. N.V.Narendranath v. CWT (1969) 74

ITR 190 (SC).

Q-35. With the gift received from the joint family property can a member from his own HUF?

Ans. : No a gift cannot help in forming or creating a HUF. It may only provide the nucleus of the Properties to an already existing HUF, Which may not be having any joint Family property Or fund.

Q-36. Mr. C, an outsider, makes a gift to a HUF consisting of Mr. A and his wife B. Can A&B assessed as a HUF respect of C's gift?

Ans. : The HUF should have two or more coparceners to treat Mr. gift as HUF property. Hence In this case it is not possible as A is the only coparcener. (Section 400 of Mulla's Hindu Law)

Q-37. Mr. A is an assessee in the status of HUF. He has sons and daughters, can he do partition among sons?

Ans. : The father can effect only a total partition in respect o all the properties. He does not have Right to effect partial partition. CIT v. Seth Gopaldas (HUF) [1979] 116 ITR 577 (MP)

Q-38. Can a father do total partition without resorting to suit?

Ans. : Yes whereas any other coprcener can achieve this result only by a suit CIT v. Seth Gopaldas (HUF) [1979] 116 ITR 577 (MP)

Q-39. Can a female along with her son represent HUF As karta when father is also alive?

Ans. : Only a coparcener can be a manager. Any other senior male member can also manage the affairs. But if the father is incapable and son is minor. Mother may represent the family for Income Tax Assessment Sushiladevi rampuriya v. ITO [1960] 38 ITR 316 (cal.)

Q-40. Mrs. X along with two daughter after her husband's death, wants to form a HUF. What are the views?

Ans. : Not possible. The concept of female forming a joint hindu family agreement appears to be Contrary to hindu law. CIT v. Smt. Sandhya Rani Dutta [2001] 115 Taxman 369 (SC)

Q-41. What is the position of the daughter after her marriage?

Ans. : The daughter on her marriage cases to be a member of her father's HUF and becomes a Member of her Husband's HUF.

Q-42. Can a adopter son become a coparcener

Ans. : No. birth of male only makes a coparcener. Adopter child can become member.

Q-43. Can HUF be created through will?

Ans. : Yes Surjitlal chhabara v. CIT [1967] 63 ITR 416 (SC)

Q-44. Does section 171 of I.T. Act apply to both schools of law?

Ans. : Yes it is applicable to Dayabhaga and Mitakshara school of hindu law. Joint family of Udayan Chinubhai v. CIT [1967] 63 ITR 416 (SC).

Q-45. How can properties not capable of physical division be partitioned?

Ans. : It can be done through Book entries K.G. Ramakrishnir v. CIT [1963] 49 ITR 608 (Mad)

Q-46. Can allotment of share to a person not entitled invalidate partition?

Ans. : No. CIT v. Govind Narain. [1975] 101 ITR 602 (all).

Q-47. When can a claim partition be made with ITO?

Ans. : It can made before the assessment. Rajmal Paharachand v. CIT [1950] 18 ITR 1 (Punj)

Q-48. A minor receives share on partition of HUF. What is your advice?

Ans. : Till Minority, the income will be clubbed with his father's in Income tax to be offered in his Individual assessment. After marriage, he can claim status of HUF with himself & wife. He becomes karta. CIT v. Parshottamdas K. Panchal [2002] 257 ITR 96/[2003] 123 Taxman 563 (Guj.)

Q-49. Can a stranger gift a property to HUF?

Ans. : Yes. Provided there is clear declaration that the gift is for the Benefits of HUF. CIT v. Satyendra kumar [1998] 232 ITR 360 (SC).

Q-50. Mr. A karta dies in Air crash & compensation is received by sons. Is it HUF income?

Ans. : Insurance compensation is an individual asset and not that of HUF. The interest on this Deposit amount is not assessable in the hands of HUF but in the hands of sons. L Bansi Dhar & sons v. CIT [1980] 123 ITR 58/4 Taxman 176 (Delhi)