THE PREFERENTIAL TAX TREATMENT AFFORDED TO HINDU UNDIVIDED FAMILIES (HUFS) UNDER THE INDIAN TAXATION STRUCTURE

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ABSTRACT

In both advanced and less-advanced nations, taxes are used to fund government operations and services. Redistribution, economic progress, and social stability are the three main goals of Indian taxes. Personal income tax is a key source of revenue for the federal government and individual states due to the extensive taxing authority granted to them by the Constitution. The system isn't perfect, though. Income tax assessment and collection are further complicated by the presence of the Hindu Undivided Family (HUF) and the preferential treatment provided to the HUF. This study's overarching goal is to explain how HUFs work and how their members can minimise or eliminate their personal income tax obligations by taking use of special characteristics unique to their succession and inheritance systems. A total abdication of duty by the HUF, however, is not entirely warranted. Through this dialogue, other structural flaws have been exposed, and suitable solutions have been proposed.

ASSESSMENT

The idea for writing this synopsis has been taken from the book **Mulla's Principles of Hindu Law[1];** where the writer was of the opinion that the Hindu Undivided Family which is a taxable entity and not the coparcenary which is a much narrower body than the joint Hindu family. Coparcenary consists of only those members who acquire by birth an interest in the coparcenary property and includes the sons, grandsons and great grandsons of the holder of the joint family property for the time being. There can be a Hindu Undivided Family which does not own any tangible property. This is so because a Hindu gets a joint family status by birth and joint family property is only an adjunct of the family.

Additionally, the researcher has took idea from **Cambridge Journal of Economics**[2]**;** where the writer has opined that the HUF can hold other property eg. houses, cash, gold, share certificates, fixed deposits which would not be considered in the asset accounting of the business group. The income and wealth holdings in HUF do not get counted in the business group‟s ownership and control of assets. The central role of legal facilitation of holding structures of family owned business groups and the continuing provision of Hindu Undivided Family accounts in the personal laws that ensured assets remained within the male line of descent of family and insulated from business risk has seen no significant change in the period of transition. No such provision was available to business houses held by Muslims or Christians, Parsis and Jews.

Moreover in respect to the existential issue the researcher has referred to **Mayne's Hindu Law and Usage**[3]**;** where the writer has opined that the joint and undivided family is the normal condition of Hindu society. The presumption, therefore, is that the members of a Hindu family are living in a state of union, unless the contrary is established. The phrase 'Hindu undivided family' is used in the statute with reference, not to one school only of Hindu law, but to all schools.

Also, it has been stated by *Mazin Khan* in his article titled **Tax benefits of Hindu Undivided**

[1] Mulla's Principles of Hindu Law, 14th Ed.
[2] Chirashree Das Gupta, Globalisation, Corporate Legal Liability and Big Business Houses in India, CAMBRIDGE JOURNAL OF ECONOMICS, 34 (2010)
[3] Mayne's Hindu Law and Usage, 11th Edn., page 323

Family (HUF)[4] that while HUF is a genuine tool of tax saving, it came to be used as a colorable device for tax avoidance. The tax laws have over a period evolved to keep pace with human ingenuity. The Income Tax Act contains certain provisions which are at divergence from the civil laws. While under civil law, any member may convert his separate property by impressing on it the character of joint property, the tax laws frown upon such acts. This was an area of wide abuse. To reduce the tax burden, a member would declare that he has given up the claim for separate property and offer the income thereof to be assessed in the hands of the HUF. Section 64(2) contains the clubbing provision wherein, if the separate property of a member is converted or blended with the HUF property, the income thereof would continue to be assessed as the income of the member.

ISSUES

In accordance with section 2(31) of the Income-tax Act, 1961 (hence referred to as 'the Act'), a Hindu Undivided Family ('HUF') is considered a 'person'. HUF is a distinct entity for purposes of taxation under the Act. According to Hindu law, a HUF is a family composed of all descendants of a common ancestor, including their spouses and unmarried daughters. A HUF cannot be founded by a contract; instead, it is formed organically among Hindu families. Despite the fact that Jain and Sikh households are not governed by Hindu law, the Act treats them as HUFs. An individual cannot establish a HUF. Typically, the most senior member of the family is regarded the karta, the individual who administers the HUF's operations.

When a couple marries, a HUF is immediately formed. To be recognised by tax authorities, a HUF must have a source of income, which can only be a bequest from a relative or an inheritance for all members of the HUF. After purchasing such an asset, the HUF must be registered under a specific name and complete additional processes, such as opening a bank account and obtaining a Permanent Account Number (PAN). It may work for folks with a high income or various revenue sources. Many families establish a HUF because it receives a separate PAN and is taxed separately. Therefore, even if members have separate salaries, these are not combined with the HUF's revenue.

As individuals receive tax deductions under several parts of the Income-tax Act of 1961, so do HUFs. Therefore, investments made and insurance premiums paid by the HUF are deducted

[4] Mazin Khan , Tax benefits of Hindu Undivided Family (HUF), (Published Online: Dec 29, 2012), The Milli Gazette Available at http://www.milligazette.com/news/5381-tax-benefits-of-hindu-undivided-family-huf Last accessed on 27th April,2014

from its taxable income. B. Srinivasan, a financial adviser headquartered in Bengaluru, stated, "HUFs are utilised to accumulate assets because members cannot withdraw funds."

However, financing a HUF is challenging. Capital may only be acquired through gifts or inheritances subject to gift tax regulations, which provide that any sum from non-family members above 50,000 is taxable. There are, however, exceptions, such as an ancestral property that generates rental income. Under typical conditions, rent will be added to a person's income and taxed according to that person's tax bracket. However, if it is moved to a HUF, it becomes the HUF's income and is taxed separately.

Creating and registering a HUF is quite simple, however issues may develop in the future. When you make a HUF, you unlock Pandora's box. Once a property has been allocated to a HUF, all co-owners have equal claim to it. Consequently, it cannot be transferred or sold without the approval of all coparceners, and even the karta cannot transfer it without the consent of all coparceners. Partitioning a HUF's real estate may be a nightmare, and it frequently results in disagreements and legal challenges. Also, a HUF cannot be divided; all of its members must agree to disband it. A lack of awareness of the regulations governing HUFs is the source of many issues. These statutes are not codified and must be studied in conjunction with the Hindu Succession Act and the Income-tax Act. The majority of the younger generation does not comprehend these regulations, particularly as the laws around HUFs become more complex. HUFs are an Indian phenomenon; when family members migrate overseas to study or work, it might be difficult to calculate their income because many countries do not recognise HUF. In such situations, the computation of income remains a grey area. The taxation of assets can also be a concern, since personal monies contributed to a HUF will be combined with the coparcener's own income, which may not be desirable if the initial intent of the HUF was to reduce taxes.

CONCLUSION

It is preferable for the unity of the nation that all individuals be subject to the same laws. The Indian Constitution upholds secularism; nevertheless, when India first gained its independence, the nation's legislators decided to create distinct personal laws for each of the several religious identities. The enactment of distinct personal laws led to the favouritism of one single faith over other religions. Despite this, secular activists and people in general are eager to voice their opinions about the Muslim Personal Law and the Uniform Civil Code. There is complete silence on the topic of the favourable treatment accorded to HUFs under the Indian Income Tax Law. It is important to remember that charitable acts always start at home. The majority of the population should work to change aspects of the laws that work to their advantage. Therefore, prior to the majority attempting to coerce the minority into agreeing to a standardised civil code, the majority ought to get rid of such privileges that it has chosen for itself.