Hindu undivided family essay

Hindu Undivided Family Hindu undivided family (abbreviation: HUF) is a legal term related to the Hindu Marriage Act. Due to the development of Indian Legal System, of late, the female members are also given the right of share to the property in the HUF. In CIT vs Veerappa Chettiar, 76 ITR 467 (SC), Supreme Court had occasion to decide on an issue whether after the death of all the female members in a HUF, the HUF would still exist. HUF as a partner in a partnership firm HUF is a joint family consists of all lineally descended from a common ancestor.

Hence, HUF is a group of members of the same family. The " father", or the " senior member" of the family called " Karta", ordinarily manages the property belonging to Joint Family. Hence, the status of HUF cannot be termed as person. The partnership is a relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Hence, to become a partner in a partnership firm, the partner should be a natural person or recognized as person by the law (Company – by virtue of Companies Act 1956).

Since, HUF is not a " person", but only group of persons belonging to the same family and carrying on the family business, HUF cannot be a partner in a partnership firm. The Supreme Court of India held (AIR-1930-PC-300 & AIR1956-SC-854) – HUF is an association of persons is " not a person" within the meaning of expression in the Partnership Act. "… it is now well settled that HUF cannot enter into contract of partnership with another person or persons. " The Supreme Court of India, in another case M/s Rasiklal & Co Vs Commissioner of held that "…… n HUF directly or indirectly cannot become a partner of a firm because the firm is an association of individuals.

” “……. in law, an HUF can never be a partner of partnership firm. ” HUF is person under Section 2(31) (ii) of Income Tax Act 1961. [1] The section reads like: (2)(31) “ person” includes” i)an individual,(ii) a Hindu undivided family, (iii)a company, iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Position of a Banker in extending credit facilities A banker dealing with Hindu undivided families will have to be cautious while extending credit facilities to HUF because certain laws and customers relating to succession and transfer of rights among Hindus, put serious obstacles in the way of the Banker’s providing financial accommodation on the security of what is ordinarily considered to be normal and reliable bank security. HUF can be governed either by Mitakshara Laws or by Dayabhaga Laws. All the HUF to the exception of West Bengal are governed by Mitakshara Law. West Bengal follows the Dayabhaga system.

Let us take an example of a HUF governed by the Mitakshara law wherein all the members acquire a right in the ancestral property by birth and the accrual of that right dates from conception of the child who by legal fiction becomes the member of HUF. So that there is always the danger of having transaction impugned by even a person who at the date of the transaction was not born. In order to charge a joint family estate, it is necessary that all the members of the family should join the execution of the deed, or should give their consent, or that the deed should be made by the head of the family in his capacity as karta or manager.

The powers of the karta are, however, limited and charge created by him is binding on the family property, only if the loan for which the charge is created, is taken for a purpose necessary or beneficial to the family, or is in discharge of a lawful antecedent debt due from the family. This is also called as vyavaharika debt. [“ Vyavahar” means conduct. In this context, it means good conduct].

In the event of a suit being filed by a banker, who has granted a loan on the security of the joint family estate, the burden of proof that, before he granted the loan, the banker had satisfied himself that the loan was taken for purposes beneficial to the family, lies on the banker. To avoid this and several other difficulties, some banks require a Hindu customer desiring to open an account, to furnish a statement to the effect that the money deposited in a fixed deposit, current or savings bank account is the personal or self-acquired property of himself or himself and not that of a joint Hindu family.

The manager of a trading Hindu family may be such a person as the family appoints or who holds out as its accredited representative. He need not be the Karta, for there can be more than one Manager, particularly if the business is carried on at different places Powers of Manager The powers of a Manager are more extensive than those of a Karta. The manager of a joint Hindu Family has all the powers required for the purposes of carrying on the family business. He can contract debts for the purpose of the business, and pledge the credit and property of the family for the purpose of its ordinary business, but not for any speculative transactions.

His actions must not be tainted with immorality. He can bind the members of the family including minors by means of Negotiable Instruments, executed in the name of the family firm. He can also compromise a dispute but he cannot embark on a new venture. Powers of Karta or manager regarding joint Family Property In Ramdayal and others v. Bhanwarlal and others, AIR 1973 Raj. 173, the Rajasthan High Court held that regarding the transfer of joint family property by the manager, the principles of law are well settled and are as follows: 1.

The Manager of a joint Hindu Family has the power to alienate (transfer) for value the joint family property so as bind the interests of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity (Apatkale) or for the benefit of the estate (Kutumbharte) or for Indispensable duties (dharmarthe) which are religious, pious, or charitable such as sradha, upananyana, and performance of other necessary sanskars. Payment of debts incurred for family business or other necessary purpose constitute a legal necessity. 2. That the burden of proving legal necessity to support alienation is upon the alinee. . That the alinee can succeed not only on proof of legal necessity but also on proof that the alinee made reasonable inquires and was satisfied as to the existence of the legal necessity. It is sufficient it to say here that the Karta or the manager can create a charge against the joint family property, only if the loan for which the charge is created, is taken for a purpose necessary or beneficial to the family. The burden of proving legal necessity lies on the banker and the banker has not only to prove the legal necessity but also to prove that it made reasonable inquiries and was satisfied as to the existence of the legal

necessity. . Kartha is the senior most male member of the family (Jandhyala Sreerama Surma v. Nimmagadda Krishnavenamma, AIR 1957 AP 434) 2. Only the Kartha has the right to manage the property and business of the HUF. 3. Kartha can enter into contract on behalf of the HUF and bind all the members to the extent of their share in the property/business 4. If the coparceners so desire, all the coparceners and Kartha may authroise any one or more adult coparceners to manage the business. Such a person (s) is/are known as " Manager(s)" The last point was also upheld by the Supreme Court (quoting from Mulla's Hindu Law) in NarendraKumar Modi v.

CIT (1976) ITR 109 (SC) Female Copartners The Hindu Succession (Amendment) Act 2005 has given equal rights to male and female in the matters of inheritance as a result a daughter also acquires status of copartner. Some experts also believe that in absence of any male member or only/all male member(s) is/are minor even a female member can become Kartha / manager of HUF after 2005. Liabilities of the members of a Joint Hindu Family It is generally presumed that money required for carrying on family business is a family necessity and that the business is carried on with the consent or acquiescence of all the members of the family.

Thus, if debts are incurred by the Manager in the ordinary course of the family business, all the coparceners become liable. However, their liability is limited to the extent of their interest in the family property and not beyond that. No doubt, the adult coparceners become personally liable when they themselves are actually contracting parties along with the Manager, or if they ratify the contract entered into by the Manager, except in the case of a

minor coparcener, who does not become personally liable unless the contract is ratified by him after attaining majority.

Can a Hindu Undivided Family (HUF) become a partner in a partnership firm? Under the Indian Partnership Act, partnership is defined under Section 4 as " a relationship between persons who have agreed to share profits of a business carried on by all or any of them acting for all. " Now the question is whether a HUF can be treated as a person under the law. Unlike a company, a HUF has no separate existence from its members. A Company as a separate entity can enforce its rights, whereas, a HUF, has to be necessarily represented by a Kartha or an adult member for enforcing any of its rights. A HUF cannot be treated as a person.

Though under the Income Tax Act, a person includes a HUF also, the Supreme Court in the case of Dulichand Laxminarayanan vs. Commissioner of Income Tax (AIR 1956 SC 354) has clearly held that the said definition cannot be imported to Section 4 of the Partnership Act and a firm cannot enter into partnership with a HUF. Further, in Rashiklal & co vs. Commissioner of IT, Orissa (9AIR 1998 SC 401) it was held that a HUF directly or indirectly cannot become a partner of a firm because firm is an association of individuals. Hence on the strength of the above rulings, it may be stated that a HUF cannot be a partner in a partnership firm.

However, in CIT Vs. Seth Govindram Sugar Mills [(1965) 57 ITR 510 SC] The Supreme Court has held that a Kartha of a HUF or an adult member of the family in their individual capacity can enter into a partnership as a representative of the family. In such cases, it is the individual who is

becoming a partner and not the HUF The constitution of a Hindu undivided family Despite scores of judicial decisions, the circumstances in which a Hindu undivided family comes into existence has been the subject of debate and controversy. Under the Income-tax Act, 1961, a hindu undivided family is ssessed to income-tax as a distinct unit of assessment. Once a family is assessed as a Hindu undivided family, it would continue, even after partition, to be assessed as an undivided family till a finding of partition is given under section 171 by the assessing officer. A joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters; while a Hindu coparcenary is a much narrower body including only those persons who acquire by birth an interest in the joint or coparcenary property (Gowli Buddanna v.

C. I. T. (60 I. T. R. 293 (SC)). A joint Hindu family may be composed of smaller or branch joint families which may hold properties in their own right and may themselves be assessable units as distinct from the apex jointfamily (C. I. T. v. Khanna (49 I. T. R. 232). The privy council observed in Kalyanji Vithaldas v. C. I. T. (5 I. T. R. 90) that the expression Hindu undivided family is used in the Income-tax Act with reference not to one school to read it as equivalent to the narrower expression Hindu coparcenary (Sushila v.

I. T. O. (38 I. T. R. 316). The Supreme Court held in Gowli Buddanna that there need not be more than one male member to form a Hindu undivided family alongwith female members (Vedathanni v. C. I. T. (1 I. T. R. 70 (SB)); that even if the family is reduced to a sole surviving coparcener with other female members, the property and income belong to the joint family, and in

respect of such income the tax is leviable on the joint family and not on the male member as an individual (Attorney-General v.

Arunachalam (34 I. T. R. (ED) 42 (PC)). This principle applies also where joint family property is partitioned and property is allotted to a coparcener who has a wife but no male issue; in such a case the income from theproperty is assessable as the income of the Hindu undivided family composed of the member and his wife (and daughters, if any), and cannot be included in the assessment of the member as an individual (Narendranath v. C. W. T. (74 I. T. R. 190 (SC)).

The same position prevails where a coparcener marries after the partition : on his marriage, the income from the property allotted to him should be assessed as that of the Hindu undivided family consisting of him and his wife (Premkumar v. C. I. T. (121 I. T. R. 347). The Supreme Court held in C. I. T. v. Veerappa Chettiar (76 I. T. R. 467) that after the death of the last male member, the Hindu undivided family may consist of female members only. However, a single person, male or female, cannot constitute a Hindu undivided family (Krishna

Prasad v. C. I. T. (97 I. T. R. 493- (SC)). In view of the Hindu Succession Act, 1956, the separate property of the father inherited upon intestacy by the son is to be treated as the son’s separate property and not as the property ofhis joint family (C. W. T. v. Chander (161 I. T. R. 370 (SC)). A member of a Hindu undivided family is not taxable at all in respect of any sum which he receives as such member out of the income of the family, even though the family may not have paid the tax on its income.

However, income from separate and self-acquired property of a Hindu which has not been thrown into the common stock is assessable as the income of the individual and not as the income of a Hindu undivided family, even though the Hindu has sons from whom he is not divided family, even though the Hindu has sons from whom he is not divided, for the sons have no interest in such income (Kalyanji v. C. I. T. (5 I. T. R. 90, 94 (PC)). The general principle of tax law that income from an individual members' property thrown into the family hotchpot is taxable as the income of the joint family, is superseded by section 64 (2).

The commission earned under a managing or selling agency (Murugappa v. C. I. T. (21 I. T. R. 311) or insurance agency (Ram Jhav. C. I. T. (31 I. T. R. 987)) agreement by a karta or other coparcener would prima facie be his individual income, unless it is shown that the rights had been acquired with the aid of joint family property (Re Haridas (15 I. T. R. 124)). Offering received by the holder of the hereditary office of the head of a religious sect are his personal income, where the functions and obligations attached to that office are personal (Ranchhodraiji v.

C. I. T. (54 I. T. R. 664). The salary received by the treasurer of a bank, whose office requires personal responsibility, integrity and ability, would be his individual income, although joint family properties may have been furnished as security to the bank (Piyarelal v. C. I. T. (40 I. T. R. 17 (SC)). A member of a trading joint family may carry on business on his personal account, in which event the profits would be his individual income and not the income of the joint family (Padampat v. C. I. T. (24 I. T. R. 84)), although the member might have borrowed the requisite capital outof the joint family

funds (C. I. T. v. Thaver (2 I. T. R. 230)) or the member might, after earning the income as his own, throw it into the family hotchpot (Amarchand v. C. I. T. (30 I. T. R. 38)). Such members carrying on business on their personal account in partnership may be assessed as a firm (Harisingh v. C. I. T. (2 I. T. C. 80)). However, the mere execution of a partnership deed by the members of the family will not preclude an assessment on the undivided family as such in respect of the profits of the business (C.

I. T. v. Doraiswami (1 I. T. C. 214). If a coparcener utilises joint family funds for contributing his share of capital in the firm, he should be regarded as having entered into partnership on behalf of, and as representing, the family (C. I. T. v. Kalubabu (37 I. T. R. 123)). Last year, the Punjab & Haryana High Court in C. I. T. v. Bhagat Singh (229 I. T. R. 239), held that all persons lineally descended from a common ancestor, including their wives and unmarried daughters constitute a Hindu undividedfamily which is a normal condition of Hindu society.

There need not be atleast two male members to constitute a Hindu undivided family. A Hindu undivided family can consist of a male Hindu, his wife and unmarried daughter. The facts in this case were that B constituted a Hindu undivided family with his wife, son and four daughters. Partial partition took place between B, his wife and his children. It was out of ancestral property that the partition was effected on April 1, 1971. This partition was duly recognised by the department.

On November 23, 1971, another daughter was born to B. B. claimed that in respect of the property acquired in partition, there was a Hindu undivided

family composed of him and his daughter. He claimed exclusion of dividual assessment. The income-tax officer rejected this contention by observing that since his wife was already separated from the Hindu undivided family, subsequent birth of a daughter to him, would not get back to him the status os a Hindu undivided family. However, the Tribunal accepted his contention.

On a reference, the Punjab and Haryana high court held that what was received by the assessee on partition was part of the ancestral property which did not cease to be Hindu undivided family property and on the birth of a daughter subsequently, the assessee constituted a Hindu undivided family qua the property received in partition. Qua this property, the court held that his status reverted to that of a Hindu undivided family and the income received from this property could not be assessed in his hands as an individual, but the same was to be assessed in the status of the Hindu undivided family consisting of himself and his daughter.

Finally, in an interesting decision in C. I. T. v. Pratapchand (36 I. T. R. 262), a Hindu who declared for the purposes of the Special Marriage Act, 1872 or 1954 that he did not profess the Hindu religion, did not thereby cease to be a Hindu : the Hindu law still applied to him, with the result that he would be entitled to file areturn as karta of a joint family in respect of the income from the ancestral properties.