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EVASION OF TAX IN HINDU UNDIVIDED FAMILY

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ABSTRACT

The concept of Hindu Undivided Family as a separate taxable entity in revenue laws has been widely used by the taxpayers to file for additional return on income tax, which has resulted in huge revenue losses to the Government and has provided an unfair advantage to a certain community over others. This paper explores the characteristics and the origin of the concept of Hindu Undivided Family in Indian revenue laws and the social implications of the concept and demonstrates how the taxpayers use the statutes as a tool to legally avoid paying taxes. The paper also discusses the case laws on these issues and the possible solution to the problem as suggested by the Law Commission of India. In its concluding remarks, the paper informs its readers about the consequences of loosely interpreting the historical tradition and customs of culture and incorporating them in the legal system, which serves to create a complicated amalgamation of completely different areas of law.

INTRODUCTION

The ‘Hindu Undivided Family’ or ‘HUF’ is a concept in Hindu personal law that includes the people who are lineal descendent from a common ancestor, this also includes the wives and unmarried daughters. The Hindu Undivided Family was created as a separate legal tax identity, different from individuals and corporate entities identified in tax law.¹ Section 2 (31) of the Income Tax Act, 1961-2019, includes the Hindu Undivided Family as a ‘person’. The Hindu Undivided Family is not formed under a contract but automatically in a Hindu family, which in this context also includes Jain and Sikh families.² A HUF property is managed by a Karta, who is generally the senior-most patriarch of the family. While a partnership arises from a contract, the relation of HUF arises from status, a HUF carrying out the family business is also excluded from the ambit of the Indian Partnership Act.³ This concept is based on another concept in Hindu personal laws that is, the ‘Hindu Joint Family’ or ‘HJF’. In the case of *Surjit Lal Chhabda v Commissioner of Income Tax, Bombay*⁴, the Hon’ble Supreme Court held that the Hindu Joint Family and Hindu Undivided Family are synonymous terms, and stated, “But,

¹ Chirashree Das Gupta, *Gender, Property And Institutional Basis Of Tax Policy Concessions: Investigating The Hindu Undivided Family*, MACROSCAN (July 19, 2020),

<http://www.macrosan.org/anl/sep12/pdf/Chirashree.pdf>.

² *I AM : HUF*, INCOME TAX INDIA (July 19, 2020), <https://www.incometaxindia.gov.in/Pages/i-am/huf.aspx>.

³ T.C.A. Ramanujam, *HUF: Bane or Boon?*, THE HINDU BUSINESS LINE (July 19, 2020),

<https://www.thehindubusinessline.com/todays-paper/tp-opinion/HUF-Bane-or-Boon/article20217532.ece#>.

⁴ *Surjit Lal Chhabda v Commissioner of Income Tax, Bombay*, (1975) 101 ITR 0776.

generally speaking, the normal state of every Hindu family is joint and in the absence of proof of division, such as the legal presumption.” This concept was initially created to be a tool that will assist in managing jointly held assets and to facilitate the inheritance of these assets in joint families.⁵ But eventually, this concept assumed the role of a tax-saving tool that is widely used to manoeuvre the revenue laws.

ORIGIN OF THE CONCEPT

The Hindu Undivided Family has a dual characteristic, that is, it can be interpreted as both a family and a firm.⁶ Arguments that supported the exemption of taxation for Hindu Undivided Family focused on the fact that this concept is made to recognize the cultural aspects of the Hindu society and with respect to their traditions and customs, as they are the ones that govern how the family units are run, and as these family units are part of the “income utilizing” unit they should be entitled to certain exemption from taxes, unlike those units that fall under “income-producing” part of the economy.⁷ On the contrary, the nature of the Hindu Undivided Family in Indian laws shows that this entity should fall under the production side of the economy that generates income. A Hindu Undivided Family accounts are provisioned in the Hindu personal laws, thus ensuring that its interests are protected from the business risks.⁸ The root of this contradiction that sculpts a traditional family unit into taxation or corporate unit, can be traced back to the interpretations made during the British colonial period. The colonial British government started incorporating and interpreting the local customs/ traditions of the Indian people, in their attempt to give a sense of representation to the local population, to subjugate them better and with lesser resistance. Yet, the colonial government failed to recognize the boundaries that divided this complex family structure into a social and a trading entity.⁹

The customs and traditions of religion were given the force of law. This kind of concept is unique to India, with no other countries having similar concepts that use a family unit for the

⁵ Sunil Dhawan, *Tax Saving Tool HUF May Cease To Exist: Law Commission Proposes To Abolish It*, THE ECONOMIC TIMES (July 19, 2020), <https://economictimes.indiatimes.com/wealth/personal-finance-news/tax-saving-tool-huf-may-cease-to-exist-law-commission-proposes-to-abolish-it/articleshow/65856948.cms>.

⁶ Chirashree Das Gupta & Mohit Gupta, *The Hindu Undivided Family in Independent India's Corporate Governance and Tax Regime*, 15 S.A.M.A.J. 1, 2 (2017).

⁷ *Id.* at 2.

⁸ Gupta, *supra* note 1.

⁹ Gupta, *supra* note 6, at 2.

purpose of corporate governance and taxation. The concept of family holding shares, and controlling and managing its account as a unit in India is the intermingling of the concept of firm and family, and is unique in the world, as it is given certain privileges that exempt them from certain revenues, in addition to this, this privilege can be availed by only those citizens that are governed by the laws of a particular religion.¹⁰ None of the other countries that have a significant or majority Hindu population have legislated the concept of Hindu Undivided Family into their statutes. This integration of the practices of a particular religion into revenue laws, only to grant them exclusive privilege, for the purpose of recognizing the so-called cultural and religious sentiments, is unprecedented.

USING HUF AS A TAX-SAVING TOOL

Section 80C of the Income Tax Act, 1961-2019, provides a way of tax deductions for an individual or Hindu Undivided Family, of up to Rs. 1.5 lakhs. However, this provision makes it possible for obtaining a tax deduction of up to Rs. 1.5 lakhs as an individual, and in addition to that another tax deduction as a separate entity of a Hindu Undivided Family, if that individual creates a HUF.¹¹ This gives a route to people to legally deduct their taxes further, in the form of a legal loophole. In the case of *Vijay Prakash Toshniwal And Ors. v Commissioner of Income Tax*¹², the Hon'ble Rajasthan High Court held that "one person can be assessed in dual capacity i.e., one as Karta of HUF and another as in his individual capacity." Section 80C of the Income Tax Act, 1961- 2019, is not the only provision in the Act that provides a way to save tax for HUF, there are several other provisions in the statute that could be used as a tool to save even more money from the revenue payment. Under Section 56 of the Income Tax Act, 1961-2019, any gifts received by an individual or a Hindu Undivided Family, from its members or relatives are exempted from taxation. Also, there is Section 24 of the Income Tax Act, 1961-2019, under this provision a Hindu Undivided Family can get a tax deduction of up to Rs. 1,50,000 in a year, in the interest of home loans paid that, is used to obtain a house property. Another provision that permits exemption to HUF is Section 80D of the Income Tax Act, 1961-2019, under this section a Hindu Undivided Family can apply for a separate tax deduction on the

¹⁰ Gupta, *supra* note 6, at 2.

¹¹ Subhash Lakhota, *How Can HUF Help Individual To Save Income Tax*, MONEY CONTROL (July 19, 2020), <https://www.moneycontrol.com/news/business/personal-finance/how-can-huf-help-individual-to-save-income-tax-1264531.htm>

¹² *Vijay Prakash Toshniwal And Ors. v Commissioner of Income Tax*, (2006) 284 ITR 306.

health insurance premium payments of up to Rs. 25,000 per assessment year. A former Chief Commissioner of Income Tax in his opinion article stated that "The HUF is an entity peculiar to the Indian tax law. The law recognizes it and there is nothing sham about it. Surprisingly, the Government carries out any amount of amendment to the Hindu law without looking into the revenue loss caused by the recognition of the HUF as a separate taxable entity. The HUF may be a boon to the taxpaying Hindu. But it is definitely a bane to government revenues."¹³

SOCIAL IMPLICATIONS

In addition to creating problems in the revenue assessments, the concept of Hindu Undivided Family is evidently patriarchal in nature as it is derived from traditional laws of inheritance that have very restricted rights of inheritance to the jointly owned properties for female members of the family. In 2005, the amendments made to the Hindu Succession Act brought changes that were very beneficial for women, now women had equal inheritance rights as men, but this was only for the properties that fell under 'Mitakshara Joint Family Property' and not for the properties that were under 'Dayabhaga Joint Family Property'.¹⁴ This amendment also gave the female family members the right to be co-parceners, but in reality, the senior-most male members continued to be the ones who became the Karta, and women are rarely seen as holding the responsibility of a Karta in a Hindu Undivided Family. A male member can also be made a Karta in several different Hindu Undivided Family accounts.¹⁵ This shows that even after the amendments the concept of Hindu Undivided Family continues to remain patriarchal at its core. There are several progressive judgements like the Delhi High Court's judgement in the case of *Sujata Sharma v Manu Gupta*¹⁶, in which the court held that the eldest female coparcener in a 'Mitakshara Hindu Undivided Family' can become a Karta. Even though there are judgements like these, they will not hold in practical application. S.K. Gupta, a professor at the Faculty of Law, Delhi University says that "While the law is a beneficial legislation, practical problems will arise with regard to giving Kartaship to women, as women of most business families in the country rarely participate in the actual management of the business and property", according to him this judgement "ignores the context" of the working of a Hindu

¹³ Ramanujam, *supra* note 3.

¹⁴ Gupta, *supra* note 1.

¹⁵ Gupta, *supra* note 1.

¹⁶ *Sujata Sharma v Manu Gupta*, (2015) SCC OnLine 14424.

Joint Family system in India.¹⁷ While the Hon'ble Supreme Court in its judgement in the case of *Shreya Vidyarthi v Ashok Vidyarthi*¹⁸ made it clear that since a Hindu widow cannot be a coparcener in the HUF of her husband, she, therefore, cannot become a Karta in the HUF of her husband, even after the death of her husband. The concept of Hindu Undivided Family is not only patriarchal and based on traditions and customs that discriminate against women, but it is also unfair to the other religions that do not fall under its ambit. Thus, the people that belong to the other religions have no such privileges that come with the entity of Hindu Undivided Family, this shows that this concept is discriminatory towards the minority religions that do not fall under it, i.e. Muslims, Persis, Christians, and Jews.

LAW COMMISSION OF INDIA'S CONSULTATION PAPER

In 2018, the Law Commission of India released a consultation paper, that recommended the abolishment of the concept of Hindu Undivided Family from revenue laws. The Income Tax Department estimates that in the assessment year of 2015-2016 alone a total of 9,98,878 tax returns were filed through the Hindu Undivided Family, which is equivalent to Rs. 3,064 crores of total revenue lost.¹⁹ This loss of revenue is because a member of a HUF and the HUF in its whole are taxed separately as they are two distinct entities under the present revenue laws. A member of a Hindu Undivided Family cannot be taxed for any income which is obtained from the income of the joint family, even when the Hindu Undivided Family has not paid the tax on this earning.²⁰ The Law Commission in its consultation paper suggested that “The coparcenary be abolished at the Central level and the right in a property by birth be extinguished. As soon as coparcenary is abolished the institution of Hindu Undivided Family would inevitably collapse.”²¹ The Law Commission suggested this keeping in my mind the huge revenue loss to the government that is caused by the existence of the Hindu Undivided Family as a distinct taxable entity. The same person can act as the Karta of the HUF and also make profits in his individual name. It is evident that the HUF can be used as a tool for a person to file for income tax returns which he or she would not otherwise be entitled to, which is why the law

¹⁷ Aneesha Mathur, *Hindu Undivided Family: The Daughter as the Inheritor*, THE INDIAN EXPRESS (July 20, 2020), <https://indianexpress.com/article/explained/hindu-undivided-family-the-daughter-as-the-inheritor/>.

¹⁸ *Shreya Vidyarthi v Ashok Vidyarthi*, (2016) 2 SCJ 324.

¹⁹ Dhawan, *supra* note 5.

²⁰ Gupta, *supra* note 1.

²¹ LAW COMMISSION OF INDIA (July 20, 2020), <http://www.lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf>.

commission's consultation paper states that, "However, today when it has been seventy-two years since independence, it is high time that it is understood that justifying this institution on the ground of deep-rooted sentiments at the cost of the country's revenues may not be judicious."²² After independence, the Government of India adopted the colonial British government's practice of incorporating the customary and traditional law of the Indian people into the legal statutes. In doing so it has also inherited the ignorance of the British colonial government, and its failure in ensuring equal distribution of privileges among the citizens. Yet even after years of independence, the Government of India has made no attempts at interpreting these religious customs in a way that ensures equality among the citizens and does not cause huge revenue losses to the government itself.

CONCLUSION

Most of the inheritance laws in India are based on the personal laws, that is, laws that are interpreted from the traditional/customary religious practices and have been codified to give them the force of law. These traditional religious practices tend to be unfair to women, as women did not enjoy the same social status as men when these religious practices took their form. This is not unique to Hindu personal laws, for example, Muslim inheritance is also governed by their personal laws emerging from the Shariah Law. But those families that are governed by the Hindu law are given an unfair advantage over others, because they have a tool, that is, the Hindu Undivided Family that grants them extra exemption from income tax, and the rights and privileges of a corporate entity. This codification of religious practices creates a complicated structure connecting different areas of law, that is, revenue laws, personal/religious laws, and corporate laws. In addition to this, the revenue exemption for HUF causes a huge amount of revenue loss for the Government of India. In my opinion, the Government of India should accept the Law Commission's suggestion to do away with the concept of coparcenary in the Indian legal system. The Government should be more concerned about the plethora of problems that come by retaining the concept of Hindu Undivided family in its legal structure, than being concerned about hurting the religious sentiments of a majority population by doing away with the concept of the coparcenary. In my opinion, this concept is violative of the constitutional fundamental right to equality, as this concept favors certain

²² *Id.*

religions over the others, thus depriving the other religions of their right to enjoy the same privileges as the religions that are included under this concept. The concept of Hindu Undivided Family is reflective of its patriarchal core and also is unconstitutional as it is discriminatory to the other religions and has become a legal loophole for taxpayers to evade income tax, resulting in unnecessary losses in revenue.

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