CHAPTER - IV

EVALUATION OF STATUTORY PROVISIONS

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4.1 INTRODUCTION:

In this Chapter, an attempt is made to evaluate, in some detail, the statutory provisions under the direct tax laws pertaining to the Hindu undivided family. The Chapter is divided into two Sections. The exercise in Section-A concentrates on judging the spirit of the statutory provisions, evaluating significance and establishing a correlationship in the overall framework of the direct tax laws.

SECTION 'A'

4.2 THE INCOME-TAX ACT, 1961:

4.2.1 Section 2(31):

The Indian Income-tax Act of 1918, for the first time, brought a Hindu undivided family within the folds of taxation. None of the taxation laws, however, define what constitutes a Hindu undivided family (HUF). As shown in Chapter-II, HUF is a totally Indian social and economic concept. Over the years, abundant case law has been pronounced about almost every constituent element of the HUF concept. In 1935, the High Court of Bombay declared that,

(A Hindu undivided family) consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters.[1]

The Supreme Court defined it more clearly when it pronounced that,

Under Hindu system of law, a joint family may consist of a single male member and widows of deceased male members and apparently the Income-tax Act does not indicate that a Hindu undivided family, as an assessable entity, must consist of atleast two male members.[2]

Earlier, the Bombay High Court had ruled that,

The conception of a Hindu joint family is a common male ancestor with his lineal descendants in the male line, and so long as that family is in its normal condition, viz. the undivided state, it forms a corporate body. There may, course, be one or more families, all with a common ancestor, and each of the branches of that family, with a separate common ancestor.[3]

The main feature about a Hindu undivided family is that it is a coparcenary or tenancy-in-common. The Supreme Court has, after taking into account other decisions, observed as under:

Hindu coparcenary has six essential characteristics, viz.

1. that the lineal male descendants upto the third generation acquire an independent right of ownership by birth and not as reprsenting their ancestors;

2. that the members of the coparcenary have the right to work out their rights by demanding partition;

3. that until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predicate the share he might receive;

4. that as a result of such co-ownership, the possession and enjoyment of the property is common;

5. that there can be no alienation of the property without the concurrence of the other coparceners unless it be for legal necessity; and

6. that the interest of a deceased member lapses on his death and merges in the coparcenary property.[4A]

As already stated in Chapter-II, only sons, grandsons and great-grandsons are the members of the coparcenary of the holder of the joint property for the time being. Therefore, wives and widows, though not coparceners, are members of the family. As regards the status of a widow in the coparcenary property, however, the situation could be tricky. Legally speaking, a widow of a coparcener is invested with the same interest which her husband had at the time of his death in the property of the coparcenary. She is thereby introduced into the coparcenary, and between the surviving coparceners of her husband ad the widow so introduced, there arises a community of interest and unity of possession. But the widow does not on that account become a coparcener. This was upheld by the Supreme Court in 1972.[4B]

For the purposes of charge, assessment, levy and collection of tax under the Income-tax Act, a 'Hindu undivided family' is a separate entity, being ordinarily represented by its 'Karta' or manager. Initially, the rates of income-tax applicable to an HUF were different than those applicable to an individual annd well until 1974, such a family received a fairly high initial 'free' allowance. Since then, however, a higher rate of tax has been applied in the case of those HUFs which have atleast one member whose total income in the previous year exceeds the minimum exemption limit for that assessment year (i.e. the 'specified HUFs').

Both by tradition and by custom, the right of being a **Karta** or manager of an HUF is conferred on the father as the head of the family, if alive, and if he dies, the right devolves upon the senior-most member of the family. A junior member of the family, however, is not barred from acting as a Karta if all the other members consent to his so acting.[5A] Their Lordships of the Supreme Court referred to the following passage from Mulla's 'Hindu Law', 14th ed., p.269:

> *So long as the members of a family remain undivided, the senior member of the family is entitled to manage the family properties, including even charitable properties, and is presumed to be the manager until the contrary is shown. But the senior member may give up his right of management and a junior member may be appointed manager.*[5B]

The existence of a **joint estate** is not an essential requisite to constitute a HUF and there may be a family without owning any property. The jointness of a Hindu family consists in food, residence, worship, etc.[6]

The Privy Council, as far back as in 1937, while dwelling on the words "income of" declared that,

> *(these words) are capable of a wider or a narrower meaning; and for the purpose of income-tax ...., income is not to be attributed to any person by any loose or extended interpretation of the words, but only where the application of the words if warranted by their ordinary legal meaning.*[7]

This particular ruling of the Privy Council held sway in the succeeding years, though its applicability or otherwise to both Mitakshara and Dayabhaga schools was repeatedly questioned. In the year 1968, the Supreme Court laid to rest all such questions with the clarification,

> *The general doctrine of Hindu law is that property acquired by a Karta or coparcener with the aid or assistace of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of self-acquired property that it should have been acquired without assistance or aid of the joint family property. The test of self-acquisition by the Karta or coparcener is that it should be without detriment to the ancestral property.*[8]

It can thus be concluded that the joint property

is of essence of the notion of a joint family. It consists of:

1. the ancestral property,if any,
2. accretions thereto,
3. acquisitions with joint funds, and
4. self-acquired property of any member thrown by him into the common stock, when the acquirer allows such property to be treated as family property.[9]

The above discussion throws light on the Hindu undivided family's status as a 'Person' (a taxable entity) under the Income-tax Act.

4.2.2 Section 4:

The section imposes income-tax upon a person in respect of his income. Following principles emerge from an analysis of this section:

1. *Income-tax is to be charged at the rate or rates fixed for the year by the annual Finance Act;*
2. *The charge of tax is on every person, including the assessable entities enumerated in Section 2(31);*
3. *The income taxed is that of the previous year and not of the year of assessment;*
4. *The levy is to be on the total income of the assessable enntity computed in accordance with and subject to the provisions of the Income-tax Act.*[10]

In the overall scheme of taxation of income, this section provides 'Constitutional validity to the levying of tax on the income of a 'person'. Accordingly, for the purpose of assessment, a 'person' as defined in section 2(31) is taken as a unit of taxation, in which is included also a Hindu undivided family.

4.2.3 Section 5:

This section defines the extent of total income with reference to the residence of a 'person' and proceeds to classify them into three distinctive categories, viz.

1. residents and ordinarily residents,
2. residents but not ordinarily residents, and
3. non-residents.

Generally speaking, the incidence of tax is the highest in the case of persons who are resident and ordinarily resident, lower in the case of persons who are resident but not ordinarily resident, and lowest in the case of persons who are non-residents. The important criterion while determining the assessability to tax is that,

> *Residence must be determined with reference to the previous year and not the assessment year.*[11]

Having divided the 'persons' (as defined in section 2(31)), into three distinct groups according to their residential status, section 5 does not accord any special

treatment for the purpose of assessment to a Hindu undivided family. The principle underlying this section is to make the chargeability of income depend upon the locality of accrual or receipt.[12]

4.2.4 Section 6(2) and (6)(b):

This section is applicable for the determination of residence and ordinary residence for the purposes of the Income-tax Act from the assessment year 1962-63 onwards.

Sub-section (2) sets a Hindu undivided family apart over the issue of "control and management" of its affairs. In simpler terms, the section purports to convey that the affairs by which taxable income was generated, should be those of the HUF as a whole and not of the individual members. Since there can be no partnership between a HUF and strangers, though the Karta or a member may enter into such partnership on behalf of the family and be accountable to it, it follows that even if the resident members represent the family in the Indian firms and control them, these firms are not controlled by the family, for the other partners are not concerned with the accountability to the family.[13]

Sub-section (6)(b) relates to the 'not ordinarily resident' status of a Hindu undivided amily over the physical presence of its manager in India. Accordingly, the status

of the family will vary from time to time entirely with reference to the status of its manager and irrespective of any other condition. For the purpose of calculating the length of the manager's residence in India, the periods of residence or stay in India of the successive managers of a Hindu undivided family durig its continued existence should be added up.[14] It is, however, illogical to infer that the ordinary residence of a Hindu undivided family should follow from that of its manager, while its residence depends on the locale of the control and management of its affairs.[15]

4.2.5 Section 47(1):

The provisions of this section should be construed in relation to those of section 45 (which deals with the capital gains). Section 47 specifies the case in which transfer of a capital asset is not assessable to tax under the head "Capital gains". More specifically, where a joint family property is partitioned, no gain is made by the Hindu undivided family and, therefore, the question of levying of capital gains tax, which can only be on the transferor, does not arise at all.

4.2.6 Section 49(1):

Section 49 lays down the special provisions for computing the cost of acquisition of capital assets. The general principle for computing capital gain is to deduct from

the sale price the cost of acquisition to the assessee. To this general rule, certain exceptions are engrafted by this section, under which the cost to the previous owner is deemed to be the cost of acquisition to the assessee.

The Direct Taxes Enquiry Committee (Chairman: Justice Wanchoo) paid special attention to this provision and had following recommendations to offer,

> *Sub-section (1) of section 49 of the Income-tax Act provides that in case of an asset, which became the property of the assessee on partition of a Hindu undivided family, the cost to the previous owner, as increased by the cost of any improvement thereto, shall be deemed to be the cost of the asset to the assessee. The amendment made by the Taxation Laws (Amendment) Act, 1970, to Section 64 of the Income-tax Act .... seeks to treat the separate property of an individual which has been converted into Hindu undivided family property, as property transferred by the individual to members of the family for being held jointly. Where such property is sold subsequently after partition or otherwise, there will be difficulty in deciding how the cost should be determined.* ***We suggest*** *that a provision similar to that contained in sub-section (1) of section 49 be made to define the cost in such case as the cost to the individual who converted the property into family property plus the cost of improvement thereto.*[16]

The above suggestion amply speaks for itself.

4.2.7 Section 64(2):

This sub-section was inserted by the Taxation Laws (Amendment) Act, 1970, with effect from 1st April, 1971. Prior to the enactment of this section, many a coparcener of joint Hindu family, with a view to steer clear of the clubbing provisions contained in sub-section (1) and thus avoid tax, threw his separate property into the common stock by which act of blending, the property became impressed with the character of a joint family property and thereafter it was diverted by going through the process of partition of the joint family property. In this process, transfer of property did not take place either in the act of blending or in the subsequent partition thereof. It also avoided the consequences of clubbing of income. Sub-section (2), after its introduction, prevented the avoidance of tax in the above manner by enacting that:

(1) the act of blending shall be deemed to be a transfer through the family to the members of the family;

(2) the income derived from the converted property shall be deemed to arise to the individual and not to the family, and

(3) when the converted property is partitioned, the income derived from the converted property by the spouse or minor child of the individual shall be included in the total income of the individual.

The sub-section seems to cover cases of members of a joint family having separate property and throwing it into common stock. It does not cover the cases of a reunion of a member, divided from the family, rejoining it and as part of the reunion, giving his property to the family. Section 64(2) applies to real (not sham) transactions. If the Assessing Officer considers it sham, there should be evidence to that effect.

4.2.8 Section 133(2):

This section empowers the Asseessing Officer, the Deputy Commissioner (Appeals), the Deputy Commissioner or the Commissioner (Appeals) to call for information from the Hindu undivided family about the names and addresses of its manager and the members.

4.2.9 Section 139:

This section deals with the procedural aspects of filing of a return of income.

4.2.10 Section 140(b):

The section mentions the person who has to sign and verify a return of income filed under section 139, and also stipulates that in respect of a Hindu undivided family, the return must be signed by a Karta, and in his absence, by

any other adult member of such family.

4.2.11 Section 164:

The section deals with the charge of tax where the shares of the beneficiaries are unknown.

4.2.12 Section 171:

The section exclusively deals with the assessment after partition of a Hindu undivided family. The section is a machinery section and not a charging section.

Sub-section (1), which differentiates between a disrupted ad partially partitioned Hindu families, deals with two distinct and different situations, viz.

(1) the case where a Hindu undivided family undergoes total partition and ceases to exist as an undivided family, and

(2) the case where a Hindu undivided family continues to exist as an undivided family, but only some property is divided prior to 1979 by way of partial partition among the members or some members separate from the undivided family.

As regards cases of complete partition, the position is clear: once a Hindu undivided family is assessed as such, it would continue to be so assessed even after it has been

disrupted and has ceased to exist, unless a finding is given under this section recording the total partition. But no finding of partition can be given unless there has been a physical division of the property or, where the property does not admit of a physical division, such division as the property admits of and not a mere severance of status. Therefore, where a joint family has come to an end in law, if a physical division of the family property, though possible, has not been effected and consequently, no finding is given under this section, the family would be deemed to continue to be a joint family and also to be charged as a unit of assessment. Even where there has been a total partition and a physical division of the family properties, if no claim of partition is made by any of the members at the time of making the assessment or, though a claim is made, no finndig is given recording the partition, the family should be deemed to continue to be a Hindu undivided family. The section, however, does not apply where, by reason of death, the former undivided family is reduced to a single individual.

Sub-sections (2) and (3) relate to the Assessing Officer's (AO) jurisdiction to make an order under this section, recording a partition, which depends upon the occurrence of the following conditions:

(a) At the time of making an assessment, a claim should be made by or on behalf of any member of the family that a partition has taken place among the members;

(b) The family should hitherto have been assessed as undivided;

(c) The AO should make an enquiry into the matter and he is further bound to give notice of the enquiry to all the members of the family;

(d) The AO should be satisfied that the joint family property has been partitioned among the various members or groups of members by physical division or otherwise as provided in the Explanation to Section 171.

Once a total partition is effected and an order is passed under this section, a joint family constituted by some of the members of the disrupted joint family would be a different assessable entity.[17]

As regards validity of a partition, it must be observed that under Hindu law, partition may be either notional or reflected in the physical division of the family properties. But in order to secure a finding of partition, it is not enough to merely state that the joint family has come to an end; it is also necessary to prove a partition by metes and bounds, or a physical division of the joint family properties, whereever possible. However, the expression 'partition' must be construed with regard to the nature of the property concerned. The Explanation to the section makes it clear that whereas in the case of property which is capable of physical division, a physical division of merely

the income is not enough. Hence, total partition under this section means 'completed partition of the entire family property', even of the properties which are not the source of assessable income. If only some assets are divided while other substantial assets are left for division at a future date, it would be a case of partial partition. The general consensus emerging out of the case law pronounced by various High Courts and the Supreme Court of India is that in a case where assets producing some income are not physically divided for any reason, although a physical division is possible, it may be held to be a case of partial partition ad not total partition.

Sub-sections (4) to (7) pertain to the member's liability for tax assessed on family. As a general rule, it could be stated that in every case, where an order has been made recording the partition of joint family property amonng the members, the assessment of the total income received by or on behalf of the joint family as such must be made in accordance with the provisions of sub-sections (4) and (5). The procedure is to compute the total income of the joint family upto the date of partition and also to determine the tax payable by the joint family as such, as if no partition had taken place and as if the joint family was still in existence, and then to hold each member or group of members liable for a share of the tax determined

as payable by the joint family. The tax assessed as payable by the joint family should be apportioned among the members or groups of members "according to portion of the joint family property allocated to" each of them. Further, these provisions also make all the members and groups of members jointly and severally liable for the whole amount of the tax assessed on the total income of the joint family, and it would not be correct to say that it is only on the failure or default of payment by one of the members that the revenue can recover his portion of the tax from the other members. Sub-section (6) imposes on the members of the joint family a personal substantive liability even in cases of partial partition. Apart from these provisions, the Department can also invoke the principle of Hindu law that if a partition takes place after the family had incurred a debt but no provision is made at the time of partition for payment of the debt, the creditor can proceed to recover it from every one of the members to the extent of the family property in his hands.[18]

Sub-section (8) sets out the penalty, fine or interest on joint family after disruption and expressly enacts that these provisions apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period upto the date of partition as they apply in relation to the levy and collection of tax.

Sub-section (9) is rather an important section from the assessment point of view. The provisions of the section, which are applicable only from the assessment year 1980-81, are that once a Hindu family is assessed as undivided, section 171 would not apply to the case of any partial partition among its members effected after 31st December, 1978. Such a partition cannot be claimed, recorded or recognized under this section; the family would continue to be assessed as if no such partial partition had taken place and the family and its members would be jointly and severally liable for any tax or other sum payable by it under the Act for any period before or after such partition.

Where there has been a physical division of the joint family property or not is a question left to the satisfaction of the Assessing Officer. But the Appellate Authority can interfere if there is no evidence to support the finding as regards genuineness of partition, or if the finding is directly contrary to the evidence in the case or is arbitrary or fanciful.

4.3 THE WEALTH-TAX ACT, 1957:

4.3.1 Section 3:

This section levies the charge of wealth-tax annd describes the assets subject to such charge. The interpretation of the terms used in the Wealth-tax Act is

synonymous with the similar terms used in the Income-tax Act. Under the Wealth-tax Act, however, a Hindu undivided family, being non-resident or not ordinarily resident, is entitled to exclude its assets and debts located outside India from its calculation of the net wealth. The assets and debts of the resident Hindu undivided family, wherever located, will be included in the computation of the net wealth.

When the Karta of a Hindu undivided family carries on business in partnership with strangers, howver, the situation requires further explanation. It is well settled that a Hindu undivided family cannot enter into a partnership with a stranger but that its Karta may do so on its behalf. The Karta alone (being the contracting party with the strangers) would be regarded as a partner in the firm. Any asset that the Karta may receive from the firm by way of his share of the profits or by way of drawings from out of his capital account would be impressed with the character of the Hindu undivided family property. It thus follows that any asset received by the Karta from the partnership, if remaining unspent in his hands on the valuation date, would have to be included in the assets of the Hindu undivided family.

In addition, the value of the interest of the Karta in the firm would have to be included in the net wealth of the Hindu undivided family, by virtue of section 4(1)(b) read with section 4(2). The sum total of these two

items, viz. (1) the unspent amount out of the sums drawn by the Karta from out of the firm, and (2) the value of the interest of the Karta in the firm, would have to be included in the assets of the Hindu undivided family as on each valuation date. Conversely, if during the existence or on dissolution of the firm, there is a loss, such loss would have to be deducted from out of the gross assets of the family as being "a debt owed by the assessee on the valuation date" within the meaning of section 2 of the Act.

For the purposes of the Wealth-tax Act, the unit of taxation is HUF and not coparcenary. Yet, a Hindu undivided family consists of collaterals and is undivided. When such HUF status is preserved, maintained or emerges, different situations as to the nature of property held by it could arise. The guiding principles laid down by the Supreme Court are thus:

> *Distinction must be drawn between two cases where an assessee is sought to be assessed in respect of ancestral property held by him:*
> *(1) where the property already impressed with the character of joint family comes in the hands of the assessee as a single coparcener. The question is whether it has retained the character of joint family in the hands of the assessee or is converted into absolute property of the assessee?*
> *(2) where property not originally joint is received by the assessee. The question has to be asked whether it has acquired the character of a joint family property in the hands of the assessee. In this class*

of cases, the composition of the family is a matter of great relevance.[19]

In view of the legal technicalities being encountered in determining such complex issues, the Jha Commission's following recommendations have much significance:

(1) Where a new HUF comes into existence, if any of its members is already a member of another HUF, the new HUF should be treated as an 'association of persons with unspecified shares' and should be taxed accordingly.[20]

4.3.2 Section 4(1A)(c) and 4(6):

Section 4(1A)(c) is designed expressly for the purpose of foiling the attempts of the propertied persons to evade or lessen their due burden of wealth-tax by the device of transferring the proprety, since one of the easiest ways of avoidance or reduction of taxes is to convert individual property as that of HUF in which wife and minor children are members of the family and to effect a partition thereafter. To plug this hole, a deeming provision was inserted into the Wealth-tax Act and the Gift-tax Act, effective from the assessment year 1972-73. Amendments in 1976 and 1979 tightened the deemed inclusion in three respects:

(1) Entire property, whether by impressing separate property into joint family property or throwing such property into hotchpot, is treated as 'converted proprty'.

(2) The gift or otherwise transfer of property for inadequate consideration as from 1.4.1980 is termed as 'converted property'.

(3) In clause (c), the word 'child' is substituted for 'son'. The amendment came into effect from 1.4.1976. Formerly, a property set apart for marriage and maintenance of a female child could not be included. Now it is includible.

The three operative conditions are:

(1) Conversion of separate property into HUF property should be after 31.12.1969.

(2) Gifts or transfer to HUF for inadequate cosideration after 28.2.1979 falls within this deeming provision.

(3) The basis of inclusion upto 31.3.1976 was proportionate to the interest of wife and minor sons. After 1.4.1976, entire value of the converted property is includible.

The Jha Commission has attempted to simplify the complexities of assessing the Hindu undivided family after partition with the following recommendations:

> *The principle of clubbing of income and wealth should be extended to cases where an individual, in his capacity as a Karta of HUF makes gifts, out of the HUF property, to his wife or minor children. The assets so transferred and the income from them should be included in the hands of the HUF.*[21]

Section 4(6) relates to the assessment for wealth-tax of the holder of impartible estates. Under law, an impartible estate is not a coparcenary property though it is considered as a joint family property for the purpose of succession. This sub-section treats the impartible estate as individual property of the holder. All the properties, movable and immovable, comprised in the estate are deemed to be of individual owner.

4.3.3 Section 5(1)(ii):

The section pertains to an exemption from taxability of the interest of the assessee in the coparcenary property of any Hindu undivided family of which he is a member. This point, however, would not arise from 1976-77 as the basis of taxation of converted property is changed.

Sections 20 and 20A:

Section 20 provides for the assessment of a Hindu undivided family after it has undergone partition. The section does not draw any distinction between a case where a Hindu undivided family is assessed as such under the Act hitherto and in a case where the matter comes up for the first time for consideration. Moreover, the section applies and covers complete partition. To constitute partition under this Act, mere severance of joint status is not enough. Actual physical

partition of assets is necessary. The traditional Hindu law, to this extent, stands modified as it has to be physical division of properties.

The section further lays down the procedure for an order recognizing partition. The prescribed procedure is that at the time of making an assessment, it should be brought to the notice of the Wealth-tax Officer that a total partition has taken place among the members of the family. The Officer must make enquiry as he thinks fit and be satisfied that the whole of the joint property has been physically partitioned amongst the members or groups of members, in definite proportions, i.e. by metes and bounds. If he is so satisfied, then he would pass an order recording the fact and the date of the complete partition. Once an order has recorded acceptance of partition, sub-section (2) has no application. The order of recognition applies and is effective for all the subsequent assessments. Accordingly, once an HUF is assessed as undivided, it must be continued to be assessed as such even after disruption, unless and until an order is passed recognizing the partition.

Section 20A provides for the assessment of a Hindu undivided family for the purposes of the Wealth-tax Act after its partial partition. Contrary to Section 20, which applies only to partial partition of HUF, Section 20A, which has come into effect from 31.12.1978, takes cognizance of the partially

partitioned HUF. Vide clause (a), partial partition is derecognized and the property subject to partition or that allotted to partitioned members, shall be deemed to be the wealth of the HUF as before the partial partition. In practical terms, the composition of HUF and its assets before and after partial partition, for tax purposes, remains the same. Vide clauses (b) and (c), the liabilities of the separated members are in proportion to properties allotted in the partial partition.

4.4 THE GIFT-TAX ACT, 1958:

4.4.1 Section 4(2):

A "gift" is 'transfer without consideration'. A simple device to avoid tax is to pass the property as a gift. Under the provisions of this section, conversion of individual or separate property into that of HUF property is deemed as taxable gift, to the extent specified. The operative conditions of the section are:

(1) an individual has a separate property;

(2) the separate property is converted into property belonging to the family;

(3) the conversion may be by impressing it with character of joint family property or by throwing it in common stock of the family;

(4) on such conversion, the individual has made a deemed gift;

(5) the extent of the deemed gift is so much of the converted property as the member of the HUF, other than the transferor individual, would be entitled to, if a partition of the converted property had taken place immediately after such conversion.

4.4.2 Section 20:

The section derecognizes partial partition of a Hindu undivided family for the purpose of gift-tax and deems that even after such partial partition, the Hindu undivided family continues and exists.

4.5 SUMMARY:

The above discussion is confined to those provisions of the direct tax laws that specifically relate to the Hindu undivided families. Other statutory provisions relating to exemptions, procedural compliances and appellate procedures apply collectively to the 'assessees' in which the Hindu undivided families are also included for administrative purposes.

In summing up, it could be stated that the complexities of the law that governs the Hindu undivided families tempt many a unscrupulous taxpayer to endeavour to escape from tax net through fair or foul means. The tax administration, in an effort to catch such escaped/diverted income, goes on piling up amendments to the statutes. Over

the years, however, instead of becoming effective, the tax statutes have become more complex, forcing both the administration and the taxpayers to seek intervention from legal forums about the interpretation of the statutes. Besides, the increasig complexity of the tax laws opens up new grounds for tax avoidance and tax evasion and weakens the administrative structure by burdening it with prolonged litigations.

A closer scrutiny of the statutory provisions and the relevant case law has brought to light the following, among others, ingenecus methods adopted by the taxpayers in escaping/reducing their tax liability:

1. Simultaneous availing of exemptions under direct tax laws in the capacities both as an individual and as a coparcenary or a member of an HUF;
2. Frequent partitions of HUF to transfer income and wealth and to avoid liability under capital gains tax, gift tax, stamp duty, etc.;
3. Splitting up of a large HUF into smaller HUFs to avail of exemptions;
4. HUFs are out of the scope of section 2(22) of Income-tax Act relating to deemed dividend, which provides an incentive to hold shares and/or debentures in HUF's name though the funds for their purchase come from individual income;
5. HUFs are also excluded from the applicability of section

64 of the Income-tax Act regarding clubbing of income, which, in itself, provides a breeding ground for devising several means for tax avoidance;

6. Direct tax laws adopt a lenient view towards HUFs as regards penalties and interest for violations of administrative rules. The lack of severity thus helps in the perpetration of violations.

SECTION 'B'

This Section presents certain statistical information about the tax revenue gathered from the HUFs over the past few years and analyse it in terms of its significance vis-a-vis other types of taxable entities. The researcher has also tried to interprete the statistics presented in a meaningful manner.

The section further reports certain cases decided by the Supreme Court and the High Courts, which the researcher found relevant to the present study.

contd. next page.

4.6 STATISTICAL INFORMATION:

Table 4.1

Number of Tax Returns filed by different taxable entities during the period from 1984-85 to 1987-88

Assessment years	Hindu undivided families	Individuals	Registered firms	Others	Companies	All Status
1984-85	178,563	2,650,396	601,724	7,553	25,109	3,463,345
	(5.17)	(76.00)	(17.00)	(0.21)	(0.72)	
1985-86	105,137	1,741,444	538,593	43,333	20,858	2,449,465
	(4.29)	(72.00)	(21.09)	(1.77)	(0.85)	
1986-87	164,845	2,307,568	571,143	28,747	17,055	3,089,358
	(5.38)	(74.00)	(19.66)	(0.95)	(0.61)	
1987-88	172,742	2,659,676	585,475	21,614	38,590	3,478,097
	(4.97)	(76.80)	(16.30)	(0.63)	(1.30)	

Note: Figures in brackets indicate percentages.

Source: Compiled from "Statistical Abstracts", Central Statistical Organization, Department of Statistics, Ministry of Planning, Govt.of India, 1990 Edition, Table 185.

Table 4.2

Returned income of different taxable entities during the period from 1984-85 to 1987-88

(Amount in Rs.'000)

Assessment years	Hindu undivi families	Individuals	Registered firms	Others	Companies	All status
1984-85	6,013,741	69,047,866	25,508,097	237,205	43,821,833	144,628,742
	(4.16)	(47.80)	(17.40)	(0.16)	(30.84)	
1985-86	3,202,091	50,723,297	29,543,601	1,655,877	55,955,931	141,120,797
	(2.26)	(35.87)	(20.87)	(1.27)	(39.80)	
1986-87	7,038,871	82,673,213	36,869,624	1,605,381	68,941,358	197,128,447
	(3.57)	(41.50)	(19.32)	(0.81)	(34.80)	
1987-88	8,177,999	101,745,438	40,617,295	1,096,759	99,597,724	251,235,215
	(3.25)	(40.70)	(16.30)	(0.45)	(39.30)	

Note: Figures in brackets indicate percentages.

Source: Compiled from "Statistical Abstracts", Central Statistical Organization, Department of Statistics, Ministry of Planning, Govt.of India, 1990 Edition, Table 185.

Table 4.3

Tax payable by different taxable entities during the period from 1984-85 to 1987-88

(Amount in Rs.'000)

Assessment years	Hindu undivided families	Individuals	Registered Firms	Others	Companies	All status
1984-85	1,915,332	11,509,340	2,519,087	49,997	24,004,766	39,998,517
	(4.78)	(28.50)	(6.10)	(0.12)	(60.50)	
1985-86	822,247	8,909,229	3,163,207	521,440	31,915,212	43,331,335
	(1.81)	(19.64)	(7.30)	(1.15)	(70.70)	
1986-87	1,618,833	13,547,515	3,650,760	488,250	29,142,552	48,447,510
	(3.34)	(27.80)	(7.50)	(1.36)	(60.00)	
1987-88	1,928,615	18,119,400	4,206,112	339,654	40,153,716	64,747,505*
	(2.97)	(27.50)	(6.50)	(0.52)	(62.50)	

Note: Figures in brackets indicate percentages.

Source: Compiled from "Statistical Abstracts", Central Statistical Organization, Department of Statistics, Ministry of Planning, Govt.of India, 1990 Edition, Table 185.

Table 4.1:

The Table shows the number of returns filed by different taxable entities during the period from 1984-85 to 1987-88. It is seen that in the year 1984-85, out of the total, 5.17 percent returns were filed by the Hindu undivided families, which percentage has come down to 4.97 in the year 1987-88. Also, there has also not been a significant increase in the number of returns filed by the assessees of all status.

Table 4.2:

This Table records the statistics about the returned income of different taxable entities for the same period. It is revealed that while the companies have registered a substatial increase (+8.50%) in the returned income, the same has gone down (-0.91%) in case of HUFs. Also, the returned income by the assessees of all status has registered substantial increase.

Table 4.3:

Table 4.3 reveals the tax payable by different taxable entities during the period under consideration. It is seen that while the amount of the tax payable by the HUFs has remained approximately the same, its percentage in the total tax payable by the assessees of all status has decreased; while in the case of companies, though their percentage of contribution to the total tax payable has not varied much,

the amount they have contributed has increased substantially.

Taken collectively, these tables reveal that the HUFs contribute a very insignificant revenue to the total tax collections. At the same time, the number of returns filed by the company-assessees is least (about 1% of the total returns filed), but their contribution to the tax revenue is the highest (above 60% of the total collection).

4.7 SELECT SUPREME COURT & HIGH COURT CASES:

1. *In the Supreme Court of India,*
   Apoorva Shantilal Shah (HUF) v. Commissioner of Income-tax
   Income-tax Act, 1961 Section 171:
   Father, in exercise of his right as Patria Potestas or otherwise, can effect partial partial partition between himself and his minor sons of the properties of Hindu joint family governed by Mitakshara school. Such partition is binding. Partial partition of joint family is permissible and valid in law. Same, therefore, ought to have been recognized.
   (1983) CTR (SC) 153

2. *In the Orissa High Court*
   Commissioner of Income-tax v. Polaki Butchi Babu
   Income-tax Act, 1961, Sections 4, 171:
   HUF, HUF or individual inncome, capital in firm inherited from father and self-acquired properties blended, subsequent partial partition, share received on partial partition invested in Firm, income from firm assessable in the status of HUF. Held, that in view of the acceptance of the claim of the assessee regarding partition, the correct status of the assessee with regard to income from the firm was that of a Hindu undivided family.
   (1988) ITR 178 430 (OR)

3. *In the Punjab & Haryana High Court*

Commissioner of Income-tax v. Brij Bhushan Lal Suresh Kumar

Firm, HUF, A coparcener can enter into a partnership with the karta of his HUF by contributing his skill and labour instead of his separate property. Held, that the sub-partnership was entitled to registration.

(1989) ITR 179 83 (P&H)

4. *In the Karnataka High Court*

B.T.Ravindranath Punja v. Commissioner of Income-tax

HUF, Partition, Sole surviving coparcener with female members, Partition of HUF property not possible, Grant of share in property by sole surviving male member to other family members, Could be only in the nature of settlement of proprty upon them in lieu of their right to maintenance. Held, that no partition could have taken place in such an event.

(1989) ITR 179 243 (KAR)

5. *In the Andhra Pradesh High Court*

G.Lakshmi Narayana v. Income-tax Officer

Income-tax Act, 1961, Section 171; CBDT Circular dated 22.9.80 and Constitution of India, Art.226

HUF, Law applicable to assessment, partial partition, sub-section (9) of section 171 inserted by Finance Act, 1980, applies in respect of assessment year 1980-81 and subsequent years, Partial partition between 1.1.1979 and 31.3.1979 claimed in assessment year 1979-80 not affected by sub-section (9) of section 171. Held, that the Income-tax Officer was not justified in invoking sub-section (9) of section 171 for ignoring the partial partition claimed by the petitioners during the assessment year 1979-80 on the ground that it was effected after December 31, 1978, namely, between January 1979 and March, 1979, which also happens to be a part of the previous year for the assessment year 1979-80.

(1989) ITR 175 593 (AP)

6. *In the Allahabad High Court (Lucknow Bench):*

J.P.Verma v. Commissioner of Income-tax

Income-tax Act Sec.22 and Hindu Succession Act Sec. 19(b):

HUF, Income of HUF or individual income, Amount inherited by son, Son iinvesting amount in his individual name, Character of amount does not change from ancestral to individual, Amount subsequently utilized in purchase of property in the name of the assessee's wife, Inncome from property attributable to investment of HUF funds assessable as income of HUF. Held, that the fact that the assessee had treated the sum as his individual property was not sufficient to change the nature and character of the property from ancestral to individual property. So much of the investment made in the house property as was attributable to the sum must be regarded as Hindu undivided family property and the income derived therefrom was assessable as Hindu undivided family income.

(1991) ITR 187 465 (ALL)

7. *In the Supreme Court of India*

Gulab Rai Govind Prasad v. Commissioner of Income-Tax

Wealth-tax Act, 1957, Section 2(m):

HUF, Gift by karta to son by book entries, No evidence of acceptance, Amcunt of gift never utilized for son's purpose but was available for family, No valid gift, Amount of gift includible in the net wealth of family. Held, that there was no gift in fact and, therefore, the amount of the gift could not be excluded in the computation of the net wealth of the family.

(1987) ITR 165 163 (SC)

8. *In the Madras High Court*

Commissioner of Income-tax/Wealth-tax v. M.Balasubramanian

HUF, HUF or individual income, Gift by Hindu father to son, intention of donor important, Specific statement that gift was for the benefit of the son's wife and children, Subsequent

marriage of son, Income from properties, Assessable as income of HUF of son.

Wealth-tax, HUF, HUF or individual property, Gift by Hindu father to son, Intention of donor important, Donor expressly stating that gift was for the benefit of the son's wife and children, Subsequent marriage of son, Properties belong to HUF of son.

Held, that the income from the gifted properties arose to the HUF and could not be clubbed with the assessee's individual income;

Also held, that for purposes of wealth-tax, the sum belonged to the HUF and was not assessable in the hands of the assessee in his individual capacity.

(1990) ITR 182 117 (MAD)

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21. Ibid., p.1.96.

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