
CHAPTER - I

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1.1 HISTORICAL PERSPECTIVE OF DIRECT TAXES:

Direct taxation is not a novelty in India introduced by the British as too commonly supposed but a most ancient and well-known institution. In fact, the British Government, which had gradually abandoned direct taxation as a means for gathering State revenues was obliged by the financial necessities to resort to direct taxation in 1860. Since then, successive governments have come to rely upon direct taxation as a means for garnering additional revenues. The natural corollary that follows that the State has been thrown into a perpetual process of framing and reframing the tax statutes in increasingly energetic attempts to generate more and more tax revenues. For example, between 1860 and 1886, twentythree Acts on the subject of personal taxation were passed. In 1916, the First World War engendered additional taxation together with steeper gradation and increased rates.

The Indian Income-Tax Act of 1918 could rightly be called the predecessor of the present-day Income-tax Act of 1961. The Act of 1918, however, was substituted with a more comprehensive Act in 1921, which the Independent India inherited from the British in 1947. The Act was again completely recast, partly to give effect to the recommendations

of a Committee which examined administrative processes and partly to carry out the recommendations of the Law Commission. Thus came into being **the Income-tax Act, 1961.**

The Wealth-Tax Act, 1957, had its origin in the recommendations made by Prof. Nicholas Kaldor, a British tax expert, appointed by the Government of India to advise it on the matter of reviewing the Indian tax structure, primarily with reference to the personal and business taxation, in the light of the revenue requirements of the Second Five Year Plan. In due course, a suitably drafted bill was passed by the Parliament, which received Presidential assent on 12th September 1957.

The Gift-tax Act, 1958, also has come out of the recommendations of Prof. Nicholas Kaldor and its purpose was to levy a tax on the gifts made by individuals, Hindu undivided families, companies and associations of persons.

1.2 'HINDU UNDIVIDED FAMILY' AND DIRECT TAX LAWS:

The Act of 1918, for the first time, included the 'Hindu undivided family' in the definition of the term "assessee" and this inclusion has continued since then. None of the Acts, however, offered any definition of a Hindu undivided family, obviously because no simple definition is possible. Prima-facie, there is no difference between

a joint Hindu family, which is the expression used in Hindu Law books, and a Hindu undivided family, the expression used in the direct tax laws. The law on the subject is governed by various sacred books of the Hindus, commentaries on these books, by custom and by rulings of Courts as well as specific statutory modifications. The main feature about a Hindu undivided family is that it is a coparcenary or tenancy-in-common.* A detailed discussion about the theoretical aspects of a Hindu undivided family is attempted in Chapter-II.

In the **Income-tax Act**, 1961, there are certain special provisions in respect of **Hindu undivided family** which are to be found in Sections 2(31) [meaning and scope]; 6(2) and 6(b) [residence in India]; 47(i) [transactions not regarded as transfer]; 49(1) [cost with reference to acquisition of assets]; 64(2) [conversion of property]; 164 [charge of tax]; and 171 [assessment of HUF after partition]. Likewise, under the **Wealth-tax Act**, 1957, the Hindu undivided families are governed by Sections 3 [liability]; 4(c) [impartible estate]; 5(1)(ii) [coparceners' share in exemption]; 20 [assessment after partition]; and 20A [assessment after partition after 31.12.1978]. Similarly, the provisions that are applicable to the Hindu undivided families under the **Gift-tax Act**, 1958, are included in Sections 4(2) [conversion of separate property into joint family property to be deemed as gift]; 20 [assessment after partition]; and 35B [offences committed by HUF].

The statistical information for the years 1984-85 to 1987-88 reveals the following facts about the returned income of the Hindu undivided families in the country.

Assessment year	(Amounts in Rs.'000)		
	Hindu undivided families		
	Number of Returns	Returned income Rs.	Tax payable Rs.
1984-85	178,563	6,013,741	1,915,332
1985-86	105,137	3,202,091	822,247
1986-87	164,845	7,038,871	1,618,833
1987-88	172,742	8,177,999	1,928,615

Source: "Statistical Abstracts", Central Statistical Organization, Department of Statistics, Ministry of Planning, Govt. of India, 1990 Edition, Table 185, p.450.

The data released by the Central Statistical Organization of the Government of India further reveals that as at the end of the year 1987-88, the total tax paying population submitting returns under various independent entities is around 34,78,097, with ultimately declaring a gross income of Rs.28,95,67,913, on which the gross tax works out to be Rs.7,69,14,766. Therefore, the tax gathered from the Hindu undivided families is merely 2.50% of the total direct tax collections in the country.

Apart from the special provisions that are applicable exclusively to the Hindu undivided families, the direct tax laws do not differentiate between the Hindu undivided family and other assesseees as regards procedural aspects of the assessment.

1.3 STATEMENT OF THE PROBLEM:

The Hindu undivided family is a unique and peculiar type of assessee in the Indian context. Under the Income-tax Act, a Hindu undivided family is accorded separate status for the purpose of assessment. The researcher proposes to critically study and evaluate the separate identity conferred on it as well as the pertinent assessment procedure relating to the HUF under the direct tax laws. Accordingly, the statement of the problem is: "LAW RELATING TO ASSESSMENT OF HINDU UNDIVIDED FAMILIES - EVALUATION THEREOF".

1.4 OBJECTIVES OF THE STUDY:

With respect to the statement of the problem expressed above, the following have been framed as the specific objectives of the present study:

- (1) To critically examine the characteristic features of the Hindu undivided family vis-a-vis direct tax statutes;
- (2) To critically examine the statutory provisions under the direct tax laws relating to the Hindu undivided families;
- (3) To examine the relevant case law in respect of the tax assessment of the Hindu undivided families;
- (4) To ascertain the necessity or otherwise of according special status to the Hindu undivided families under the direct tax statutes.

1.5 SIGNIFICANCE OF THE STUDY:

The Hindu undivided family is considered as a separate entity for the purpose of taxation. A large number of assesseees claim the status of HUF so as to become eligible to the privileges and special treatment provided under the tax laws. Even a cursory look at the statutory provisions would show that since 1922 onwards, the Hindu undivided families have always enjoyed a special status. In the present Dissertation, it is attempted to critically examine and evaluate the significance of this special status; and at the end, tender such meaningful suggestions as may be appropriate.

1.6 METHODOLOGY ADOPTED FOR THE STUDY:

The present study relies exclusively on the **secondary data**, that is, published sources, particularly on the analysis of statutory provisions. The study also draws extensively from the interpretation and analyses offered by tax-experts, legal luminaries and also from the case-law as delivered by the highest judicial forums in the country.

1.7 SCOPE OF THE STUDY:

The scope of the study is confined to the examination of the Hindu undivided family as a unit of taxation against the perspective of the Hindu law and direct tax statutes.

The study further deals with the basic issues relating to the sustained separate status of the Hindu undivided family and the procedure relating to its assessment for tax purposes.

1.8 LIMITATIONS OF THE STUDY:

The direct tax laws, comprising the Income-tax Act, 1961; the Wealth-tax Act, 1957, and the Gift-tax Act, 1958, all have certain specific provisions related to the assessment for tax under individual statutes. However, it would be beyond the scope of this Dissertation to study each and every legal provision, identify its individual relevance and significance to the overall direct tax structure and proceed with drawing specific conclusions. Hence, the study is kept limited to evaluate the significant provisions under the direct tax laws.

1.9 CHAPTER SCHEME:

The Dissertation has been divided into Five Chapters. **Chapter-I** deals with the framework aspects such as statement of problem, objectives of the study, methodology adopted, significance, scope and limitations of the study. **Chapter-II** deals with the foundational aspects of the Hindu law as it relates to the Hindu undivided family, its characteristics, etc. **Chapter-III** deals with the important provisions under law relating to the assessment of the Hindu undivided

family under the direct tax statutes. **Chapter-IV** evaluates the statutory provisions relating to the HUF, presents certain relevant statistical information and also records some important case-law in respect of the Hindu undivided family. **Chapter-V** presents the conclusions drawn at the end of the study and offers certain meaningful suggestions. A comprehensive **Bibliography** concludes the Dissertation.

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