

CHAPTER - III

**HINDU UNDIVIDED FAMILY
: STATUTORY PROVISIONS**

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3.1 INTRODUCTION:

In the present Chapter, the statutory provisions, as they stand in the statute books, are being reproduced verbatim, so as to analyse them in the subsequent Chapter. These provisions have been extracted from Taxmann's "Income Tax Act" and "Wealth Tax Act and Gift Tax Act", 1990 editions, The explanation of the footnote numbers has been given in the 'References' part of the Chapter for illustrating as to how these provisions have undergone legislative changes over the time through various Finance Acts.

3.2 THE INCOME-TAX ACT, 1961:

2. *In this Act, unless the context otherwise requires -*

... ..

(31) "person" includes -

ii. a Hindu undivided family,

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and ¹[subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year ²[***] of every person;

Provided that where by virtue of any provision of this act income-tax is to be charged in respect of

the income of a period other than the previous year, income-tax shall be charged accordingly.

- (2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which -

- (a) is received or is deemed to be received in India in such year by or on behalf of such person; or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or
- (c) accrues or arises to him outside India during such year;

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

- (2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which -

- (a) is received or is deemed to be received in India in such year by or on behalf of such person; or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1: Income accruing or arising outside India

shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2: For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

6. For the purpose of this Act, -

(2) A Hindu undivided family, ... is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is -

(b) a Hindu undivided family whose manager has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more.

47. Nothing contained in section 45 shall apply to the following transfers -

(i) any distribution of capital assets on the total or partial partition of a Hindu undivided family;

49. ³[(1)] Where the capital asset became the property of the assessee -

(i) on any distribution of assets on the total or partial partition of a Hindu undivided family;

⁴[(iv) such assessee being a Hindu undivided family,

by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969].

64. ⁵[(2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family, or throwing it ⁶[into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property)], then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971 -

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;

(b) the income derived from the converted property or any part thereof ⁷[***] shall be deemed to arise to the individual and not to the family;

⁸[(c) where the converted property has been the subject matter of a partition (whether partial or total) amongst the members of the family, the income derived from such converted

property as is received by the spouse or minor child on partition shall be deemed to arise to the spouse or minor child from assets transferred indirectly by the individual to the spouse or minor child and the provisions of sub-section (1) shall, so far as may be, apply accordingly;]

Provided that the income referred to in clause (b) or clause (c) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse or minor ⁹[child] of the individual.

Explanation ¹⁰[1]: For the purposes of sub-section (2):-

¹¹[***] "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

¹⁰Explanation 2: For the purposes of this section, "income" includes loss.]

133. The ¹²[Assessing] Officer, the ¹³[Deputy Commissioner (Appeals)], ¹⁴[the ¹⁵[Deputy] Commissioner or the Commissioner (Appeals)] may, for the purposes of this Act, -

(2) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family;

140. The return under section 139 shall be signed and verified -

(b) in the case of a Hindu undivided family, by the Karta, and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

164. (1) ¹⁶[Subject to the provisions of sub-sections (2) and (3), where] any income in respect of which the

persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assesseees or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as "relevant income", "part of relevant income" and "beneficiaries", respectively), ¹⁷[tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate;]

Provided that in a case where -

(iii) the relevant income or part of relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the ¹⁸[Assessing] Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created bona fide exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance;

171. (1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family,, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

- (2) Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the ¹⁸[Assessing] Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.
- (3) On the completion of the inquiry, the ¹⁸[Assessing] Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.
- (4) Where a finding of total or partial partition has been recorded by the ¹⁸[Assessing] Officer under this section, and the partition took place during the previous year -
 - (a) the total income of the joint family in respect of the period upto the date of partition shall be assessed as if no partition had taken place; and
 - (b) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (2) of section 10, be jointly and severally liable for the tax on the income so assessed.
- (5) Where a finding of total or partial partition has been recorded by the ¹⁸[Assessing] Officer under this section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place; and the provisions of clause (b) of sub-section (4) shall, so far as may be, apply to the case.
- (6) Notwithstanding anything contained in this section, if the ¹⁸[Assessing] Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the

¹⁸[Assessing] Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(7) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

¹⁹[(9) Notwithstanding anything contained in the foregoing provisions of this section, where a partial partition has taken place after the 31st day of December, 1978, among the members of a Hindu undivided family hitherto assessed as undivided -

(a) no claim that such partial partition has taken place shall be inquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such partial partition had taken place and any finding recorded under sub-section (3) to that effect whether before or after the 18th day of June, 1980, being the date of introduction of the Finance Act (No. 2) Bill, 1980, shall be null and void;

(b) such family shall continue to be liable to be assessed under this Act as if no such partial partition had taken place;

(c) each member or group of members of such family immediately before such partial partition and the

family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition;

- (d) the several liability of any member or group of members aforesaid shall be computed according to the portion of the joint family property allotted to him or it at such partial partition, and the provisions of this Act shall apply accordingly.]

Explanation: In this section, -

- (a) "partition" means -
- (i) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or
 - (ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;
- (b) "partial partition" means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

3.3 THE WEALTH-TAX ACT, 1957:

- 3, ¹[Subject to the other provisions contained in this Act], there shall be charged for every ²[assessment year] commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company ³at the rate or rates

specified in ⁵[Schedule I].

4. ⁶['1A) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it ⁷[into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property)], then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computing the net wealth of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1972, -

- (a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;
- (b) the converted property or any part thereof ⁸*** shall be deemed to be assets belonging to the individual and not to the family;

- ⁹[(c) where the converted property has been the subject matter of a partition (whether partial or total) amongst the members of the family, the converted property or any part thereof which is received by the spouse or minor child of the individual on such partition shall be deemed to be assets transferred indirectly to the spouse or minor child and the provisions of sub-section (1) shall, so far as may be, apply accordingly;]

Provided that the property referred to in clause (b) or

clause (c) shall, on being included in the net wealth of the individual, be excluded from the net wealth of the family or, as the case may be, the spouse or minor child of the individual.]

5. (1) ¹⁰[Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets], and such assets shall not be included in the net wealth of the assessee -

(ii) the interest of the assessee in the coparcenary property of any Hindu undivided family of which he is a member.

20. (1) Where, at the time of making an assessment, it is brought to the notice of the ¹¹[Assessing Officer] that a partition has taken place among the members of a Hindu undivided family, and the ¹¹[Assessing Officer], after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various members or groups of members in definite portions, he shall record an order to that effect and shall make assessment on the net wealth of the undivided family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place. if the partition has taken place on the last day of the previous year and each member or group of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.

(2) Where the ¹¹[Assessing Officer] is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family liable to be assessed as such.

- 20A. Where a partial partition has taken place after the 31st day of December, 1978, among the members of a Hindu undivided family hitherto assessed as undivided, -

(a) such family shall continue to be liable to be assessed

under this Act as if no such partial partition had taken place;

- (b) each member or group of members of such family immediately before such partial partition and the family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition;
- (c) the several liability of any member or group of members aforesaid shall be computed according to the portion of the joint family property allotted to him or it at such partial partition.

and the provisions of this Act shall apply accordingly.

Explanation: For the purpose of this section, "partial partition" shall have the meaning assigned to it in clause (b) of the Explanation to section 171 of the Income-tax Act.]

3.4 THE GIFT-TAX ACT, 1958:

- 4. ¹[(2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereafter in this sub-section referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, for the purpose of computation of the taxable gifts made by the individual, the individual shall be deemed to have made a gift of so much of the converted property as the members of the Hindu undivided family other than such individual would be entitled to, if a partition of the converted property had taken place immediately after

such conversion.]

20. (1) Where, at the time of making an assessment, it is brought to the notice of the ²[Assessing Officer] that a partition has taken place among the members of a Hindu undivided family, and the ²[Assessing Officer] after enquiry, is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an order to that effect and he shall make assessments ³[on the value of the taxable gifts] made by the family as such as if no partition had taken place and each member or group of members shall be liable jointly and severally for the tax assessed on the value of the taxable gifts made by the joint family as such.

(2) Where the ²[Assessing Officer] is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family.

REFERENCES

The Income-tax Act, 1961:

1. Substituted for "subject to the provisions of this Act" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
2. "or previous year, as the case may be," omitted, ibid.
3. Inserted by the Finance Act, 1989, w.e.f. 1.4.1990.
4. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
5. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
6. Substituted for *into the common stock of the family (such property being hereinafter referred to as the converted property)* by the Finance Act, 1979, w.e.f. 1.4.1980.
7. "in so far as it is attributable to the interest of the individual in the property of the family" omitted by the Taxation

Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.

8. Substituted, ibid.
9. Substituted for "*son*", ibid.
10. Inserted by the Finance Act, 1979, w.e.f. 1.4.1980.
11. "(1)" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
12. Substituted for "*Income-tax*" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
13. Substituted for "*Appellate Assistant Commissioner*", ibid.
14. Substituted for "*or the Inspecting Assistant Commissioner*" by the Finance Act (No.2) Act, 1977, w.e.f. 10.7.1978.
15. Substituted for "*Inspecting Assistant*" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
16. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
17. Substituted for the portion beginning with "*tax shall be charged*" and ending with "*more beneficial to the revenue*" by the Finance (No.2) Act, 1980, w.e.f. 1.4.1980.
18. Substituted for "*Income-tax*" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
19. Inserted by the Finance (No.2) Act, 1980, w.e.f. 1.4.1980.

The Wealth-tax Act, 1957:

1. Amendment introduced by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989, has become redundant in view of omission of provision relating to additional wealth-tax.
2. Substituted for "*financial year*" by the Wealth-tax (Amendment) Act, 1964, w.e.f. 1.4.1965.
3. Levy of wealth-tax was withdrawn on companies by the Finance Act, 1960, w.e.f. 1.4.1960. However, levy of wealth-tax has been revived in a limited way by the Finance Act, 1983, w.e.f. 1.4.1983.

4. Substituted for *"the Schedule"* by the Finance Act, 1976, w.e.f. 1.4.1977.
6. Inserted by the Finance (No.2) Act, 1971, w.e.f. 1.4.1972.
7. Substituted for *"into the common stock of the family (such property being hereinafter referred to as the converted property)"* by the Finance Act, 1979, w.e.f. 1.4.1980.
8. *"in so far as it is attributable to the interest of the individual in the property of the family"* omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
9. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
10. Substituted for *"Wealth-tax shall not be payable by an assessee in respect of the following assets"* by the Finance Act, 1970, w.e.f. 1.4.1971.
11. Substituted for *"Wealth-tax Officer"* by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.

The Gift-tax Act, 1958:

1. Inserted by the Finance (No.2) Act, 1971, w.e.f. 1.4.1972.
2. Substituted for *"Gift-tax Officer"* by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
3. Substituted for *"on the amount of taxable gifts"* by the Repealing and Amending Act, 1960, w.e.f. 1.4.1960.