

CHAPTER - V

CONCLUSIONS AND SUGGESTIONS



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5.1 INTRODUCTION:

The recurrent theme that emerges out of the discussions in the preceding Chapters is that the law relating to the assessment of the Hindu undivided families is in a drastic need of revamping in the areas of simplification of procedure, strengthening with respect to catching the escaping income and wealth in the tax net and making it expedient with respect to the settlement of disputes over trivia.

Before the conclusions based on the earlier discussions are presented, it is proposed to put on record the views expressed by different Union Finance Ministers, through their Budget Speeches, in this behalf:

Shri.H.M.Patel (1977-78 Budget):

... the direct tax statutes have become increasingly complicated and incomprehensible over the years. It is, therefore, necessary to take immediate action for the simplification and rationalization of these laws with a view to making them readily intelligible to the taxpayers, reducing litigation, and thus subserving the interest of the national economy. It is also necessary to examine ways and means of improving the administration of these laws and expediting assessment, appellate and other proceedings under these laws.¹

Four years later, the Government appeared to be highly enthusiastic and greatly motivated over an altogether different aspect of the direct taxes:

Shri. R. Venkataraman (1981-82 Budget):

Income-tax and other direct taxes are important instruments for raising resources and reducing disparities. We propose to achieve these objectives by plugging of legal loopholes and effective administration rather than by enhancement of rates which often leads to tax evasion and generation of black money.²

It took yet another four years for the Government to forward some sensible proposals:

Shri. V. P. Singh (1985-86 Budget):

Our approach to the reform of the personal income-tax is as follows. First, the rates of personal income-tax should be recast and rationalized with a view to making the structure simple and reasonable. While maintaining the progressivity of the tax structure, it needs to be ensured that the combined effect of the rates of taxes on personal income and wealth are not counter-productive. Second, the exemption limit should be so fixed as to eliminate a large number of small assessments and to provide relief to low and middle income groups. Third, the tax structure should be stable. Fourth, in order to make more effective use of the administrative machinery in reducing tax evasion, the emphasis in tax assessments should shift from routine examination of a very large number of returns to a thorough scrutiny of a sample of cases. Fifth, it must be ensured that when tax evasion is detected, the penalties are swift and severe. Sixth, a tax, however laudable in intent, should have no place

*in the statute book if it has outlived its utility.*³
(emphasis added).

It is obvious from the above excerpts that the overhauling and, if necessary, complete recasting of the country's personal income-tax laws is long overdue. In fact, these laws should be reframed in such way so as to impart them more buoyancy and productivity to have beneficial effects on saving mobilization, contribution to industrial development and increasing the overall productivity of the direct taxes.

Referring specifically to the problem being studied, obviously the tax laws relating to Hindu undivided families discriminates in favour of the Hindus by according the Hindu community a right to claim a separate status on completing certain formalities, has become a much abused legislation and is honoured more by its flouting than respecting. It is more commonly used as a shelter and for indulging into all sorts of gimmickry to evade the lawful tax payments. To start with, creation of HUF, its partition as a natural corollary and creation of further HUFs piles up administrative workload and poses several legal issues, which remain pending with the already overburdened appellate machinery for anything between 8 to 10 years. While going through the case-law, the researcher was appalled to find that quite frequently, the High Courts and even the Supreme Court of India had to dismiss the petitions

as these did not relate to the questions of law but to the questions of fact. As per the procedure laid down under the direct tax statutes, for the questions of fact, the Appellate Tribunal is the ultimate authority; inspite of which, the facts of the case were so distorted to make them appear as the questions of law for which the intervention of the High Courts and Supreme Court has to be solicited.

To compound the matters further, when the powers-that-be realize that the situation has worsened to such an extent that immediate intervention is necessary, the Government comes out with sporadic (but unenthusiastic and by all means, superficial) measures, such as:

Shri.R.Venkataraman (1980-81 Budget):

...the separate treatment accorded to Hindu undivided family in tax laws has been widely used for avoidance of proper tax liability. I accordingly propose to derecognize partial partition of Hindu undivided families both for income and wealth taxation. Partial partitions made on or after 1st January 1979 will not be recognized for tax purposes and taxes will continue to be levied on the basis that the existing Hindu undivided family had continued to remain joint. ...At present, Hindu undivided families having one or more members with independent income exceeding the exemption limit are charged to income-tax at rates which are somewhat higher than those applicable in the case of individuals. In order to further restrict the use of Hindu undivided family for the purposes of tax avoidance, I propose to raise the rates of income-tax in the case of such Hindu

*undivided families. ... With these two changes in regard to tax treatment of Hindu undivided families, ...the urge for forming multiple Hindu undivided families merely for fragmentation of income and reduction of tax liability will be weakened.*⁴

The cascading effects of such half-hearted measures are worse than the original malady; which ultimately result in interpretative confusions and beget a seemingly unstaunchable flood of further litigations.

5.2 CONCLUSIONS:

From the detailed study of the law relating to the assessment of Hindu undivided families, particularly in respect of its composition, statutory provisions and also from the judicial viewpoint, the following conclusions could be drawn:

1. 'Hindu undivided family' is a special status taxable entity available only to the Hindus, under the umbrella of which, the Hindus enjoy certain exclusive tax benefits;
2. Though the entity is known as the 'Hindu undivided family' and included in the definition of the word "person" under all the three direct tax laws, it takes into its folds, Jains, Sikhs, Buddhists and in some cases, even Muslims (e.g. Khojas of Gujarat);
3. The special status granted to the HUF-assesseees is quite often misused and abused to lessen the tax liability;
4. Just 5% of the total assesseees are covered under the

category of 'HUF' who also contribute less than 5% of the tax revenue. Compared this against the Company-assesseees who constitute less than 1% of the total assesseees but contribute more than 60% of the tax revenue, the logic of continuing the special status of 'HUF' becomes incomprehensible;

5. A large number of HUF's try to avoid their tax liabilities by barely staying within the legal framework through the devices like partitions; even though the administration does not recognize partial partitions of HUF after 31.12.1978;
6. The number of tax litigations is on increase, and in majority of such cases, the assesseees are driven by the sole motive of obtaining reduction in their tax liability.

5.3 SUGGESTIONS

At this juncture, one cannot resist referring to the sixth tax reform proposed by Shri.V.P.Singh in his 1985-86 Budget Speech that, *a tax, however laudable in intent, should have no place in the statute book if it has outlived its utility*". It is the researcher's humble but considered opinion that the Hindu undivided family as a taxable entity has far outlived its utility from the viewpoint of tax collection. The Government should come to the terms with the fact that the taxation of HUF is one of the weakest pillars in the tax structure and that there is a room for abolishing altogether the HUF as a

separate unit of taxation. Such an abolition would harvest the following positive results:

- (1) Undue litigations would come to an end, consequent to which expeditious assessments and speedier tax collection would be possible;
- (2) The administrative work would be simpler and this would help the department to expedite the assessments with greater efficiency and consideration;
- (3) Reduction in the number of separate tax entities would help the assessment procedure as substantial time would be saved;
- (4) The data presented earlier bears out the fact that the variations in the returns submitted have an insignificant impact on the ultimate tax collection. Still, the collection machinery gets tied down for the same. This would be avoided totally and the collection machinery's time and efforts used more productively elsewhere.
- (5) HUFs, which have been classified as big HUFs, small HUFs, specific HUFs, non-specific HUFs, HUFs with single coparcenary, etc., consume maximum time of the tax gatherers and taxpayers, which, in the end, benefit only the tax and legal professionals, but in the process, cause huge loss to the revenue and constant humiliation to the taxpayers.

In the interim of taking such a radical step as total

abolition of a taxable entity, the following suggestions may be implemented as stop-gap measures:

- (1) It must be made a condition precedent to the creation of HUF to get itself registered with the tax authorities, as is done in the case of partnership firms.
- (2) Tax rates applicable to the HUFs be made more rational and reasonable so as to induce the HUF-assessees to pay their taxes voluntarily. At the same time, machinery for gathering taxes from the HUFs should be reinforced with provisions like mandatory registration.
- (3) The duality of tax rates for ordinary HUFs and specified HUFs must be removed. The tax rates should be uniform for all the HUFs. In other words, all types of HUFs must become assessable without any favoured or special treatment.

REFERENCES

1. Government of India, Ministry of Finance, Department of Economic Affairs : "Budget Speeches of Union Finance Ministers - 1947-48 to 1990-91", New Delhi, p.433.
2. Ibid., p.488.
3. Ibid., p.545.
4. Ibid., p.475.