



# ESTATE PLANNING

# PRESENTATION INDEX

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# PRESENTATION INDEX

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# **Assets in India & Assets outside India**

# Assets in India & Assets outside India

## Global Assets

```
graph TD; A[Global Assets] --> B[Assets out of India]; A --> C[Assets in India]; B --> D["Transmission (Inheritance) of assets governed by laws of respective foreign country"]; C --> E["Transmission (Inheritance) of assets governed by laws of India"];
```

### Assets out of India

**Transmission  
(Inheritance) of assets  
governed by laws of  
respective foreign  
country**

### Assets in India

**Transmission  
(Inheritance) of assets  
governed by laws of  
India**

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# **Law governing succession of assets by Inheritance & Will**

# Law of Succession

**On death of a person – Succession operates**

## **Testamentary Succession**

(when a person decease after making a Will)

✓ **The Indian Succession Act**

✓ **Muslim Shariat Law**

## **Intestate Succession**

(when a person decease without making a Will)

✓ **Hindu Succession Act**  
Hindu, Sikh, Jain & Buddhist

✓ **Muslim Shariat Law**  
Muslim

✓ **The Indian Succession Act**  
Christian & Parsi

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# **What is Testamentary Succession ?**

## **&**

# **How does it operate ?**



# Testamentary Succession

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**When assets are bequeathed on the basis of a Will, it is called as testamentary Succession.**

**A Will valid under the Indian Succession Act, has to be made in respect of Indian Asset.**

**A Will in respect of Global Assets (Foreign + Indian Assets) is valid in India for Indian Assets, if it contains all the essential elements of a valid Will.**

# **Testamentary Succession**

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**It is advisable to execute a Separate Will for Indian Assets.**

**There is no unnecessary disclosure of Foreign Assets to which Indian Laws do not have jurisdiction.**

**The Will should clearly mention that this Will is in respect of Indian Asset only.**

**A Will can be in respect of all the Indian Assets or the Will can be a Specific Will in respect of certain specific asset.**

# Testamentary Succession

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A Will valid under the Indian Succession Act, has to be made in respect of his / her Assets.

**Essential of a valid WILL :**

- ✓ Will has to be in writing.
- ✓ Identification of the person executing the Will.
- ✓ Details of the assets to be bequeathed under the Will.

# Testamentary Succession

## Essential of a valid WILL :

- ✓ Names and details of the beneficiaries under the Will, to whom assets are to be bequeathed.
- ✓ Signature of the person executing the Will, with date.
- ✓ Signature of two adult witness with their identification.
- ✓ It is advisable to execute the Will in English, unless the testator does not fully understand English

# Testamentary Succession

- ✓ Person signing the Will can sign before Notary Public or get the Will Registered.

Whether to sign the Will, without Notary, before Notary or get the same registered depends on the facts & circumstances of the case.

- ✓ It is advisable to execute Declaration of the two witnesses confirming the fact that they are the witness of the Will. This Declaration can be filed in court at the time of obtaining the probate.
- ✓ It is advisable to have a Doctor as a witness in case of aged person.

# Testamentary Succession

When should you revise your Will, prepare a new / fresh Will

- ✓ It is imperative to make a new Will when :
  - the person to whom the assets are bequeathed dies.

Sec. 105 – Indian Succession Act.
- ✓ It is advisable to make a new Will when :
  - one or both the witnesses to the Will dies.
  - new Will when the executor/s of the Will dies.

# Testamentary Succession

## Final step in – Testamentary Succession :

- ✓ Executor or Beneficiaries to make application before the Court along with Will to obtain a probate.
- ✓ Court will demand declaration from witness & legal heirs. Court will issue public notice.
- ✓ Court will issue a letter of administration with Will (Probate), which will make Will a conclusive document.

# Testamentary Succession

## Effect of Nomination / Joint Holder (E or S) :

- ✓ On death of the holder of financial assets transmission of assets needs to be done in favour of the Nominee / Joint Holder (E or S).
- ✓ Nominee / Joint Holder (E or S) is not the owner of the assets, he is merely a Custodian / Trustee. The real owner of the asset is the one who is the beneficiary under the Will in case of Testamentary Succession (where Will is made).



# Testamentary Succession

## Effect of No Nomination / No Joint Holder :

- ✓ All institutions are obliged to honour the Probate issued by the Court.
- ✓ Probate is a conclusive document for property bequeathed in favour of beneficiary.
- ✓ In the absence of a Probate, the institution may prescribe procedure to accept a will without a Probate as document for transmission of asset.

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# **What is Intestate Succession ? & How does it operate ?**

# Intestate Succession

- ✓ When a person dies without executing a Will, the process by which the assets of the deceased are bequeathed is called Intestate Succession.
- ✓ There are specific provision applicable according to the religion followed by the deceased.

Hindu Succession Act	Muslim Shariat Law	The Indian Succession Act
Hindu, Sikh, Jain, & Buddhist	Muslim	Christian & Parsi

# Intestate Succession

**Distribution of assets where Hindu dies without executing a Will :**

**✓ Hindu Male : Class I heirs**

**Mother, Widow, Daughters, Sons, Heirs of the predeceased Son / Daughter. (Father not included).**

**✓ Hindu Female : Class I heirs**

**Sons, Daughters, Children of predeceased Son / Daughter and the Husband. (Father, Mother, Father-in-law, Mother-in-law not included).**

**All the assets are to be equally distributed among all the heirs, surviving at the time of his / her death.**

# Intestate Succession

## Final step in – Intestate Succession :

- ✓ Heirship Certificate / Succession Certificate is an order of the Court certifying the legal heirs of the deceased and the assets bequeathed to the legal heirs.
- ✓ The legal heirs under the law of Succession should obtain a certificate of Heirship (Varsai Ambo / Pedhi Namu / Family Tree) from Mamlatdar office.
- ✓ The legal heirs should then apply to the court to obtain a Heirship Certificate / Succession Certificate.
- ✓ The Court will issue public notice and consider any responses received, thereafter issue a Heirship Certificate / Succession Certificate.

# Intestate Succession

## Effect of Nomination / Joint Holder (E or S) :

- ✓ On death of the holder of financial assets transmission of assets needs to be done in favour of the Nominee / Joint holder (E or S).
- ✓ Nominee / Joint Holder (E or S) is not the owner of the assets, he is merely a Custodian / Trustee. The real owner of the asset are the legal heirs of the deceased under Intestate Succession (When Will is not made).

# Intestate Succession

## Effect of No Nomination / No Joint Holder :

- ✓ All institutions are obliged to honour the Heirship Certificate / Succession Certificate.
- ✓ Heirship Certificate / Succession Certificate is a conclusive document for property bequeathed the same.
- ✓ In the absence of a Heirship Certificate / Succession Certificate, the institution may prescribe procedure to accept the certificate of Heirship (Varsai Ambo / Pedhi Namu / Family Tree) as document for transmission of asset.

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# **Management of Assets (Moveable & Immovable) by Power of Attorney**



# Management of Assets by Power of Attorney

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## For Movable Assets

- ✓ Should be notarised in India or Abroad.
- ✓ Should be stamped as per local Stamp Act, in Gujarat, it is Rs. 300/=.

# Management of Assets by Power of Attorney

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## Important clauses of POA to manage Movable Assets

- ✓ To carry out all the operations of Depository Account including instruction for debit & credit to the demat account.
- ✓ To carry out operation of Government supported savings schemes with specific mention of names.
- ✓ To carry out the affairs of a Hindu Undivided Family (HUF) where the NRI is the Karta of his HUF.

# Management of Assets by Power of Attorney

## Important clauses of POA to manage Movable Assets

- ✓ To carry out the affairs of Partnership or Proprietorship Concern.
- ✓ To carry out functions as a Director of a Company.
- ✓ To make and accept all claims under a WILL or under succession.
- ✓ To encash fixed deposits even before maturity and close bank accounts (subject to acceptance by the bank).

# Management of Assets by Power of Attorney

## For Immovable Assets

*April 10, 2013/CAITRA 20, 1935 – Gujarat Stamp (Amendment) Act, 2013*

✓ If giver and receiver of POA holder both are in India

Should be registered with respective Registrar where the property is located in India.

✓ If giver and / or receiver of POA are out of India

POA should be executed & signed before Indian Embassy abroad and thereafter should be submitted in 90 days to registrar where the property is located. It will be stamped & verified by Stamp Duty Collector Office & District Collector Office. Giver & Receiver of POA both can execute and sign out of India.

# Management of Assets by Power of Attorney

## For Immovable Assets

*April 10, 2013/CAITRA 20, 1935 – Gujarat Stamp (Amendment) Act, 2013*

- ✓ Appropriate stamp duty has to be paid, which is Rs. 300/= for POA to close relatives (father, mother, brother, sister, wife, husband, son, daughter, grandson, granddaughter) .
- ✓ When POA given to any person other than close relative, market value based stamp duty will be liable on the POA.
- ✓ It is advisable to give a Letter of Authority to a lawyer, to represent the parties before authorities in India, when the giver & receiver of POA is out of India.

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# **Income Tax Planning for Assets received by Succession**

# Taxability of asset received in succession

**Section 56 (x) :- Following are liable to Income Tax :**

- ✓ any sum received without a consideration exceeding Rs. 50,000/=.
- ✓ any immovable property OR any property other than immovable property without a consideration or with inadequate consideration exceeding Rs. 50,000/=.

# Taxability of asset received in succession

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## Exceptions

Provided that this clause shall not apply to any sum of money or any property received :

- ✓ From any relative (as defined).
- ✓ On the occasion of the marriage of an individual.
- ✓ Under a Will or by way of Inheritance.
- ✓ Under certain other cases under specified conditions



# Taxability of asset received in succession

---

Can I receive any amount of asset under succession ?

Sec. 56 (x) does not lay down any limits (upper cap) on the value of the assets that can be received

**THEN...**

What is the maximum amount of assets that can be received under succession ?

# Taxability of asset received in succession

Provision of Sec 68 of Income Tax Act needs to be considered :

## Section 68 of Income Tax Act

“where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in opinion of the Assessing officer satisfactory the sum so credited may be charged to income tax as the income of the assessee of that pervious year.”

# Taxability of asset received in succession

Provision of Sec. 68 of Income Tax Act needs to be considered :

- ✓ Rate of tax for incomes made taxable U/s. 68 has been prescribed U/s. 115 BBE.
- ✓ The prescribed rate U/s. 115 BBE are :
  - 60% + 25% Surcharge on basic tax + 4% Cess on total tax (including surcharge) = 78% (If disclosed in the Return of Income).
  - 78% + 6% (10% of tax payable) [Penalty U/s. 271AAC] = 84%. (In case of detection during the Assessment Proceedings).
- ✓ Can invite prosecution (Imprisonment & Fine) U/s. 276C(1), 277, 277A of the Income Tax Act.

# Taxability of asset received in succession

## How to comply with Section 68 of the Income Tax in assets received in succession ?

- ✓ Identity of the person from whom credit received.
- ✓ Credit worthiness.
- ✓ Genuineness of transaction.

# Taxability of asset received in succession

## Jewellery which can be considered as explained :

- ✓ CBDT Circular in context of search & seizure proceedings provides :

### Gold Jewellery & ornaments

500 gms	-	Married lady
250 gms	-	Unmarried lady
100 gms	-	per male member

- ✓ Declared in wealth tax return (when Wealth Tax Act was in force).
- ✓ Jewellery reflected in the Balance Sheet as an asset.

The above can be considered as explained assets.

# Taxability of asset received in succession

---

## Transfer by Will or Gift ?

Is it better to receive a gift of property from a close relative in his / her life time or under a WILL ?

- ✓ Both are exempted from Income Tax by virtue of Sec 56 (x).
- ✓ Is the WILL expected to be challenged ? This is the Deciding factor.

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# Tax planning ideas and succession

# Tax planning ideas and succession

## Scope of planning with the Will

- ✓ If assets are bequeathed by way of intestate succession than, it is received by defined legal heirs and not persons / entities of choice.
- ✓ Assets can be received by HUFs, Females, Minors etc., if assets are bequeathed under WILL.



# Tax planning ideas and succession

## With a Trust under a WILL

- ✓ One discretionary Family Trust can be created as a part of the WILL.
- ✓ A discretionary trust is liable to tax at the maximum marginal rate (presently 30% + Surcharge), but if formed under a WILL is liable to be taxed as a separate person at regular rates. Even deduction U/s 80 C is available.
- ✓ The Trust can have income other than business income (interest, dividend capital gains etc.).

# Tax planning ideas and succession

## With a Trust under a WILL

- ✓ Discretionary Trusts are trusts where beneficiaries and / or shares of beneficiaries are not determined.
- ✓ Such Trusts are useful to take care of dependents decisively.
- ✓ Trustees can be empowered to distribute the income among the beneficiaries & at a certain stage even dissolve the trust.
- ✓ Shares of a company can also be bequeathed to such trust.

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# Estate planning through Private Trusts

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# Joint holders of assets

# Joint holders of assets

- ✓ In case of financial assets held in joint name, his / her share shall be in accordance with the investment made by each co-owner. The first holder is treated as the owner of asset, by the financial institution.
- ✓ In case of immovable assets held in joint mode, share of each co-owner is as per the shares mentioned in the purchase document, if nothing is specified then all the joint holders will have equal share, under revenue law. Joint holders with undefined shares can discharge Income Tax liability as per their share in investment.

# Joint holders of assets

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- ✓ Joint holding in Immovable property cannot be on E or S (Either or Survivor) basis.
- ✓ On death of one of the joint holders, immovable property does not get transferred automatically. It has to undergo process of transfer by Will / succession in respect of his / her name.

# **Income Tax Planning for assets received by Succession**

# Taxability of assets received by succession

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**India does not have  
inheritance tax.**

**Estate duty in India has  
been abolished.**



# Taxability of assets received by succession

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✓ Both are exempted from Income Tax by virtue of Sec 56 (x).

✓ Is the WILL expected to be challenged ?  
This is the deciding factor.



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# **Taxability of income from assets received under inheritance in India**

# Taxability of income from assets received under inheritance

## ✓ Immovable assets

<b>Name of Asset</b>	<b>Different Types of Income</b>	<b>Taxability</b>
<b>Immovable other than Agriculture Land, Plantation and Farm House</b>	<b>Rent Income</b>	<b>Taxable as per Slab rates, after deduction of 30% u/s 24.</b>
<b>Agriculture Land, Plantation and Farm House</b>	<b>Agriculture Income</b>	<b>Exempted u/s 10(1)</b>

# Taxability of Income from assets received under inheritance

## ✓ Movable Assets

### Income Generating

Name of Asset	Type of Income	Taxability
NRO Account / NRO Fixed Deposit	Interest income	Taxable as per Slab rates
NRE Account / NRE Fixed Deposit	Interest income	Exempted as per Section 10(4)
FCNR Account		
PPF Investment	Interest income	Exempted as per Section 10 (11)

# Taxability of income from assets received under inheritance

## ✓ Movable Assets

### Growth oriented (For RESIDENTS)

Name of Asset	Type of Income	Taxability
Shares	Dividend	Taxable as per Slab rates
Mutual Funds		

# Taxability of income from assets received under inheritance

## ✓ Movable Assets

Growth oriented

Name of Asset	Different Types of Income	Taxability
Share in Partnership Firm / LLP	Remuneration	Taxable as per Slab rates
	Interest on capital	
	Share in Profit of business	Exempted u/s 10(2A)

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# **Taxability on sale of assets received under inheritance**

# Taxability of sale of assets received under inheritance

## ✓ Immovable Assets

Name of Asset	Long Term Capital Gain	Short Term Capital Gain
Immovable other than Agriculture Land, Plantation and Farm House.  Agriculture Land, Plantation and Farm House within the limits prescribed.	<u>More than 2 years</u>  Tax Rate - 20% + surcharge + Health & Edu. Cess)	<u>Less than 2 years</u>  Slab rates + surcharge + Health & Edu. Cess
	TDS Rate 20.8%	TDS Rate 31.2%
	TDS is to be deducted on entire sale consideration	

# Taxability of sale of assets received under inheritance

- ✓ **Immovable Assets**  
Agricultural land situated beyond the below limits are completely exempted.

<u>Population of a city / town etc.</u>	<u>Arial Distance</u>
10,000 to 1,00,000	2 kms.
1,00,000 to 10,00,000	6 kms.
Above 10,00,000	8 kms.

Agricultural land within these limits are liable to taxation as any other immovable assets.



# Taxability of sale of assets received under Inheritance

## ✓ Movable Assets

Income	Taxation In India
Sale of Shares – Listed	Short term (less than 1 year) – 15%  Long term (more than 1 year) – Exempted upto Rs.1,00,000/-. Above that – 10%
Sale of Shares – Unlisted	Short Term (less than 2 years) –Slab rates  Long term (more than 2 years) – 10% (without indexation if amount is invested in foreign currency)

# Taxability on sale of assets received under Inheritance

## ✓ Movable Assets

Income	Taxation In India
Mutual Fund Investment – Debt	<p>Short Term (less than 3 years) – Slab rates</p> <p>Long Term (more than 3 years) – (Listed) - 20%(with indexation)</p> <p>Long Term (more than 3 years) (Unlisted) – 10% (without indexation if amount is invested in foreign currency)</p>
Mutual Fund Investment – Equity	<p>Short term (less than 1 year) – 15%</p> <p>Long term (above 1 year) Exempted upto 1,00,000/-. Above that – 10%</p>

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# **Basic principles relating to formation & succession of HUF**

# Basic principles relating to formation & succession of HUF

- ✓ Undivided Ancestral assets acquired / owned by the family are HUF assets. Gift from mother can also be source of HUF property as held in *CIT vs. Satyendra Kumar (1998) 232 ITR 360(SC)*.
- ✓ Self acquired properties of ancestors not HUF assets.
- ✓ A family (including adopted child), consisting of only husband & wife can be recognized as Hindu Undivided Family (HUF) under the present interpretation of Hindu law.  
(*[1966] 60 ITR 293 (SC) Gowli Buddanna v. Commissioner of Income-tax Biharilal Kanaiyalal*)  
(*CIT vs. Parshottamdas K. Panchal (2002) 257 ITR 96 (Guj)*)  
(*[1997] 93 TAXMAN 26 (HC GAUHATI) Commissioner of Income-tax v. Arun Kumar Jhunjhunwalla & Sons*)

# Basic principles relating to formation & succession of HUF

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- ✓ There is no Deed required to form a HUF. HUF is created on happening of an event. Deed required by Bank / Income Tax are just affirmation of the formation.
- ✓ A HUF as such cannot to be a partner in a partnership firm. The Karta can become partner and represent the HUF.
- ✓ HUF can make investment and recognized in all financial assets.
- ✓ HUF cannot make nomination as succession process is inbuilt in HUF.

# Basic principles relating to formation & succession of HUF

- ✓ By virtue of amendment to Sec. 6 of the Hindu Succession (Amendment) Act, 2005, daughters are co-parceners in the HUF and their rights and liabilities are equal to other co-parceners (sons & father).
- ✓ Exception:  
*“Provided that, nothing contained in this sub-section shall effect or invalidate any disposition or alienation, including any partition or testamentary disposition of property which had taken place before the 20<sup>th</sup> day of December 2004.”*
- ✓ Hence, this amendment does not apply to HUF partitioned before the above date but reactivated the rights of daughters on all HUF divided/undivided after that day.  
(Vineeta Sharma v. Rakesh Sharma  
SC: Civil Appeal No. Diary no.32601 of 2018)

# Basic principles relating to formation & succession of HUF

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- ✓ The shares of each co-parceners and members of HUF are not fixed, till the time the partition is done.
- ✓ On partition, all the coparceners (Husband, Son, Married / Unmarried Daughter) & member (wife) are entitled to equal share.
- ✓ On death of any co-parcener, there is a deemed partition and his / her share goes to his / her legal heirs. Only coparceners can make a will of his / her share.

# Basic principles relating to formation & succession of HUF

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- ✓ A member (wife) cannot make WILL in respect of her share. She cannot claim partition during her life time but she is entitled to share in the event of partition, during her life time.
- ✓ The partition of HUF can be unequal if mutually agreed upon by the coparceners & member. (*CGT vs. N.S Getti Chettiar 91971 82 ITR 599(SC)*)
- ✓ A coparceners or member can release himself/herself from the HUF.



# Basic principles relating to formation & succession of HUF

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- ✓ Only complete partition of HUF is now recognized under Income Tax Act.
- ✓ After complete partition of HUF, coparceners/member desirous of reuniting can form a HUF without some of the coparceners / member.
- ✓ Share received by an individual from partition of bigger HUF goes to his HUF, not his individual  
(*CIT vs. Durgamma (P) (1987) 166 ITR 776 (AP)*, *CIT vs. Kantilal Ambalal (1991) 192 ITR 376 (Gujarat)*, *CIT vs. Hari Kishan 920010 117 Taxman 214*)  
*W.P.A.R Rajagopalan vs. C.W.T (2000) 241 ITR 344 (Madras)*.

# Basic principles relating to formation & succession of HUF

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- ✓ When only one member remains or in case of partition in the HUF, the HUF ceases to exist, the same gets merged in the HUF / Individual assets.
- ✓ The eldest coparceners in the family becomes the Karta. Any (adult person) other than the eldest coparceners can become Karta by mutual agreement.
- ✓ Mother remains a Manager of the HUF on death of the Karta or till coparceners are minors.

# **Income Tax Planning for Hindu Undivided Family (HUF)**

# Income Tax Planning for HUF

- ✓ It is recognized as a separate “person” for purpose of taxation under Income Tax Act.
- ✓ Insurance premium paid for its members can be claimed as a deduction by the HUF as a deduction U/s. 80 C, over & above other investments U/s. 80 C.
- ✓ Tuition fees of members of HUF cannot be claimed by the HUF U/s. 80 C.

# Income Tax Planning for HUF

- ✓ HUF can have income earned by the virtue of its capital, supplemented by management of the affairs by the Karta.  
*([1959] 37 ITR 123 (SC) Commissioner of Income-tax v. Kalu Babu Lal Chand)*
- ✓ Incomes like Salary, Commission, Professional Fees are not HUF incomes.  
*([1999] 103 Taxman 400 (SC) K.S. Subbiah Pillai v. Commissioner of Income-tax.)*
- ✓ HUF can own a business, Incomes from ownership of expensive equipment / machine etc.
- ✓ Any sum paid out of income of HUF to its members is tax free U/s. 10(2) of the Income Tax Act.

# Income Tax Planning for HUF

- ✓ Agricultural income of ancestral land is HUF income.
- ✓ Real nature of asset important to determine whose income whether that of HUF of Individual.
- ✓ In case of agricultural land holding, revenue record might not recognize HUF holding, but nature & source of asset / income is important.

# Income Tax Planning for HUF

## Gifts to HUF

- ✓ From its members : Tax free in the hands of HUF, but income derived by the HUF on such gifted amount shall be clubbed to the donor.
- ✓ From non members : Taxable in the hands of the HUF, beyond Rs. 50,000/-. No clubbing provision is applicable.

# **Income Tax Planning for HUF**

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## **Interest free Loans to HUF by Member**

- ✓ Member can provide Interest free loan to HUF**
- ✓ This loan should be from Member's own fund.**
- ✓ HUF can invest this loan and earn income.**
- ✓ AO can not fix Notional Interest in the hands of Member. CIT Vs. H.H. Maharaja Family Trust (Gujarat High Court)**



# Income Tax Planning for HUF

## Gifts from HUF

To its members : Taxable in the hands of recipient.

To non members : Taxable in the hands of recipient.

- ✓ A gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to his relation without the consent of the other coparceners is void.

*Thamma Venkata Subbamma vs. Thamma Rattamma (1987) 168 ITR 760(SC)*

# Income Tax Planning for HUF

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**Judgements where Gift from HUF to Members is considered as tax free income**

- *Vineetkumar Raghavjibhai Bhalodiya Vs. ITO (Rajkot ITAT) (2011)*
- *Biravelli Bhaskar Karimnagar Vs. ITO (Hyderabad ITAT) (2015)*
- *DCIT vs. Ateev V. Gala (ITAT Mumbai) (2017)*
- *Pankil Garg Vs. PCIT, Karnal (Chandigarh ITAT) (2019)*

**Judgement where Gift from HUF to Members is considered as taxable income**

- *Gyanchand M Bardia Vs. ITO (Ahmedabad ITAT) (2018)*

# Income Tax Planning for HUF

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The judgement of *Gyanchand M Bardia Vs. ITO (Ahmedabad ITAT) (2018)* stating that gift from HUF to Members is considered as taxable income is acceptable in light of the following comments:

- The above case refers to the pronouncement in *Vineetkumar Raghavjibhai Bhalodia (Rajkot ITAT)* in which receipt of gift by members from HUF was considered as exempt. However, the case was for a matter for Assessment Year 2005-06.
- A similar view has also been taken in several other decisions following the decision of *Rajkot ITAT*.

# Income Tax Planning for HUF

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- In the decision of the Ahmedabad ITAT referred above, it has been held that: Section 56(2)(vii) was amended in Finance Act, 2012 defining the term of "relative" to be applicable in case of an individual assessee as well as HUF; with retrospective effect from 01.10.2009.

Hence, the legislature clearly expressed its intent to restrict the exemption benefit by HUF donee only for receiving gifts from its members and nothing else.

- The above judgement of the Ahmedabad ITAT distinguishes the decision of Rajkot ITAT with the subsequent amendment and holds the gift from HUF as taxable.

# Income Tax Planning for HUF

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## Gift from HUF

- ✓ **Sec 10(2) Exemption two condition satisfied**
  - (1) The individual is the member of HUF and**
  - (2) the sum received is from the income of HUF.**
  
- ✓ **Member of HUF receives money from HUF for following purpose**
  - (1) Loan**
  - (2) Gift**
  - (3) Partition (partial or full)**

# **Income Tax Planning for HUF**

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## **Gift from HUF**

- (1) Members can receive loan from HUF but it is repayable.**
- (2) Gift is taxable as per Ahmedabad ITAT decision Gyanchand M Bardia VS ITO**
- (3) Full Partition is allowed but partial partition not allowed in Income Tax**

**Philosophically speaking...**

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**Do we all believe in life after death?**

**Some would say... “Yes”**

**Some would say... “No”**

**Philosophically speaking...**

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**But the fact is...**

**we all have assembled  
to plan affairs after death.**



# A request...

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# Thank you...

# Questions ?



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