

Be careful – While forming/creating HUF for Taxation as well as other matters



K.G. VYAS
Advocate

1. The Hindu Succession (Amendment) Act, 2005 is passed by the Government on 6-9-2005 and made applicable from that date. The daughter, whether she is married or unmarried, is brought on the equal rights/claims like son is and both have become co-parceners by that Act and both have right and claim for partition of HUF property, whether it may be ancestral or individual property blending into common hotchpotch as a HUF property, because the said property then does not remain individual.

2. The Hindu Succession (Amendment) Act, 2005 has created complications when the property of HUF remains. For example the agricultural HUF property/land, which are remained 1 to 4 acres and/or residential one house/premises. Then by this Act now they have become co-parceners son and daughter who can claim share in the HUF property. In the case of son and four daughters, father and mother, then in that case it becomes very difficult to distribute the property meets and bounds. It will be very difficult to survive by them or any one else. No sale deed or agreement or loan etc. is obtained without a written permission from the

daughter whether married or unmarried. It is difficult to do the same. The share can be relinquished of daughter, but only after paying proper stamp duty by the way of registration etc. This will cost more and more cumbersome.

3. Whether this Act or provision applies or not to daughter born after amendment of this Act or born before this act came into force is controversial issue until it decided by the highest court of law.

4. The self-acquired individual property, after his death intestate cannot become HUF property, under section 8 of the Hindu Succession Act. This is decided ultimately by the highest Court of Law reported in 161 ITR 370 SC, setting aside other higher courts' decisions.

5. The Hindu Succession (Amendment) Act, 2005 has created daughters' right and claim in the HUF property as birthright like son who was previously having or enjoying his right. Now by that Act she has become co-parcener of the HUF property.

We have to take very careful precaution while doing for only taxation matter to save tax or otherwise.

○□○