Partnership is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them. According to Pollock, "Partnership is the relation which subsists between persons who have agreed to share the profits of a business carried on by all or any of them on behalf of all of them". Indian Partnership Act 1932 adopts Pollock's definition with slight variation. It omits the words 'which subsists' out of Pollock's definition, considering them unnecessary. Instead of the words 'all or any of them on behalf of all of them' the words 'all or any of them acting for all' have been used, which convey the idea.

1. S.239 of the Contract Act, 1872 (since repealed). This was based upon Kent's definition "Partnership is a contract of two or more competent persons to place their money, effects, labour, and skill, or all of them, in lawful commerce, or business and to divide the profits and bear the loss in certain proportions" - 3 Kent's Comm. 23.


3. Section 4.
of mutual agency which is essential for every contract of Partnership. Section 4 of the Act defines "Partnership", 'Partner', "Firm" and "Firm name" as —

"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "Partners" and collectively "a firm" and the name under which their business is carried on is called the firm name."

This specifically indicates that Partnership arises by an agreement between two or more persons to constitute partnership. Agreement may be express or implied, but the agreement, must be there and by agreement we mean contract. If the basis of the relationship between certain persons is not an agreement then it would not be a Partnership.

Under the Indian Income-tax Act, 1961, "Firm" has been defined under section 2(23) as:

" 'Firm', 'Partners' and 'Partnership' have the meaning respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932); but the expression "Partner" shall also include any person who, being a minor has been admitted to the benefits of Partnership".
Under the law of Partnership a 'firm' has no legal existence apart from its partners and it is merely a compendious name to describe its partners, but under the Income-tax Act the position is somewhat different. A firm can be charged as a distinct assessable entity as distinct from its partners. For the purpose of Income-tax a firm is regarded as a separate entity having a separate status and existence apart from individual partners, who carry on the business of the firm and for Income-tax assessment purposes there is no distinction between a firm registered under the law of partnership and the one not so registered.

No doubt, a partnership is treated as an entity for certain purposes, as for instance by the Income-tax Act for purposes of assessment or the Code of Civil Procedure for purposes of procedural matters or the law of merchant. But barring the exceptional cases of limited recognition of a firm


of partnership as an entity the normal position in law is that it is not a legal entity. Unlike an incorporated company, which is a separate legal entity distinct from its members and also a legal person, a firm is neither anything distinct from its members nor it is a legal person. It is clearly indicative that though for purposes of assessment, a firm is treated as a separate and distinct unit under the Income-tax Act but it does not become a legal entity.

I. HINDU UNDIVIDED FAMILY VIS-A-VIS PARTNERSHIP

A Hindu undivided family is not a juristic person for all purposes and cannot enter into an agreement of partnership with either another family or individual. It is open to the Karta of joint Hindu family however as representing the family to agree to become a partner with another person. The partnership agreement in that case is between the Karta and the other person and no member of the family except the Karta acquires a right or interest in the partnership. In C.I.T. v Nand Lal Ganda Lal, it was pointed out that both under the Hindu law

and under the law of partnership, the Hindu undivided family as such can exercise no control and management over the business of the partnership of which the coparcenary is a member through its Karta. The other members of the family may make a claim against the Karta for treating the income or profits received from the partnership as a joint family asset, but they cannot claim to exercise the rights of partner nor be liable as partner. The creditors of a firm wherein the Karta of Hindu undivided family represents would be entitled to proceed against the joint family assets including the shares of the non-partner coparceners for realising their debts. But that is not because the members of the family ipso facto become partners in that firm, but because under the Hindu law the Karta has the right, when properly carrying on business, to pledge the credit of the joint family to the extent of its assets. The liability of the latter arises by reason of their status as coparceners and not by reason of any contract of partnership by them.


(a) Hindu undivided family paying salary to its members

In *Jitmal Bhuramal V C.I.T.*,\(^{12}\) where a Hindu undivided family carried on business and the family, through its Karta, was also a partner in a firm carrying on business, the Karta agreed to pay to two junior members, A and B, a certain monthly salary for services to be rendered to the family\(^{13}\) in relation to the business of the family. He also agreed to pay a monthly salary to two other junior members, C and D, for services to be rendered to the firm\(^{14}\). In the assessment of Hindu undivided family, the amounts paid as salary to A and B were allowed by the Tribunal, but the salary paid to C and D were disallowed on the ground that they did not render their services to the family but only to the firm. On appeal Supreme Court upheld the decision of the Tribunal by saying that C and D junior members of the coparcenary were serving the entity which was separate and distinct from the Hindu undivided family and any service to the partnership cannot be regarded as service to Hindu undivided family.\(^{15}\) A Hindu undivided family can be

\(^{13}\) Emphasis supplied.
\(^{14}\) Emphasis supplied.
\(^{15}\) Supra f.n. 12 at p.890.
allowed to deduct salary paid to members of the family, if
the payment is made as a matter of commercial or business
expediency; and the services rendered must be to the family.

In M/S Jugal Kishore Baldeo Sahai v C.I.T. (U.P.) Lucknow, it was clarified that the decision given by Supreme Court in Jitmal Bhurmal v C.I.T. need not be given a narrow interpre-
tation so as to confine the right of deducting the remuneration paid by a Hindu undivided family to junior members only. The view expressed by the court was in general terms and did not make any distinction between a junior member of the family or a Karta. The principle was laid down by the Supreme Court without any such distinction even though the court was then concerned with salaries which had been paid to junior members of the family.

In Jugal Kishore Baldeo Sahai's case, the assessee, a Hindu undivided family, consisted of B, the Karta and his brother G and their minor sons. It carried on business of

17. Supra f.n. 12.
Commission Agency and also derived income from some partnership business in which B, the Karta was a partner representing the family. Under an agreement with G, B was allowed a salary of Rs.12,000/- annually because he was managing all the businesses of the family. This amount was debited in the account books of the family annually and credited to the individual account of B. The assessee claimed that this sum must be deducted as expenditure. The point for decision before the Supreme Court was - "Whether the salary paid or credited to B, Karta of the family was permissible deductions in computing the income of the family business". The Supreme Court replied in the affirmative holding that the agreement was valid in the interest of the family and the remuneration was only for services to the family business and to look after the interests of the family in other businesses, so the remuneration was deductible. In judging what is valid or proper agreement which would justify the payment of remuneration to the Karta of a Hindu undivided family for managing the business of the family, the test which should be applied is whether the agreement was by or on behalf of all the members of the family and whether it was in the interests of the business of the family, so that it could be justified on grounds of commercial expediency.19

In this case what the Karta received as remuneration, he received for managing all the businesses of the Hindu undivided family, which can only mean that he was managing the affairs of Hindu undivided family business and also to look after the interests of the Hindu undivided family in other businesses. Thus the remuneration was not intended to cover any services rendered by him to the partnership apart from whatever he was required to do in the capacity of looking after and managing the affairs of the Hindu undivided family.

On these grounds the principle laid down in Jitmal Bhuremal was not applied as in that case it was proved that junior members received remunerations for rendering services to the partnership and not to the Hindu undivided family. Thus we conclude that if remuneration is paid to Karta of a Hindu undivided family or any other coparcener under a valid agreement which is bonafide and in the interests of, and expedient for, the business of the family and the payment is genuine and not excessive, such remuneration would be an expenditure for the purposes of the business of the family and would be allowable.

Earlier in *Shanti Kumar Narottam Moraji v C.I.T.*

it was held that it is not correct as a general legal proposition that a partner in a registered firm is not entitled to claim any deduction against the share of the profits included in his total income, the share having been arrived at on the assessment of the firm with regard to its profits. It would be open to the partner to claim a deduction provided he satisfies the taxing authority that such deduction represents necessary expenditure, the expenditure being incurred in order to enable him to earn the profits which are being subjected to tax. These observations were approved in *C.I.T. (Bihar) v Ramniklal Kothari* by holding that the respondent, who was a partner in four firms but did not carry on any independent business, was entitled to deduct from his share of the profits from the firm amounts paid as salary and bonus to staff, expenses for maintenance and depreciation of motor cars and travelling expenses expended by him in earning the income from the firm.

It is, therefore, submitted that the business carried on by a firm is business carried on by the partners. Profits of the firm are profits earned by all the partners in carrying on the business. The share of partner is business income in his hands and being business income, expenditure necessary for the purpose of earning that income and appropriate allowances are deductible therefrom in determining the taxable income of the partner.23

It is not a universal rule of law that where a Karta of a Hindu undivided family receives salary from a firm, the same should necessarily be included in the assessment of the family. In certain circumstances the salary received by the Karta as partner may be treated as the individual income of the Karta. The departmental authorities cannot merely proceed on the footing that where a member of a Hindu undivided family becomes a partner in a firm as representing the family everything that he receives must be treated as the income of family.24

23. Ibid.

24. This rule is inconsistent with the judgement in V.D. Dhandwey v C.I.T. (1966) 68 I.T.R. 365 (S.C.) - wherein it was observed that the remuneration paid by the firm to the partner (Karta of Hindu undivided family) was directly related to investment in the partnership business from the assets of the family. There was real and sufficient connection between the investment, from the joint family funds and the remuneration paid to partner. The salary paid to Karta partner was assessable as the income of Hindu undivided family.
In the absence of a finding that the income which was received by Karta -partner was directly related to any assets of the family utilized in the partnership, the income could not be treated as income of Hindu undivided family.

(b) Karta as partner

The concept of Hindu undivided family joining a partnership presents considerable difficulty. A Hindu undivided family is a fleeting body. Its composition changes by births, deaths, marriages and divorces. Such a partnership is likely to have a precarious existence. Therefore it is now well settled that Hindu undivided family cannot as such enter into a contract of partnership with another person or persons. From the mere fact that the Manager of Hindu undivided family describing himself as representing the family entered into an agreement of partnership with other persons, it cannot be inferred that an agreement of partnership was intended contrary to law between a Hindu undivided family consisting of all adult members, females, minors and even unborn persons and strangers to the family. Further, the fact that the joint family had latter ceased to exist by reason of partition, will not affect the validity or continuance of the partnership entered into by the Karta with other persons.

(i) Partnership between Karta and individual members of the Hindu undivided family

A coparcener cannot become a partner in the business carried on by a Karta of an Hindu undivided family unless the coparcener has his separate or self acquired individual property, which he contributes towards the business carried on by the Karta of the Hindu undivided family or agrees to contribute his skill and labour.27

In the case of Lachhman Dass V Commissioner of Income-tax, Punjab28, the judicial committee noticed as an important fact that an individual coparcener while remaining joint could possess, enjoy and utilize in any way he liked the property which was his individual property, not acquired with the aid of or with any detriment to the joint family property. The partnership before their Lordships was constituted of the Hindu undivided family consisting of Lachhman Dass and his seven sons, and Daulat Ram, being one of the seven sons. This Daulat Ram had separate property and was the owner of a sum of Rs.48,000/- in his own separate right. The Hindu undivided family of Lachhman Dass entered into partnership with Daulat Ram and carried on the

business of Indian Woollen Textile Mills. The question before their Lordships was whether the removal could be a valid partnership between Lachman Dass representing the Hindu undivided family on the one hand and Daulat Ram as a member of the undivided joint family in his individual capacity on the other. That question was answered in the affirmative, but in connection with that answer, particular stress was laid on the fact of Daulat Ram having with himself self-acquired separate property and he having invested a specific sum of Rs.48,000/- for running the partnership business of the Indian Woollen Textile Mills. In connection with the question before them, the observation of their Lordship's was:

"In this view of the Hindu law, it is clear that if a stranger can enter into partnership, with reference to his own property, with a joint Hindu family through its Karta, there is no sound reason in their Lordship's view to withhold such opportunity from a coparcener in respect of his separate and individual property".

These observations clearly emphasise that a coparcener who could be taken into partnership, must be one who has his separate property which he contributes towards the partnership business. Thus the rule laid down by the privy Council is that the Karta of the joint Hindu family can enter into partn-
ship with an individual member of the coparcenary qua his separate property. From this it becomes abundantly clear that an individual coparcener can enter into contractual relations with the Karta of the joint Hindu family in respect of his separate and individual property, without separating himself from the joint Hindu family. A coparcener who has no separate and self-acquired property of his own cannot be accepted as a partner by a Karta of the Hindu undivided family for carrying on the joint family business because contribution of separate assets towards carrying on the partnership business is necessary ingredient for bringing into existence of a partnership or in the alternative he must contribute his skill and labour.

(ii) Karta of Hindu undivided family as partner with outsider or a separated member of Hindu undivided family

In Firm Bhagat Ram Mohan Lal V. C.E.P.T., where initially Karta of Hindu undivided family consisting of himself and his


30. Supra f.n. 27.

two brothers enters into partnership with two strangers and on reconstitution of the firm two brothers (who were coparceners) were also made partners, the question for decision was whether in the old firm two brothers could be said to be partners. The Supreme Court ruled that:

"It is well settled that when the Karta of Joint Hindu Family enters into partnership with strangers, the members of the family do not ipso facto become partners in the firm".

Therefore they cannot become partners in their individual capacity without contributing their separate assets to the partnership firm. If members of a coparcenary are to be regarded as having become partners in a firm with strangers, they would also become under the partnership law partners inter-se, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners. There is nothing in the income tax Act to prohibit members of a joint Hindu family from dividing some properties, while electing to retain their joint status and carrying on business in respect of their separated shares invested as their individual capital. It

32. Ibid., at p.526.
is difficult to visualize the situation of a Hindu joint
family entering into a partnership with strangers through
its Karta and the other coparceners also becoming at the
same time partners in their personal or individual capacity. Hence a partnership which was made between two coparceners
for carrying on business of the undivided family could never
be valid partnership in law. Such a partnership is foreign
to the well established principles governing an undivided Hindu family.

II. REGISTRATION OF PARTNERSHIP

The Indian Partnership Act, 1932, does not make the
registration of partnership firms compulsory in India, nor
does the Act impose any penalties for non-registration.
However certain disabilities are provided therein for
unregistered firms and their partners. For purposes of assess­
ment of firms to tax provision has been made for registered
and unregistered firms under sections 183 and 184 of the Income

High Court of Mysore misconstrued the law laid down
by the P.C. and the Supreme Court to mean that a
partnership could come into existence between a
Karta of an undivided family and one of the copa­
crceners if such coparcenar merely agrees to become
a working partner of the firm.

77 I.T.R. 870 for detailed discussion at pp.879-883.
tax Act, and for this purpose application for registration may be made to Income-tax Officer on behalf of the firm under section 184.

(a) Registration where Co-partner enters into partnership with Karta without individual investment

We have noticed earlier that a co-partner cannot become a partner with the Karta, who is conducting the Hindu undivided family business unless he is the owner of separate property and invests the same in the business in his individual capacity or contributes his skill and labour. Hindu law does not allow any of the co-partners to become partner with the Karta in the business. If in contravention to this rule one applies for registration under section 184 of the Income-tax Act, the application would be rejected.

Where a co-partner who had no separate property or estate and contributed nothing towards the partnership business carried on by the Karta of the Hindu undivided family, the partnership could never be a valid partnership. Similar

36. Ibid.
would be the case where partnership is formed by two Kartas of Hindu undivided family and two coparceners without their investment, though genuine is illegal and invalid and not entitled to registration under the Income-tax Act, because there would be a conflict of rights as a coparcener and as a partner. 37

(b) Registration where coparcener enters into partnership with Karta by investing his separate assets

In the cases of Lachhman Das V C.I.T.38, Firm Bhagat Ram Mohan Lal39, Sunder Singh Majithia V C.I.T.40, Shah Purshottam Das Ghelabhai V C.I.T. (Gujarat)41 referred to earlier, we have noticed that a coparcener can become a partner with the Karta of Hindu undivided family by investing his separate property as there is no bar under the Hindu law that a coparcener is incompetent or incapable to acquire, hold or utilize separate property by remaining as a member of Hindu undivided family. In

41. (1974) 96 I.T.R. 422 (Guj.).
such a case he is recognised as a partner in the business of Hindu undivided family carried on by the Karta and is entitled for separate share in the gains on his individual investments and also entitled for the benefits accruing to Hindu undivided family from the business in the capacity of a coparcener. In the case of C.I.T. v Motilal Bankers, where the facts of the case were that a Hindu undivided family, of which Motilal was the Karta, carried on several businesses, one of the businesses consisted of money lending and it was carried on under the name and style of Motilal Bankers. During the previous year relevant to the assessment year 1961-62, the Karta Motilal entered into partnership with Narendra Kumar, an undivided junior member of the family. Narendra Kumar brought in a sum of Rs. 5,000/- to the business and became an eight-anna partner in it. For the assessment year 1961-62, the partnership firm applied for registration under the Indian Income-tax Act and thereafter declarations were filed for the assessment years 1962-63 and 1963-64 in accordance with section 184(7) of the Act. The Income-tax Officer declined to register

42. (1973) 88 I.T.R. 391 (All.).
the firm for these three years, holding that it had not been proved that Narendra Kumar had brought in the capital alleged, and further, that an undivided junior member could not become partner with the Karta of the family. He included the income in the hands of Hindu undivided family. The firm as well as the family appealed to the Appellate Assistant Commissioner, and he held that introduction of the capital by Narendra Kumar had been satisfactorily proved and that it was open in law to an undivided junior member of the Hindu undivided family to enter into a partnership with the Karta of the family. In the result, he directed registration of the firm and excluded the income from the Hindu undivided family assessment. The Income-tax Officer appealed to the Income-tax Appellate Tribunal but the Tribunal affirmed the decision of the Appellate Assistant Commissioner. Following the Privy Council decision in the case of Lachman Das V Commissioner of Income-tax, Punjab, it was held that when a partnership is entered into between the Karta of a Hindu undivided family and an undivided member of that family, the validity of the partnership cannot be assailed in a case where the undivided member brings in his separate property. The capacity of that member as a partner cannot be related to the

assets of the Hindu undivided family and no case can arise of any confusion between his capacity as a coparcener and his capacity as a partner with respect to the Hindu undivided family property. Their Lordships of the Allahabad High Court therefore held that the Tribunal was right in holding that the partnership was valid in law and entitled to registration under the Income-tax Act and also that the share income coming to the lot of Sri Narendra Kumar from the business of Motilal Bankers was not assessable in the income of the assessee family.44

(c) Registration of firm represented by two coparceners with strangers

In Commissioner of Income-tax, Madhya Pradesh, Nagpur and Bhandara V Sir Hukam Chand Mannalal & Co.,45 a firm styled Sir Hukam Chand Mannalal and Company was formed under the deed dated 16th July, 1948, to carry on the business of "Managing and Selling Agents" of Hukam Chand Mills Ltd. Sir Hukam Chand and his son, Raj Kumar Singh, were two of the five partners of the firm. They represented the interest of the Hindu undivided

family of Sir Hukam Chand and his sons. On 31st March, 1950, the property of the Hindu undivided family was partitioned and the interest of family in the partnership was taken over by a private Ltd. Company styled Sir Sarup Chand Hukam Chand Ltd. For the assessment years, 1950-51, 1951-52, 1952-53 and 1953-54, the Income-tax Officer granted registration to the firm under section 26A of the Indian Income-tax Act, 1922. In 1954-55 the Income-tax Officer declined to grant registration. In Appeal, the Appellate Assistant Commissioner confirmed the order of the Income-tax Officer on the ground that two coparceners could not represent the interest of the Hindu undivided family in a partnership. The Tribunal reversed the order holding that Sir Hukam Chand and his son, Raj Kumar Singh were partners in the firm on behalf of the Hindu undivided family and there was nothing in law which prevented two, or more coparceners of a Hindu undivided family representing the family from entering into a partnership with a stranger or strangers. At the instance of the Commissioner of Income-tax, the following question was referred by the Tribunal:

"Whether, in the facts and circumstances of the case, the firm Sir Hukam Chand Mannalal and Company, could be granted registration under section 26A of the Act?"
The High Court answered the question in the affirmative. The Commissioner of Income-tax appealed to Supreme Court with a certificate granted by the High Court. Position in law was not disputed on behalf of the Commissioner. But it was urged that since two members of a coparcenary represented in the firm the same beneficial interest of a Hindu undivided family, and since they were incompetent to enter into a contract inter-se the partnership agreement could not be registered. The Supreme Court following the observations in *Ram Laxman Sugar Mills V C.I.T.*, 46 *P.K.P.S.Fichappa Chettiar V Chocklygam Pillar* 47 and *Charandas Haridas V C.I.T.*, 48 held that it is now settled law that in considering an application for registration of a firm, the Income-tax Officer is not concerned to determine in whom the beneficial interest in the share in the partnership vests and therefore the firm created by two coparceners with strangers is valid and could be granted registration under section 26-A of the Income-tax Act, 1922. 49

47. A.I.R. 1934 P.C. 192.
To sum up the result is that one or more members of Hindu undivided family may enter into a contractual relation in the nature of partnership with the stranger and they qua the stranger become partners.

III. KARTA'S OBLIGATIONS TO THE HINDU UNDIVIDED FAMILY

The position in Hindu law with regard to a coparcener, even when he is Karta, entering into partnership with others in carrying on a business is equally well settled. The Partnership that is created is a contractual relationship and will be governed by the provision of the Indian Partnership Act, 1932. The partnership is not between the family and the other partners; it is a partnership between the coparceners individually and his other partners.

The coparcener is undoubtedly accountable to the family for the income received, but the partnership is exclusively one between the contracting members, including the individual coparcener and the stranger to the family. On the death of the coparcener the surviving members of the family cannot claim to continue as partners with strangers or institute a suit for dissolution of partnership; nor can strangers sue the surviving members as partners for the coparcener's share of the loss. Therefore, so far as the partnership is concerned, both under the partnership law and under Hindu law, the control and management is in the hands of the individual
It is worth noticing that the same person cannot be taxed both as an individual as well as the Karta of his family. The two capacities are totally different. The liability to be taxed as an individual is different from the liability to be taxed on behalf of his Hindu undivided family. The individual and Hindu undivided family are two different units of taxation. They are two different assesses.

The net result from the above discussion is that Hindu undivided family as a unit for assessment cannot become partner with an outsider or a member of the family as a Hindu undivided family is not a juristic person for all purposes. The partnership between the Karta of Hindu undivided family and an individual member of the family if the individual member had his separate assets and invests them in business is perfectly valid. Though it may be said that in partnership Hindu undivided family is represented by the Karta but the partnership agreement

in that case is between the manager and the other person and no member of the family acquires any right or interest in the partnership and they cannot claim the right of partners nor are they liable as partners.

In the case of trading families the Karta has power, to enter into partnership with strangers. He has the additional power than the Karta of an ordinary family to take debts in the course of business. For such debts except Karta, none else is personally liable. The liability of other members extends only to the extent of their interest in the joint family property. Though in partnership other members of the family are not partners but Karta is accountable to the family. The members of the family who are not partners in the partnership business cannot interfere with its management so long as it is a going concern. But if dissolution of the firm takes place, they can participate in it.\footnote{Ganga V Rengachari, A.I.R. 1955 Mad. 340.}

\section*{IV. ASSESSMENT}

\textbf{Hindu Undivided Family or Individual Income}

The question, whether the amount received by the 'Karta' by way of managing director's remuneration in the one case or as
his share of profits in the partnership business in the other case is his personal income or is the income of his Hindu undivided family cannot arise as between the company and the 'Karta' as the Managing Director, or between the outside partners and the 'Karta as a partner'. Neither the company nor the outside partners, as the case may be, is or are interested in such a question. Such question can arise only as between the 'Karta' and the members of his family and the answer to the question will depend on whether the remuneration or profit was earned with the help of joint family assets.53

(a) Test for Determination

In Gokul Chand v. Hukam Chand Nath Mal54, the judicial committee ruled "that there could be no valid distinction between the direct use of the joint family funds and the use which qualified the member to make the gains by his own efforts". In making this observation, the judicial committee


appears to have been guided by certain ancient Hindu law texts. That view of the law became a serious impediment to the progress of the Hindu society which resulted in great deal of public dissatisfaction and the central legislature was constrained to step in and enact the *Hindu Gains of Learning Act*, 1930 (30 of 1930). This enactment which laid down that any gains made by a member on account of training or education, whether ordinary or specialized, will constitute separate property of the acquirer, nullified the effect of that decision. Since then certain tests have been laid down by the Supreme Court in number of cases to find out whether a given income is that of the person to whom it was purported to have been given or that of the family.

The main tests are:

1. Whether the income received by a coparcener of a Hindu undivided family as remuneration had any real connection with the investment of the joint family funds;

(2) Whether the income received was directly related to any utilisation of family assets;

(3) Whether the family had suffered any detriment in the process of realization of the income; and

(4) Whether the income was received with the aid and assistance of the family funds.

It is submitted that from these principles, the broader principle that emerges is whether the remuneration received by the coparcener in substance though not in form was but one of the modes of return made to the family because of the investment of the family funds in the business or whether it was a compensation made for the services rendered by the individual coparcener. If it is the former, it is an income of the Hindu undivided family but if it is the latter then it is the income of the individual coparcener. If the income was essentially earned as a result of the funds invested the fact that a coparcener had rendered some service would not change the character of the receipt. But if on the other hand it is essentially a remuneration for the services rendered by a coparcener, the circumstance that his services were availed of because of the reason that he was a member of the family which had invested funds in that business or that he had obtained the qualification shares from out of the
family funds would not make the receipt, the income of the Hindu undivided family.\(^{56}\)

(b) **Earnings by detriment to or with aid and assistance of family funds**

Income received by a member of a Hindu undivided family, from a firm or a company in which the funds of the Hindu undivided family, are invested, even though the income may be partially traceable to personal exertion of the member, is taxable as the income of the Hindu undivided family, if it is earned by detriment to the family funds or with the aid or assistance of those funds; otherwise it is taxable as the member's separate income.\(^{57}\)

(c) **Profits on settlement of accounts after partition accrued**

On the point as to whether profits on settlement of accounts after partition accrued to the member or the Hindu


undivided family, we may in brief refer to the case C.I.T. v Ashokbhai Chimanbhai.58 One A was the manager of a Hindu undivided family and a partner in a firm with a 5 anna share in the profit and loss. The beneficial interest in the profits of the firm falling to the share of A belonged to the Hindu undivided family. The adjustment of accounts of the firm used to take place on every calendar year i.e. on 31st December, when A was entitled to receive share of profits. By a deed dated 12.11.1955 the Hindu undivided family, was disrupted and the property of the family was divided. As a result of the partition, A got the 5 anna share in the firm and became full owner of the same. Assessment proceedings were initiated for the accounting year 27.10.1954 to 14.11.1955. The question was whether the profit in question accrued to Hindu undivided family it was held:

If the profits arose on the settlement of accounts on 31.12.1955, A alone was the owner of those profits and the assessee had no right therein. Those profits were undoubtedly the result of transaction spread over the entire period of the calendar year 1955, but if the profits did not arise from day

to day or from transaction to transaction destination of the profits must be determined by the title thereto on the day on which they arose. If the Hindu undivided family, acquired no right in the share of profits received by A, the taxing authorities could not claim that the profits should still be apportioned between the Hindu undivided family and A, and tax should be levied on the apportioned income. In the present case at the date when A acquired the right to receive a share of profits, there was no subsisting joint family and his share of the profits was not received by him on behalf of the Hindu undivided family. There was no assignment of the profits which had already accrued to the Hindu undivided family. Profits accrued to A and on the date on which they accrued the Hindu undivided family had because of the deed of partition, no interest in the profits.

The Revenue authorities could not claim that profits which under the instrument of partition did not accrue or arise to A as representing the Hindu undivided family must for purposes of taxation be so deemed.

The net result is that the profits on settlement of accounts after partition accrued to the member and not the Hindu undivided family.
(d) **Karta Services to Firm**

Where the Karta of Hindu undivided family enters into a partnership in a firm representing the family, his remuneration for rendering service to the partnership is not the income of the family unless real and sufficient connection existed between the investment of Hindu undivided family assets and the remuneration paid to him.\(^59\)

(e) **Burden of Proof**

Burden of proving that income is of Hindu undivided family is on the department if there is no evidence or material of joint family source.\(^60\)

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