I. CONCEPT OF JOINT HINDU FAMILY PROPERTY OR INCOME.

(i) Hindu Law

The wealth which becomes the property of a person solely by reason of his relationship to the owner is classified by Vijnaneswara into two categories: (1) apratibanda daya; and (2) sapratibanda daya. The wealth of a father or paternal grand-father becomes the property of his sons or grandsons by reason of their being his sons or grandsons respectively. This inheritance is not liable to "obstruction" and is therefore called apratibanda daya. Property devolving upon person from relations other than lenial ascendants is on the other hand, liable to "obstruction" and is consequently known as sapratibanda daya¹. All properties inherited by Hindu male from his father, grand-father, and great grand-father is apratibanda daya, because in this property son, grandson and great grand-

¹ Mitakshara I, 1,2,3.
sons acquire an interest by birth and therefore it is called unobstructed heritage. When a person inherits from any person other than father, grand-father, and great grand-father, that is known as sapratibanda daya, or obstructed heritage because he inherits such property only on his death and had no right by birth in that property so long as he was alive.

Unobstructed heritage as explained above, is ancestral property or it may be called joint family property or coparcenary property, and obstructed heritage, is separate property or self acquired property. Unobstructed heritage

2. The distinction between obstructed and unobstructed heritage is recognised only by the Mitakshra School. According to the Dayabhaga, all heritage is obstructed, and no person, not even son, takes an interest by birth in the property of another person. Dayabhaga recognises only the right of succession and his right only accrues, for the first time, upon the death of the owner of the property. Coparcenars in the case of Sapratibanda daya cannot restrain the holder from alienating the property, as in the case of pratibanda daya. Its holder, so long as he is living, has absolute rights of alienation over it; he may gift it intervivos or by will, he may sell it or mortgage it. See Mohamad Hussain v Raboo Kishva Nandan Sahai (1937) 64. I.A. 250.
devolves by survivorship and the obstructed heritage by inheritance. It cannot, therefore, be said that "property inherited from any ancestor or ancestress may be called

3. There are certain exceptions to this rule:

(1) Where deceased coparcener has left only male issues, they represent his right to a share on partition.

(2) Where the coparcener leaves behind a female relative specified in class I of the schedule of the Hindu Succession Act 1956, or a male claiming through such female (S.6).

(3) Where the deceased coparcener has disposed of his interest in the coparcenary by will under section 30 of the Hindu Succession Act, 1956.

(4) Where the deceased coparcener has sold or mortgaged his interest in the coparcenary property with the consent of other coparceners (in M.P, Tamil Nadu and former Bombay State, even without such consent).

(5) Where the interest of deceased coparcener has been attached in execution of a decree against him during his life time.

(6) Where the interest of a deceased coparcener has vested in the official assignee or official Receiver, on the insolvency of such coparcenary.

4. There are also some exceptions to this general rule which we may discuss at a proper place.
ancestral property". It is not the sense in which it is used in Hindu Law, but it has a technical meaning. The Hindu joint family is a big reservoir into which property flows in from various sources and from which all members of the Joint family draw out to fulfil their multifarious needs. The Joint family property may come from various sources and we may illustrate thus:

5. Two Privy Council decisions (none of them get overruled) are worth noticing for the property inherited from maternal grand-father. In Venkayamma V Venkataramanamma (1902) 25 Mad. 676 (P.C.), two brothers inherited from their maternal grand-father on the death of one, question arose as to whether his share would go to his widow by succession or to his brother by survivorship. The P.C. held that that was a joint property in their hands and that the undivided interest of the deceased passed to his brother on his death by survivorship and not to widow. In Muhammad Hussain Khan V Babu Kishva Narain Sahai (1937) 64 I.A. 250, the P.C. took the contrary view. It was held that when a Hindu inherits from his maternal grand-father his son does not acquire any interest in it by birth and such property is not ancestral property. Even in the earlier case P.C. did not say that it is an unobstructed heritage. The effect of later decision is that property inherited by a son from his maternal grand-father is not ancestral property in his hands, but is a separate property. The former decision is bad law even if it is restrictively interpreted to mean that brothers inheriting from their maternal grand-father take it inter-se as Joint Family Property (see Dewan, P. Modern Hindu Law, 4th Edn. 1979, p.233). In Maktul V Manbhari (1958) S.C.J. 1266, a case under the Punjab Customary Law, it is held that the property inherited by a person from his maternal grand-father is not ancestral property qua his descendants.
I. Ancestral

1. Unobstructed heritage i.e. what a person inherits, from his father, father's father and father's father's father under right by birth.

2. Property obtained on partition. When a coparcener gets his share in the joint family property on partition; qua his sons, sons' son, son's son's son it will continue to be joint family property, but property inherited from others will be his separate property. The Courts draw some distinction between "Joint Family Property" and "Joint Ancestral Property", holding that in joint ancestral property, the members acquire a right by birth; whereas no such presumption is made in respect of property which is merely joint without being ancestral. But there is really no real difference between these two species of property. As Beamam J. said:

"Barring all presumptions, I state as my opinion without much fear of serious contradiction, that where property is admitted or proved to have been joint family property, it is subject to exactly the same legal incident in every respect as property which is admitted or proved to, be ancestral joint family property".

3. **Accretion**: The term accretion has been used in a wider sense including all income, accumulations, or acquisitions of property made with the joint family nucleus. In its ordinary meaning accretion means (a) accumulation of income of the joint family property, (b) property purchased or acquired with the income of the joint family, and (c) proceeds of the sale of joint family property or property purchased out of such sale proceeds. These have all along been accepted as part and parcel of joint family property.

7. *Matwri V Matwri*, AIR 1966 S.C. 1836; *Mallappa Girmallappa V R. Yellappagouda*, AIR 1959 S.C. 906. See also *M.N. Aryamurthi V M.L. Subbarya Sethi*, AIR 1972 S.C. 1279. Here in this case father had accumulated wealth out of ancestral nucleus but made unequal distribution by will among his 10 sons and wife. It was held that the property has been earned out of joint family nucleus wherein sons have right by birth so father is not competent to make unequal distribution among the sons by will. See also *Baikutha Nath Paramanik V Shashi Bhushan Paramanik* (1973) 2 S.C.C. 334.

8. Dewan, Paras - Modern Hindu Law, 1979 Edn. p.236. See also *Ramanna V Venkata* (1888) 11 Mad. 246 (accumulation of income of ancestral property); *Lal Bahadur V Kanth Lal* (1907) 29 All. 244 (P.C.) (Property purchased or acquired out of the income or with the assistance of ancestral property would also be ancestral property. It must be noted that sons, grandsons and great grandsons acquire a vested interest, not only in the income and accretions of ancestral property which accrued after their birth, but also in that which accrued before their birth. See also *Srinivas V Naraindevi*, AIR 1954 S.C. 379; *Gowdappa V Ramchandra*, AIR 1969 S.C. 1076; *Suppamma V Subbalakshmi* (1972) M.L.J. 110; *Phimavaramu V Nagireddy*, AIR 1973 A.P. 184; *Budhia V Raghu*, AIR 1973 Orissa 85.
4. **Property exchanged.** Where ancestral property is exchanged with another property, the property so obtained in exchange will be ancestral property.9

5. **Property Jointly Acquired.** Where property is acquired by Joint Hindu family by their jointlabour by way of business, profession or vocation with the aid of joint family property it becomes joint family property or coparenary property.10 Even if such property is acquired by the coparceners without the aid of joint family fund it is joint family property. It is now settled law that presumption is that the property so acquired will be joint family property.11 in which sons will acquire an interest by birth, unless it is proved that the acquirers intended to own the property as co-owners between themselves, in which case it will be a joint property as distinguished from the Joint Family Property.12

---


10. Lal Bahadur v Kanhaiya Lal (1907) 29 All. 244 (P.C).

11. If it is acquired by all the members of the family jointly and not when it is acquired by one or by some of the members.

6. Property thrown into common stock. Where any member of the joint family abandons all his claims to his separate property and throws it into the common stock, such property assumes the character of joint family property.

II. Individual

Whatever is acquired by a coparcener without detriment to the paternal estate, a present from a friend, a gift and the like shall not be shared by the coparcener.

The key words in the doctrine of self acquisition are "What has been acquired without any detriment to the joint family property". So far as the sacred texts are concerned, their conjoint effect is to put all acquisitions, however

13. Discussed in detail under the heading blending.


15. 

Yajnavalkya II, 128.

See further for detailed comments: Mitakshara II, 46;

Yajnavalkya II-119-120, cited and explained in Mitakshara I-IV, 1-31; Dayabhaga, likewise devotes a whole chapter to this subject, VI-II-40; Manu IX, 206-207.
made, to the single test — were they made without detriment to the joint estate, which means that if they were made without material draft on the family fund, then they cannot be treated as an accretion to the family estate and must be regarded as the separate property of the Coparcener. Thus separate or self acquired property in its technical sense means property obtained by a Hindu without any detriment to ancestral property. The expression "separate " or "self acquired" property refers to a property acquired by a Hindu by his own exertions without the assistance of family funds. Such property can be obtained from several sources, i.e.-

1. **Property obtained on gift.** Where a Hindu makes a gift of his self acquired property to his son, or bequeaths to him under will, the question that arises is whether such property is the separate property of the son, or whether it is ancestral in his hands qua his sons. Answer would depend whether the donor intended that the donee should take it

---

16. We have already referred to two types of separate properties i.e., (i) maternal grand-father (though subject to limitation), maternal uncle, paternal uncle, brother or any other collateral; (ii) inheritance from lenial ancestor more than three degrees remote.
exclusively for himself, or that the gift was for his branch of the family. It means that there is no presumption either way; it is a question of fact in each case, to be decided after considering all the circumstances of the case. The simple rule should be that the donee takes it as his separate property, subject to any restriction that a donor may impose on the gift. Author is of the view that every Hindu has power to dispose of or gift his separate property to anyone he likes including his own son, so gifted property will not be an ancestral property in the hands of donee.

2. Gains of Learning. Before 1930 courts made a distinction between a specialized and ordinary training. In the former case the earnings of the coparcener out of his education or training were treated as joint family property and in the later case they constituted his self acquired property. This

17. Arunachalam Mudaliar V Muruganatha, AIR 1953 S.C. 495. Father as Karta can make gift of small portion of movable property out of love and affection to wife, son, daughter, daughter-in-law or son-in-law but gift of immoveable property can only be made to daughter alone at a time of marriage or subsequently keeping in view the financial and other relevant circumstances of the family. See Tripura Sundri V Kalvanarasan, 1973 Mad. 99; see also Guramma V Mallappa, AIR 1964 S.C. 510; Karuppa V. Palanammal, AIR 1963 Mad. 245; Kamla Devi V Bachulal, AIR 1957 S.C. 438; Venkata Subramania V Eswara, AIR 1966 Mad. 266.

distinction was not only artificial but unsatisfactory.
Therefore, in the year 1930, the Hindu Gains of Learning
Act was passed and this distinction was done away with. It
is laid down that whether the training is ordinary or
specialised any gains made on account of training or
education will constitute separate property of the acquirer.19
However, if a coparcener is trained as an Engineer and the
Joint Family, in view of his special training, opens an
industry in which joint family funds are invested, the
profits of this industry will not be separate property of the
Engineer coparcener. But if he is allowed to draw a salary
or allowed to take part in profits for his skill, that will
constitute his separate property.

V C.I.T., Delhi20, where the Karta of a Joint Hindu Family was
appointed as the treasurer of the Central Bank of India, and as
treasurer, he furnished security to the Bank of certain
properties of Hindu undivided family, the question that arose

19. For detailed discussions, cf. Dewan, P. Modern Hindu Law,
for consideration was whether for the purposes of Income tax the salary and emoluments received as treasurer of the Bank were assessable under the head "Salaries" or under the head "Profits and Gains of Business" or were "Assets in the hands of the Hindu undivided family". It was held that the mere fact that the joint family property had been lodged by way of security would not make the earning of Karta as treasurer a part of the income of the Hindu undivided family. The Supreme Court pointed out that the Karta who entered into service as treasurer furnishing the security, had not received any particular training at the expense of the family fund; nor was his appointment the result of any outlay or expenditure or detriment to the family property.

Referring to "risk" or "detriment" to the family property considered by the judicial committee in Gokal Chand v. Rukam Chand21, it is observed by the Supreme Court:

"The word 'risk' in the Judgement must be read in the context in which it was used. Family Estate was used and the expenditure was incurred for equipping one of its members to joining the Indian Civil Service,22 It was in that connection

21. AIR 1921 P.C. 35.

22. After this case to overcome the like situations "Hindu Gains of Learning Act, 1930" was enacted.
that the words "Risk of" or "Detriment to" family property were used. ... The cases which the P.C. relied upon in Gokal Chand's case\(^23\) were all cases expended to fit a member of the Joint family for the particular profession or avocation the income of which was the subject matter of the dispute but the respondents were unable to refer to any decision in which it was held that the mere fact of giving joint family property in security for the good conduct of a member of the family employed in a post of trust was sufficient to make the emoluments of the post joint family property because of any detriment to family property or risk of loss.

It has not been shown that in this case there was any detriment to the family property\(^24\) within the meaning of the term used in decided cases."

While holding that the income belonged to the member it was said that -

"Treasurership is an employment of responsibility, trust and fidelity and personal integrity and ability, and mere ability to furnish a substantial security is not the sole or even the main reason\(^25\) for being appointed to such a responsible post in a bank like the Central Bank of India".

In C.I.T., West Bengal v Kalu Babu Lal Chand,\(^26\) the Joint family furnished almost all the capital of a company

---

23. AIR 1921 P.C. 35.
25. Emphasis supplied.
and the Karta was appointed its Managing Director.

It was held -

"The Joint Family assets were used for acquiring the concern and for financing it and in lieu of all the detriment to the Joint Family properties, the joint family got not only the shares standing in the name of two members of the family, but also as part and parcel of the same scheme, the Managing Directorship of the company".

As the Managing Directorship was derived from or acquired with the assistance of the Joint Family Fund, the income therefore received by the assessee is the income of the family of which assessee was Karta. The salaries and remunerations earned by a member of the Joint Family would prima facie be his individual property unless it be shown that the rights was acquired by utilising any portion of the joint family property to its detriment. But where the partnership deed showed that one of the coparceners as partner was to be given a salary on account of his rich experience and skill, that salary would constitute his self acquired property of that coparcener, despite the fact that the family contributed a large part of the capital of the firm, as the connection between the salary and the detriment was not sufficient.²⁷ In such

cases the character of the receipt must be determined by reference to its source, its relation to the assets of the family and the primary object with which the benefit received disbursed. Where the income was primarily earned by utilizing the joint family assets or funds and the mere fact that in the process of gaining the advantage an element of personal service, skill or labour was involved did not alter the character of the income.  

To this effect the law has been very clearly summed up by Paras Dewan as:

"If remuneration, salary, profit or commission is earned by the Karta or any other coparcener on account of substantial investments of the Joint Family funds in the undertaking, business, enterprise, or industry, it will constitute Joint Family property, even if the personal skill and labour of the Karta or the coparcener is an important factor in the earnings. But if no

28. Krishna v CIT, AIR 1969 S.C. 893. See also Dhanwatey v CIT, AIR 1968 S.C. 683 here coparceners invested the family assets in partnership and to avoid incidence of income-tax agreed to have profits from the business as personal salaries of each coparcener. It was held that so called salary was part of the joint family property.


30. Emphasis supplied.
joint family funds or properties are invested or only nominal investment is made or the joint family is, apart from the earnings of the Karta or the other coparcener, receiving profits, dividends, interest or some other return on investments without any detriment to joint family funds or properties (except the usual risk involved in any business), then the earnings will constitute the separate properties of the earner. The fact that the Karta stands in fiduciary relationship with other members of the family is immaterial.

4. Benefits of Insurance Policy. When the Karta or any other coparcener insured himself and premiums are paid out of joint family funds, then who would be entitled to the benefits of insurance. According to Madras High Court those benefits belonged to the insured person and constitute his separate property. But in Parbati Kuer v Sarangadhar Simha's case, the Supreme Court observed:

"There is no proposition of law by which the insurance policies must be regarded as the separate property of the coparceners on whose lives the insurance is effected by a coparcener, and that the proceeds of an insurance policy do not belong to the Joint Family."

31. Emphasis supplied.
32. Balamba v Krishnayya, AIR 1914 Mad. 595; Venkata Subbarao v Laxmi Narayana, AIR 1954 Mad. 222; Bengal Insurance Co. v Veilayumal, AIR 1937 Mad. 571.
33. AIR 1960 S.C. 403.
and on the facts of the case Supreme Court further observed:

"At no time did the premia paid cease to be the assets of joint family and became the share of the income of the individual coparcener. The question is not whether the deceased, who was the Karta of the joint family in this case, took out the policies for the benefit of his own family but whether he did so without detriment to the joint family funds. If it was the latter, then anything obtained with the joint family funds would belong to the joint family".

Madras High Court in Karuppa Gounder v. Palaniammal made distinction between the Supreme Court observations that the same should be confined to the facts of that case alone and Shrinivasan J., observed:

"But where a coparcener has effected insurance upon his own life, though he might have received the premia out of the funds which he might receive from the joint family, it does not follow that the joint family insured the life of the member or paid the premia in relation thereto. It is undeniable that a member of a coparcenary may with the moneys which he might receive from the coparcenary effect an insurance upon his own life for the benefit of the members of his immediate family. His intention to do so and keep the property as his separate property would be manifested if he makes a nomination in favour of his wife or children, as the case may be".

34. Emphasis supplied.
35. AIR 1963 Mad. 245 at p.248. See also Sidrammappa v. Bahajappa, AIR 1962, Mys. 38 (If the father paid premium for the son's policy out of love and affection, the benefit of the policy will constitute his separate property).
In *Narayanlal V Controller of Estate duty*, the Andhra Pradesh High Court said that in every case, where joint funds are used for payment of premia of life insurance policy there is a detriment to the joint family, but that is not the sole criterion. If joint family funds are advanced to members of the coparcenary for their individual benefit, there is strictly speaking a detriment to the joint family, nonetheless the intention with which that money was given and the use of it by the individual for his own benefit would determine the character of the income or the amount earned therefrom.

We are of the opinion that inspite of the fact that the question is coming again and again before the courts but no proper rule to determine whether the amount would belong to joint family or the insured has been laid down. The remedy lies in legislation for a clear cut law on this point. We are of the view that when a coparcener is paid moneys from the joint family funds for his own utilisation, say pocket expenses, and he gets himself insured and nominates his wife or child for its benefit, the profits of insurance must be

36. AIR 1969 A.P. 188.

37. Paras Dewan, *Modern Hindu Law*, 4th Ed., 1979, at p.244, asserts that the view of A.P. High Court is the correct view of the problem.
treated as his separate property. It is a different matter that he instead of utilizing the money in any other way utilized it for his and his family benefit. Under the insurance rules nomination in case of death clearly indicates the intention of the insured that he treated the profits of policy as his separate property. Life Insurance is always for the personal benefit of the insured or his nominee in case of his death if occurs before maturity.

5. Income of the Joint Family Property allotted to a member for his maintenance. In such cases the presumption of Hindu Law that every acquisition made by a member from the ancestral nucleus would be presumed to be the joint family property would not apply. Because the very idea of allotment of a portion of joint family property to a coparcener is for convenient enjoyment, though the right in respect of that property to partition by metes and bound is still reserved, carries with it the necessary implication that he is entitled to deal with the income accruing from that property as he likes and on that income other coparceners would have no right because that is the result of his spirit of initiative and enterprise of his own industry and
But where members of a family decide for purposes of convenience to take charge of certain properties of the family in their individual charge and administer them, it does not axiomatically follow that the individual members who have been charged with the responsibility of possessing them are not to account for their income.  

6. **Government Grants.** If property movable or immovable, is granted to a coparcener by the Government, it will constitute the separate property of the grantee, unless it has been specially given to him as Joint Family property.

7. **Income from the Separate Property.** Income from the separate property or property acquired with such income will be

---

36. See Nagayasami V Kochadai, AIR 1969 Mad. 329. See also Rameswara V Kolanda, AIR 1939 Mad. 911 (Property purchased out of surplus will be separate property of the coparcener); Lalchandhora V Channayudu, AIR 1963 AP 31; Rani Jagdamma V Wazir, AIR 1923 P.C. 39; Lachmehwar V Menohar (1892) 19 Cal. 293; Venkataseswara V Esahwer, AIR 1966 Mad.266; Chinna V Venkata, AIR 1954 Mad. 282(even if the coparcener invests a portion of such property in business and earns profits, these profits will be his separate property, as to hold otherwise will go to kill, "the spirit of initiative and enterprise.


40. Katama V Raja of Shivaganga (1863) 9 MIA 539.

41. Mahant V Sita Ram (1899) 21 All. 53 (P.C.).
separate property of the coparcener. Likewise separate earnings of a coparcener or earnings by self exertion, without the aid of the joint family property, constitute separate property of the coparcener.

8. Property held by a sole surviving coparcener. When all coparceners die leaving behind one, he is known as sole surviving coparcener. Under certain circumstances when the joint family property passes into the hands of sole surviving coparcener, it assumes the character of separate property.

(ii) Income-tax Law

To determine whether the assessee is an individual or a Hindu undivided family in relation to a particular source of income it will be necessary to find out whether the assets were acquired from a common ancestor or there was some ancestral nucleus, as a result of which the assets came

42. Krishnaji v Moro (1891) 15 Bom. 373 (P.C.).

43. If at the time of alienation another coparcener is in the womb, then on his birth, he can challenge such alienation or if there are widows of deceased coparceners, he cannot alienate after any widow adopts a son. But a son born to him or adopted after alienation cannot challenge the alienation.
into existence or income is earned with detriment to the family property, or is earned by the member while carrying on the business in a representative capacity on behalf of Hindu undivided family to which he belongs, or is received by reason of the fact that the company or the partnership or the employer's business, etc., benefitted or receives benefits from the family, or is received from the property thrown into the common stock or that the income is produced by the joint efforts of the members of a Hindu family. Where none of the


46. Where property is acquired by the joint efforts of all the coparceners there is a strong presumption that the property is joint family property unless it is proved that the coparceners wanted to own the property as co-owners between themselves in that case it will be joint property instead of joint family property, (See Santhalinassam V Meenakshi (1970) 2 MLJ 85; Vinod V Abdul (1974) 1 CWR 572; Vishwanath V Ramakutty, 1975 KLT 434), where property is acquired by some of the coparceners jointly the presumption is that the property is joint property of such coparceners unless the contrary is proved (See Bhagwan Deyal V Reoti, AIR 1962 S.C. 287; Sudarshan V Narasimhulu (1902) 25 Mad. 149).

This is the distinction made where property is acquired by the joint efforts of all the coparceners and where the same is acquired by some of the coparceners jointly under the Hindu Law.
circumstances exist, the income may be the separate income of the individual. There is no presumption that the business or income was joint and belonged to the joint family or that the amounts invested by the members came out of the family funds unless the nucleus of the family is considerable and the member has no ostensible source or fund from which the investment could come or that the property given by way of gift by a father to his son was taken by the son as ancestral

---


49. Janki Sao V CIT (1958) 33 ITR 835; CIT V Chandumull (1967) 66 ITR 347 - this case explains why different presumptions arise under the law when the asset concerned is business or immoveable property. For acquisition of immovable property consideration money is the main consideration and the possibility of its supply from the joint family nucleus justifies the presumption of acquisition for and by the joint family. Such is not the case where a new business is started. In its case, more than capital, individual skill and exertion are required and, therefore, the primary presumption is different and is in favour of the member who runs it. See also Mangilal Rungta V CIT (1955) 28 ITR 167; Jainarayan Balbakas V CIT (1957) 31 ITR 271; Godiram Bhagwandas V CIT (1960) 39 ITR 513.
Further it will not be enough to assess an income as that of the Hindu undivided family on the mere fact that in an agency business the junior member of the Hindu undivided family gave security deposit out of the family fund, or that the income is entered in the joint family books.

The principles emerging from decided cases for determining whether the income of a member of a Hindu joint family is his personal income or of the Hindu undivided family are summed in a succinct manner by the Punjab High Court in Prem Nath v CIT as -

50. Arunachala Mudaliar v Muruganth Mudaliar, AIR 1963 S.C. 1495 S.C. after considering the texts and the various decisions of the High Courts said that the answer to the question (whether son's son can claim an interest in it by birth) the answer to the question primarily depends upon the intention of the donor or testator. The intention is to be gathered from the terms of the dead.


53. See foot-note 65 at pp.

54. (1967) 63 ITR 795.
1. The income of a member of a joint family would be his separate income if it has been obtained by his own exertion and without any detriment to the father's estate, that is, without the aid of joint family property.

2. The income would be joint family income if it is earned at the expense of the joint family funds.

3. Where the family funds have been used either for earning the income, or for qualifying the member to earn the income, the presumption is in favour of detriment to the patrimony.

4. Partibility does not depend on causa proxima and is not negatived by the intervention of the personal element of the individual member's character or, in other words, when the income arises both by reason of use of family funds and personal exertion, the presumption would be that income belongs to the family.

5. If the facts show that a member would not have been put in such a position as to be able to earn the income in question without the aid of the family funds, it would be the income of the family and, consequently where a member becomes a partner with the aid of the family funds and earns remuneration, though for services rendered, the income would belong to the family if it appears that he would not have earned that remuneration had he not been a partner. On the other hand if facts show that the income was the result, entirely or predominantly, of the
personal exertion of the member, which it would be for the member to prove, the income will not be partible, as happened in Piyare Lal Adishwar Lal's case.\textsuperscript{55} In other words if there exists an inseparable link between the investment of the patrimony and the earning, the earning would be partible.

6. Where a member can establish that he earned the remuneration not because of his being partner, but solely or predominantly because of special qualifications personal to him, the income would be impartible.

The decision of the Full Bench of Punjab High Court in this case\textsuperscript{56} was reversed by the Supreme Court\textsuperscript{57} but made no comments on the principles laid down in the judgement. In the instant case, the following question was referred by the Tribunal to the Punjab High Court at Delhi, for opinion and the High Court answered the question in the affirmative with special leave, the assessee appealed to the Supreme Court.

\textsuperscript{55} (1960) 40 ITR 17 (S.C.).
\textsuperscript{56} Prem Nath v CIT (1967) 63 ITR 795.
\textsuperscript{57} Prem Nath v CIT (1970) 78 ITR 319 (S.C.).
"Whether the remuneration received by Prem Nath, Karta of the assessee Hindu undivided family for services rendered to the firm of Messrs. K.C. Raj & Co. and the sub-partnership of Messrs. Krishan Lal in which he is a partner representing the interests of the assessee Hindu undivided family was rightly included in the total income of the assessee Hindu undivided family".

The facts in brief were as under -

"The assessee is a Hindu undivided family. Prem Nath, the Manager of the family, was admitted as representing the family to a partnership styled 'Messrs K.C. Raj and Company' under the terms of the partnership Prem Nath was entitled to an 'allowance' of Rs.700 per month for 'rendering service' to the partnership. In proceedings for assessment of Income-tax of the Hindu undivided family, the Income-tax Officer rejected the contention that the remuneration paid to Prem Nath was the individual income of Prem Nath. The order was confirmed in appeal, by the Income-tax Appellate Tribunal".

Supreme Court observed that Prem Nath was "a working partner" and he was allowed a salary at the rate of Rs.700 per month. There is no evidence on the record that the remuneration agreed to be paid was not for services rendered to the

58. Emphasis supplied.
partnership. It is true that, in the partnership, Prem Nath represented his undivided family. The share in the profits of the partnership may on that account be regarded as the income of Hindu undivided family. We are, however, only concerned with the remuneration paid to Prem Nath as "working partner" in the business of the firm. Their Lordships of the Supreme Court held that there can be no doubt that the income received by Prem Nath was remuneration for services rendered by him and there was no real or sufficient connection between the investments of the joint family assets and the remuneration paid to him.

We may conclude that if there is "real and sufficient" connection between the joint family funds invested and the remuneration paid by the partnership to the manager of the joint Hindu family, who is a partner, the remuneration is taxable as the income of the Hindu undivided family and if there is no "real and sufficient" connection between the joint family funds invested and the remuneration paid to Manager of joint Hindu family by the partnership then the remuneration paid to manager is his separate income and not

59. Emphasis supplied.
59a. Emphasis supplied.
taxable under the Hindu undivided family. In another way we can say that remuneration paid to a member of a Hindu undivided family, who represents the family in partnership, will be treated as the income of the Hindu undivided family if it is directly related to the investment in the partnership business with the assets of Hindu undivided family. Whether income is of the Hindu undivided family or of individual coparcener, the Supreme Court, in *Raj Kumar Singh Hukam Chandji V Commissioner of Income-tax*, laid down:

"... the test 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

59b. Emphasis supplied.


61. (1970) 78 ITR 33, where facts in brief were - The appellant, a Hindu undivided family was a branch of larger family which had disrupted. It was allotted considerable shares in the company which was formed to take over certain business of the Larger family. Its karta and another member were managing directors of the company at the relevant time and the question was whether the managing director's remuneration was assessable in the hands of the family. Applying the test Supreme Court held that the remuneration received was assessable as his individual income, at pp. 43, 44.
essentially earned as a result of the funds invested the fact that a coparcener has 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 out of the family funds would not make the receipt, the income of the Hindu undivided family".62

The general doctrine of Hindu Law is that property acquired by a Karta or coparcener with the aid or assistance of joint family assets is impressed with the character of Joint Family Property. To put it differently, it is an essential feature of self acquired property that it should have been acquired without assistance or aid of the joint family property. The test of self acquisition by the Karta or coparcener is that it should be without detriment to the ancestral property.63

62. The principles adopted in Gokul Chand Case (48 I.A. 162) that "in considering whether gains are partible, there is no valid distinction between the direct use of the Joint Family funds and a use which qualifies the member to make the gains by his own efforts is no longer valid. Ibid., P. 33.

63. V.D. Dhanwatey V CH (1968) 68 ITR 365 at 369 (S.C.) with respect it is submitted that dissenting judgement by Hedge, J. is more convincing. The contention that if a coparcener of a Hindu undivided family takes any aid from family funds in making an acquisition, however slender that aid might be, the acquisition in questions should be considered as a family acquisition, stands repelled by the S.C. in Piyare Lal Adishwar Lal V CIT (1960) 40 ITR 17.
From the above discussion it follows that it is not any or every kind of aid received from family funds which taints an income as family income. Before an income earned by the exertions of a coparcener can be considered as family income, a direct and substantial nexus between the income in dispute and the family funds should be established. The principles relating to individual or Hindu undivided family income, are elaborated in a number of cases which make the picture clear for ascertaining the status of the Assessee.

64. See Piyare Lal Adishwar Lal V CIT, AIR (1960) 40 ITR 17. See also Palanippa Chettiar V CIT (1968) 68 ITR 221 (S.C.) leads to the same conclusion.

Palanippa would not have become the Director of the firm in question but for the shares acquired out of Hindu undivided family funds. Yet S.C. held that the remuneration received by him was his individual income.

65. Gokul Chand V Hukam Chand Nath Mall (1921) 48 ITR 162 (P.C.) - (a coparcener prosecuting his studies from Hindu undivided family funds became I.C.S. It was held that his earnings was Hindu undivided family. To nullify the effect of this decision "Hindu Gains of Learning Act, 1930" was enacted - presently such income is individual income not of Hindu undivided family); S.B. Inder Singh V CIT (1943) 11 ITR 16 (Pat.) - (Income received by the Karta as the governing director of a private company consisting of himself and his two sons, was assessed as individual income); CIT V Desanram (1945) 13 ITR 419 (Pat.) - (Director's fees received by two Kartas from a limited Company owned by their respective Hindu undivided family was treated as personal earnings of the Karta); CIT V S.N.N. Sankaralinga Iyer (1950) 18 ITR 194 (Mad.) - (Qualifying shares were purchased from family funds, Karta became Managing Director. His remuneration was considered as his individual income and this decision was also approved by the supreme Court in Palanippa Chettiar V CIT (1968) 68 ITR (Contd....)
221 but on different reasoning); R. Hanumanthappa and son V CIT (1952) 22 ITR 364 (Mad.) - (Income from Managing agency earned by a firm constituted by two members of a Hindu undivided family was treated as individual income of the Partners); Sir Padampat Singhanie V CIT (1953) 24 ITR 184 (All.) - (Minor Coparcener admitted to benefits of partnership constituted of Strangers, no evidence of use of family funds. It was treated individual income; see also Prem Sukhdas Jagnani V CIT (1962) 46 ITR 396 (Pat.);
Kaniram Hazarimill V CIT (1955) 27 ITR 294 (Cal.) - (where Karta entered as partner by employing family funds, share income was held as Hindu undivided family income - See also Mangal Chand Mohan Lal, in re, (1952) 21 ITR 164 (All.); S.S. Khubchand Motilal Jain V CIT (1974) Tax L.R. 552 (M.P.); L.L. Kapoor V CIT (1955) 27 ITR 348 (Pat.) (share income of one of the brothers from a firm consisting of four brothers being members of Hindu undivided family and two outsiders, which was shown in the Joint Family Accounts; held income does not belong to Hindu undivided family); Anar Qhand Bishan Dass V CIT (1956) 30 ITR 238 (Punj.) - (Members of Hindu undivided family became partner in a firm without employing Hindu undivided family funds, but throws the income into the common stock of Hindu undivided family. Held income is of the individual when it is earned and the department is not concerned with what he did with it after earning); Shri Ram Jha V CIT (1957) 31 ITR 987 (All.) - (Commission earned by Karta acting as agent for effecting insurance of the members of the family, was treated as individual income); CIT V Kulu Babu Lal Chand (1959) 37 ITR 123 (S.C.) - (Qualifying shares acquired by the Karta with family funds and becomes managing director. His remuneration as Director is Hindu undivided family income). See also Lal Girjesh Babaur Pal V CIT (1965) 55 ITR 167 (All.); T.T. Ratnasababty Pillai V CIT (1966) 62 ITR 356 (Mad.); P.N. Krishna Iyer V CIT (1969) 73 ITR 539 (S.C.); Pratapveer Kakkar V CIT (1974) 93 ITR 301 (All.); Bimal Kumar Jain V CIT (1974) 93 ITR 225 (All. - (remuneration received as a General Manager); Somitam Bhagwan das V CIT (1960) 39 ITR 513 (Pat.) (Income from properties in the name of Junior Coparceners,

(Contd.....)
on the facts of the case to be taxed as Hindu undivided family); Piyare Bai Adishwar Lal v CIT, AIR (1960) 40 T R 17 (Karta appointed treasurer of Bank on giving family property as security thereof. Salary earned by him was individual income and not Hindu undivided family); See also Knightsdale Estates v CIT (1955) 28 T IR 650 (Mad.); Ram Krishan Das Munnilal v CIT (1961) T IR 452 (All.) - (B.K. and R members of Hindu undivided family - firm constituted by B in his individual capacity with third parties - each credits appearing in the names of B.K. and R - explanation not satisfactory, held there could be no presumption that the cash credits were the income of the Hindu undivided family); Goswami Maharaj Ranchhodraiiji v CIT (1964) 54 T IR 664 (Guj.) - (Hereditary office of the Head of a religious sect, income from disciples is personal); Mathura Prasad v CIT (1966) 60 T IR 428 (S.C.) (Karta of smaller Hindu undivided family become partner with the Hindu undivided family funds, salary or allowance received by him was held to be Hindu undivided family income. See also Nagar Dass v CIT (1967) 66 T IR 203 (All.); V.L.Dhanavat v CIT (1968) 68 T IR 365 (S.C.); S.Bhagwan Singh v CIT (1960) 38 T IR 436 (Pun.); Kishan Chand Lundisang Rajaji v CIT (1966) 60 T IR 500 (S.C.) - (Dividend income from shares acquired with the funds of Hindu undivided family but held in the name of Karta. Held assessable in the hands of Hindu undivided family); CIT v Srimati Rama Bai (1967) 63 T IR 25 (Mys.) - (Income from properties received under will with a direction to apply the properties for the benefit of children is individual income); Rameshwar Prasad Bagla v CIT (1967) 65 T IR 462 (All.) - (Remuneration received by Karta as Managing Director of Company wherein controlling interest was obtained by the use of family funds is Hindu undivided family income); See also Haridas Purshottam in re,(1947) 15 T IR 124 (Bom.) - (Income from Managing Agency); CIT v Ram Rekshpal Ashok Kumar (1968) 67 T IR 164 (All.) - (Income from assets inherited by a son from his father, from whom he had separated by partition, not to be assessable as income of the Hindu undivided family of the son effect of the provisions of the Hindu Succession Act 1956 discussed. See also CWT v Chander Sen and CIT v Khushi Ram Rangi Lal (1974) 96 T IR 634 (All.); Palanippa Chettiar v CIT (1968) 68 T IR 221 (S.C.) - (Shares acquired with family funds not with the object that Karta should become the Managing Director, but in the ordinary course of investment; Karta's

(Contd....)
remuneration as Managing Director was his individual income and not Hindu undivided family income. See also CIT V B.N. Talwar (1966) 69 ITR 704 (All.); N. Murugappan Chetty and Sons V CIT (1952) 21 ITR 311 (Mad.); Trikpl Singh & Sons V CIT (1969) 71 ITR 2 (All.); V. R. Dasappa V CIT (1974) 96 ITR 523 (Mys.); CIT V C. P. Sarathy Mudaliar (1968) 68 ITR 626 (A.P.), affirmed in (1972) 63 ITR 170 (S.C.) - (Loan to joint family by a company wherein the shares were held by Karta and other coparceners of the family using family funds, held not to be assessable as dividend income of Hindu undivided family in CIT V Rameshwarlal Sanwaram (1971) 82 ITR 628 (C. I.); CIT V Gurunath Bhasappa (1970) 72 ITR 192 (S.C.) - (Salary paid to Karta for managing business of the firm wherein he was a partner representing family, on facts, not to be treated as Hindu undivided family income); See also CIT V L.C. Shah (1969) 73 ITR 692 (S.C.); Prem Nath V CIT (1970) 78 ITR 319 (S.C.); CIT V Noti Lal Ram Shroop (1970) 76 ITR 43 (Raj). - (Interest occurring on amounts gifted by Karta of a Hindu undivided family did not accrue to Hindu undivided family); S. Parthasarthy V CIT (1970) 76 ITR 788 (S.C.) - (Income from house property gifted by the father to his son is individual income - See also CIT V Gordhandas K. Vore (1974) 96 ITR 50 (Bomb.) - (Income from property received under a trust); Rajkumar Singh Hukam Chandli V CIT (1970) 78 ITR 33 (S.C.) - (Shares acquired in a company out of family funds, Karta being Managing Director received remuneration, which is his individual income; See also V.C. Rajarathnam V CIT (1971) 80 ITR 705 (Mad.); CIT V B.N. Bhaskar (1971); 82 ITR 345 (Del.) - (Managing Agency Business); Hir Lal Mangal Lal Parikh V CIT (1973) 92 ITR 417 (Raj.); V. J. Patel and F. J. Patel V CIT (1973) 91 ITR 353 (Guj.); A.R. Balakrishnan V CIT (1974) 96 ITR 469 (Mad.); CIT V Surajram Hiralal I.T. Ref. No. 91 of 1970, decided on 15.11.1973 by the Gujarat High Court); CIT V Krishan Bans Bahadur (1974) 96 ITR 714 (S.C.) - (Shares Received as and by way of gift from grandfather to be Hindu undivided family property in the hands of donee and his son); Gajanand Sutwala V CIT (1973) 92 ITR 119 (All.) - (Sole Surviving coparcener invested money in a firm from Hindu undivided family, share income received by him after adoption of a son is Hindu undivided family funds; See also Tolaram Baljoy Kumar V CIT (1973) 90 ITR 162 (Gauhati); CIT V C.A. Patwardhan (1970) 75 ITR 68 (Bomb.); Surjit Lal Chhabda V CIT (1970) 75 ITR 458 (Bomb.); CIT V Sum. Nagaratnamma (1970) 76 ITR 33 (Mys.); Adj. Mangalappa (1970) 72 ITR 89; Karuppu Chettiar (1978) 114 ITR 523; Adj. C.I.T (Mad. II) V V.R.A. Manica Mudaliar (1978) 114 ITR 521; Lala Narendra Lal Shanti V C.I.T. (1974) 93 ITR 534 (All.); Chasiram Agrawal V CIT (1968) 6 ITR 235 (Assam); see also CIT V Hardalinal Manilal (1974) 97 ITR 86 (Guj.); CIT V Babubhai Mansukhabhai (1977) 106 ITR 417 (Guj.); Ruijilal V Deulal Ram (1977) 79 PLR 27.
II. BLENDING

(i) Concept & Scope

Property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into joint stock with the intention of abandoning all separate claims upon it. It is known as blending. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred merely from acts which have been done from kindness or affection.


67. It is merely a historical aspect of the question as to how certain properties had become joint family properties - See Binod Behari Lal v. Rameshwar Prashad, 1978 S.C. 1201; Though the doctrine is peculiar to Mitakshara School but it also applies in the Dayabhaga School in the case of brothers living together and forming a joint family. See also Mallesappa v. Malleappa AIR 1961 S.C. 1268; Nutbehari v. Nanilal, AIR 1937 P.C. 61; Rajani v. Joga (1923) 50 I.A. 173.
The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristic of joint family or ancestral property by his own volition and intention, by waiving or surrendering his special right in it as separate property.\(^68\) The legal concept of blending is embedded in the idea that there should be conscious surrender.\(^69\) A man's intention can be discovered only from his words or from his acts and conduct.\(^70\) When his intention with regard to his separate property is not expressed in words, court must seek for it in his acts and conduct. But it is the intention that must be sought in every case, the acts and conduct being no more than evidence of the intention.\(^71\) Intention of abandoning his separate claim therein, must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be

\(^{68}\) To blend is to share along with others and not to surrender one's interest in favour of the others to the exclusion of oneself. See *Pushpa Devi C CIT*, 1977 S.C. 2230.

\(^{69}\) *Chinna V Venkata*, 1957 A.P. 93.

\(^{70}\) See *Lal Bahadur V Kanahaya Lal* (1906) 29 All. 24.

\(^{71}\) *G. Narayana Raju V G. Chemaraju* AIR 1968 S.C. 1276 at p. 1280.
inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation.\textsuperscript{72} However, it must be noted, that a female member of Joint Family has no power to throw her separate property into the common stock as she is not a coparcener.\textsuperscript{73}

\textbf{(ii) Effect of Blending Separate Property OR Income with Family Property}

The separate property of a coparcener ceases to be separate property and acquires the characteristic of a joint family or ancestral property not by any physical mixing with his joint family or ancestral property but by his own volition and unequivocal intention by his waiving and surrendering his separate rights in his separate property in favour of joint family.\textsuperscript{74} Separate property

\begin{itemize}
  \item \textsuperscript{72} Lakkireddy Chinna Venkata Reddi V Lakkireddi Lakshmana, AIR 1963 S.C. 1601 at p.1604; Krishna V Keyastha, AIR 1966 All. 570 (Mere fact that income of the separate property was spent on members of the joint family is not enough); Manicha V Thangavelu, AIR 1964 Mad. 35 (Separate property can be converted into joint family property by unambiguous and unequivocal declaration).
  \item \textsuperscript{73} Pushpa Devi V CIT, 1977 S.C. 2230; See also Malesappa Bandeppa Desai V Desai Mallappa, 1961 S.C. 1268; CIT V Sita Bhateja (1973) 91 ITR 1933; Lakkireddy Chinna Venkata Reddi V Lakkireddi Lakshmana, 1963 S.C. 1601.
  \item \textsuperscript{74} See Bhimavarupu V Nagireddy, AIR 1973 A.P. 184; Goli Eswariah V CIT (1970) 76 ITR 675 (.S.C.); Pushpa Devi V CIT 1977 SC 2230.
\end{itemize}
of a coparcener becomes joint family property because by the exercise of his volition, he has impressed it with the character of joint family or coparcenary property, to be held by him thereafter along with other members of the joint family; it is by his unilateral action that the property becomes joint family property; the transaction by which a property ceases to be the property of a coparcener and becomes impressed with the character of coparcenary property does not in itself amount to a transfer; no transfer need precede the change and no transfer ensues either. Thus when a coparcener throws his separate property into common hotch-potch of the family, he makes no gift under chapter VII of the Transfer of Property Act. In such a case there is no donor or donee. Further no question of acceptance of the property thrown into the common stock arises. The blending by a coparcener of his self-acquired property with the coparcenary property does not require compliance of any particular legal device or procedural formalities. After a self-acquired property is blended by a coparcener, the following consequences follow:

1. The ownership thereof vests in the whole body of the coparceners;
2. If the blending coparcener happens to be a manager of the joint family, such property will continue to be under his management and he can still alienate it for purposes of legal necessity or benefit of estate;

3. If the coparcener is a father, the interest of his sons in that property can be sold to discharge his debts which are not ayavaharika in nature;

4. The undivided interest of the coparcener in the coparcenary property including the property in question can be brought to sale by his creditors;

5. The property with other coparcenary property would become subject of devolution by survivorship; and

6. The coparcener will enjoy the property alongwith others and still claim a share in the property alongwith other coparceners by enforcing a partition as he has equal interest in the coparcenary property.75

From the above it is clear that even after throwing his self-acquired or separate property into the common stock

75. Ratilal Khushaldas Patel v CTT (1965) 55 ITR 517 (Guj.); Keshav Lal Lallubhai Patel v CTT (1962) 44 ITR 266 (Bom.); M.K. Stremmann v CTT (1961) 41 ITR 297 (Mad.); Approved in Goll Eswariah v G.G.T., (1976) 76 ITR 675, at p.681 (S.C.); CTT v Ramprasad Mehra (1975) 100 ITR 468 (Bom.); Damodar Krishnaji Nirgude v CTT (1962) 46 ITR 1252 (Bom.).
of the family, the coparcener does not abandon all his interests in the property but has, still, some right and interest therein. 76

WHETHER NUCLEUS ESSENTIAL

The existence of a coparcenary is absolutely necessary before a coparcener can throw his self-acquired property into the common hotch-pot. But it is not a requirement that some joint family property must exist before a coparcener can impress his self-acquired property with the character of joint family property. So long as there is a coparcenary there is a common hotch-pot. May be there is nothing in the common hotch-pot but it can receive properties which may be thrown into it. 77

76. CIT V Dr. (Mrs.) Sita Bhaveja (1973) 91 ITR, 193 at p. 196 (Mys.); Pushpa Devi V CIT, 1977 S.C. 2230.

Where the joint family owns the nucleus the process of throwing separate property by a coparcener into the common stock will be called "blending," but where there is no nucleus the process may be called the "impressing" of one's personal property with joint family character as the term "blending" may not be very appropriate in such a case. The term "blending" postulates mixing of one's property with the other. That however does not mean that the existence of the joint family property is an essential condition for impressing one's personal property with the character of joint family property. It was as far back as in 1890 in the case of *Krishniji Mahadeo Mahajan v Moro Mahadeo Mahajan* 78, it was held:

"In short, for self-acquisition to be thrown into the common stock, it is not necessary that there should be a nucleus of commercial property".

78. (1890) ILR 15 Bom., 32; See also S. Subramania Iyer v CIT, (1955) 28 ITR 352 (Mad.); Duggirala Sedasiva Vittal v Solla Rallain, 1958 (A.P.) 145; Damodar Krishniji Nirguje v CIT (1962) 46 ITR 1252 - Possession of ancestral or joint family property under the Hindu Law is not a condition precedent for enabling a coparcener to impress his self-acquired property with the character of a coparcenary property. What constitutes impressing self-acquired property with the character of a coparcenary property is the unequivocal act on the part of the coparcener to abandon his individual exclusive right in the property in favour of the coparcenary. It is a well known principle of Hindu Law that coparcenary can exist even though it may own no coparcenary property. When a coparcenary can exist without possessing or owning coparcenary property, there is no reason why a coparcener could not be in a position to abandon his self-acquired

(Contd..)
In view of the unanimity of the views among different High Courts on this point it is now settled that holding of property by the Joint Family is not at all necessary to enable a coparcener to impress his personal property with the character of Joint Family.  

(iii) Effect of Blending for Income-Tax Purposes

The principles laid down in income-tax and gift-tax cases on the point as to whether throwing of self-acquired property in favour of the coparcenary. It is his right under the Hindu Law on the exercise of which the property assumes the character of the coparcenary property.  


property into common stock of the family and subsequent partition among Hindu undivided family members, amounts to "transfer" or not, so as to attract the provisions of S.64 of Income-tax Act 1961, and S.4 of Gift-tax Act, 1958, created difficulties for the revenue department, for there being "no transfer" under the rule of blending as understood under the Hindu law. To get over the situation of avoiding tax liabilities by the assesses Subsection (2) was added to Section 64 of the Income-tax Act 1961 by the Taxation Laws (Amendment) Act, 1970 and Subsection (2) was added to Section 4 of the Gift-tax Act, 1958 by the Finance (Nos.2) Act 1971. Section 64(2) provides that where an individual being a member of Hindu undivided family, converts his separate property into property belonging to Hindu undivided family, he will be deemed to have "transferred" the property through the family to the members of the family for being held by them jointly. Hence income derived from the converted property will be deemed to arise to the individual himself and not to the family. Index\footnote{Index1. We are not discussing here Sub-section (2) of Section 4 of Gift-tax as we are concerned with Income-tax only in our research.} Above referred amendments have now nullified the principles laid down
in the cases, as is evident from clause (a) of section 64(2) which deems the conversion to be a transfer through the family to the members. Here we may give in brief the background, on the basis of which the above referred amendments and the amendments vide Taxation Laws (Amendment) Act 1975, took place in order to be fully acquainted with the law of blending as it stands today for the assessment of Hindu undivided family and its members under the Income-tax Act, 1961.

**WHETHER PARTITION AMOUNTS TO TRANSFER OF PROPERTY**

It is well established rule that when the property which was previously enjoyed by the members of a coparcenary has been divided among themselves in a partition there is no transfer of the property from coparcenary as a unit to the individual coparceners who divide it. It is only a case of converting what had been enjoyed by the coparceners with coparcenary rights into property enjoyed by them with separate rights. There is no element of transfer in such a division. In Commission,

---

82. Supra f.n. 80.

83. Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976 further clarifies the position when the words "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)" have been substituted to the words "into the common stock of the family (such property being hereinafter referred to as the converted property)".
of Income-tax V Keshvylal Lalubhai Patel where in S.C. was approached to interpret section 16(3)(a)(iii) and (iv) of the Indian Income-tax Act, 1922, the Supreme Court was of the view that the word "transfer" used in the Section is in the strict sense and not in the sense of including every means by which property may be passed from one to another. Assuming that the act of throwing by the assessee of his self acquired property into the hotch-pot of family property is a Transfer, still when there is a subsequent partition of the Joint Hindu Family there is no transfer of assets within the meaning of S.16(3)(a)(iii) and (iv) of the Act to the family members.

84. (1965) 55 ITR 637.
86. Section 16(3)(a)(iii) and (iv) reads:

16(3) In computing the total income of any individual for the purpose of assessment, there shall be included -

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly.

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart.

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration.
The Supreme Court in this decision made a passing reference of opinion among the High Courts as to whether the act of throwing the self-acquired property into the hotch-pot was a transfer or not. Their Lordships expressed the view that it was not necessary to settle the controversy about that point and it remained an open question.

**FATHER CONVERTING HIS SEPARATE PROPERTY TO HINDU UNDIVIDED FAMILY PROPERTY**

From the authorities it is clear that the father has a plenary dominion over his self-acquired properties. He can dispose of them by transfer *inter vivos*, such as, sale or gift, or he can dispose them of by testamentary device. His powers are, therefore, unrestricted. The sons have no power to intervene in the full enjoyment of the father in his self-acquired properties or seek the interdiction of his dispositions thereof. It follows, therefore, that the sons have no right in present, if in the self-acquired properties of their father, on his death intestate the properties may devolve upon them as unobstructed heritage.

87. CIT V Keshavlal Lallubhai Patel (1965) 55 ITR 637.


89. See Kannaiyan V Assistant Controller of Central Excise Erode, AIR 1970 Mad. 320 at p.322.

90. Balwant Singh V Rani Kishori (1898) 20, All. 267 (P.C.); Arunchala Mudaliar V Muruganatha Mudaliar, AIR 1953 S.C. 495; Muddun Gopal V Ram Buksh (1893) 6 W.R. 71 (Cal.).
Under ordinary law, when self-acquired assets are transferred to an Hindu undivided family, an interest therein may be created in favour of a wife or minor child who happens to be a member of the said family. In the context, however, of the language used in Section 16(3)(a), when assets are transferred to an Hindu undivided family, there is no transfer direct or indirect, effected by the transferer in favour of his wife or minor child who may be members of that Hindu undivided family, within the meaning of the words used in Section 16(3)(a).

When the subsequent transfers of properties take place among the members of an Hindu undivided family as a result of partition by metes and bounds, that transaction cannot be regarded as a transfer by the assessee to his wife or minor child. The two transactions viz. the one throwing the separate property of the assessee into the hotch-pot of the joint family and the other of partitioning the joint family properties, are separate, genuine, independent transactions. Neither by the one nor by the other there has been any transfer, direct or

91. S.64 of the 1961 Act.
indirect, effe\(\text{ct}^{6} \) by the assessee to his wife or minor
son within the meaning of section 16(3)(a)(iii) and
section 16(3)(a)(iv).\(^{92} \) But this decision, it is submitted
does not lend support to the contention that when the
father converts his self-acquired property into the Joint
Family property, there is no element of transfer. In the
process of converting the self-acquired property into
joint family property, there is an element of transfer
of rights to property. It also involves the diminution
of the father's right and the conferment and enlargement
of rights of others.\(^{93} \)

The law before the Taxation Laws (amendment) Act
1975, which came into force with effect from 1st April,
1976 and the Taxation Laws (amendment) Act, 1970, which
came into force with effect from 1st April, 1971 was that the
partition of joint Hindu family property including blended
property, if any, is not transfer in the strict sense and
does not effect a "transfer of assets", direct or indirect
within the meaning of section 64(1)(iv) or 64(1)(v), to the

\(^{92} \) Keshavlal Lallubhai Patel v Commissioner of Income-tax, Gujarat (1962) 44 ITR 266.

\(^{93} \) G.V.Krishna Rao v The First Addl. Gift Tax Officer, Guntur, AIR 1970 A.P. 126 at pp.132-134.
wife or minor children.\textsuperscript{94} As word "transfer" used in s.64 did not include all the means of transferring property from one person to another as defined in s.63, Section 64(2) has been added to get over the situation and although such partition in respect of the blended property could not come independently, within the mischief of sections 64(1)(iv) and 64(1)(v), as the case might be, it will now attract the provisions by virtue of Section 64(2) and have the desired effect thereby.

APPLICATION OF SECTION 64(2)

Section 64(2) relates to a case where an individual has converted or converts, at any time after December 31, 1969, his separate property into property belonging to the Hindu undivided family of which he himself is the member, by impressing his property with the character of property belonging to Hindu undivided family or throwing such property into the common stock of the family.

For the purpose of S.64(2) the term "property" has been defined in the explanation to include any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment which for the time being represents such sale proceeds and also any property converted into any other property by any method. The "interest of the individual in the property of the family" and the "interest of the spouse or the minor son in the individual property of the family", relevant upto assessment year 1975-76 has been defined to mean the proportion in which the individual or, as the case may be, the spouse, the minor son of the individual would be entitled to share the property of the family if there had been a total partition in the family as on the last day of the previous year of the family relevant to the assessment year for which the individual is to be assessed under S.64(2).

Where the income referred to above is included in the total income of an individual in accordance with the provisions of sub-section (2), it will be excluded from the total income of the family or, as the case may be, of the spouse or the minor child of the individual.

CIRCUMSTANCES FOR ATTRACTING THE PROVISION OF S.64(2)

The circumstances requisite for attracting the provisions
of Section 64(2) are that there is -

(i) an individual assessee who is a member of
an Hindu undivided family;

(ii) and possesses separate self-acquired property,
income where from is assessable in his hands;

and

(iii) he converts, at any time after 31st day of
December, 1969, such separate property into
property belonging to Hindu undivided family
either through the act of impressing the
property with the character of the family
property or throwing it into the stock of the
family.

LEGAL FICTION

Section 64(2) for assessment year 1971-72 to assessment
year 1975-76 created four legal fictions. If the requisite
circumstances did exist, then notwithstanding anything
contained in any law, and for the computation of the income
of the individual:

(i) The converted property has to be deemed to have
been transferred by the individual not to the
joint family, but to its members for being held
by them jointly;
(i) So much of the income derived from the converted property as was attributable to the interest of the individual in the property of the family was to be deemed to have arisen to the individual and not to the family (Interest of the individual in the property of the family implied the proportion in which the individual would have been entitled to share the property of the family if there had been a total partition in the family as on the last day of the relevant previous year of the family).

(iii) So much of the income derived from the converted property as would have arisen to the spouse or to a minor son had there been a total partition, etc., was also to be included in the total income of the individual because the latter was deemed to have transferred such share of the property to the spouse or to the son; and

(iv) Even if, after such blending, the converted property was factually partitioned, either by a total partition or a partial partition, the provisions of section 64(1) would still have had application so far as the tagging of the income was concerned.

Under the amended provisions of section 64(2) enforceable from the assessment year 1976-77, the changes made therein

95. Words in S.64(2)(b) "in so far as it is attributable to the interest of the individual in the property of the family "were omitted S.64(2)(c) is substituted;in the proviso "minor child" was substituted for "minor son"; Brackets and figure "(1)" in explanation is omitted; clause 2 of the explanation was omitted. See for details Chaturvedi and Pithisaria's Income-Tax Law, 2nd Edn., Vol.2, 1976,pp.1063-1065.
are of vital and far reaching effect.

Under the amended provisions three legal fictions have been created:

(i) The converted property shall be deemed to have been transferred by the individual not to the joint family but to its members for being held by them jointly;

(ii) The whole of the income derived from the converted property or any part thereof shall be deemed to arise to the individual and not to the family; and

(iii) where the converted property has been the subject matter of a total partition or partial partition amongst the members of the family, the income derived or received by the spouse or minor child from the portion of converted property allotted to them shall be tagged with the total income of the individual under the provisions of section 64(1).

The matter may be illustrated by taking a joint Hindu family consisting of:

X (dead)  
A  B  
C(wife)  E(wife)  
D(minor son)  
F  G  
(Major son)  (Minor son)
B converts his individual money amounting to Rs. 24,00,000/- by impressing it with the character of joint family property of the bigger Hindu undivided family. On a partition, if coming into effect, say, on 31st March, 1970, each A, C, D shall be entitled to a 1/6th share, i.e., Rs. 4,00,000/- and each of B, E, F and G shall be entitled to a 1/8th share i.e., Rs. 3,00,000/-. 

Suppose Rs. 24,00,000/- yields an interest income of Rs. 1,44,000/- @ 6% per annum for a particular year, the income includible in the total income of B, shall be -

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Assessment Year</th>
<th>Conversion on or after 1.1.1970</th>
<th>Conversion on or after 1.1.1970</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>If there is no subsequent partition</td>
<td>If there is a subsequent partition</td>
</tr>
<tr>
<td>1</td>
<td>1970-71</td>
<td>NIL</td>
<td>NIL</td>
</tr>
<tr>
<td>2</td>
<td>1971-72 to 1975-76</td>
<td>NIL</td>
<td>Rs. 54,000 (himself, wife and minor child)</td>
</tr>
<tr>
<td>3</td>
<td>1976-77 onwards</td>
<td>NIL</td>
<td>Rs. 1,44,000 Rs. 54,000</td>
</tr>
</tbody>
</table>

For the purpose of computation, under the Income-tax Act, of the total income of the individual, the fictions created
by section 64(2) have an over-riding effect - "not with-
standing anything contained in any other provision of this 
Act or any other law for the time being in force."

**AVOIDANCE OF DOUBLE TAXATION**

The proviso to section 64(2) has been enacted in order 
to avoid the possibility of double taxation. It provides that 
when an income has, under the provisions of section 64(2),
been included in the total income of the individual, such 
income shall be excluded from the total income of the family, 
or, as the case may, the spouse or the minor son of the 
individual.

From the discussion we find that there is difference in 
the concept of blending under the Hindu Law with regard to the

---


97. Provisions of S. 64(2), for the purpose of computation, 
of the total income of the individual, under the Act, 
have an over-riding effect -

"... not-withstanding anything contained 
in any other provision of this Act or any-
other law for the time being in force".

98. See CIT V Rama Nand Sachdeva (1981) 6 Taxman 142 
(Del.).
word "Transfer" and as we use the word "Transfer" for purposes of computing the total income of the Hindu undivided family or the individual who converts or impresses his separate property with the Hindu undivided family. This is a very progressive amendment and has been made by the Parliament keeping in view the trend of capitalists for avoidance of tax liability by blending their separate property with the Hindu undivided family and then in some cases effecting partition to pay less taxes. This way of avoidance of tax liability has been curtailed by the Taxation Laws (Amendment) Act, 1970, coming into force w.e.f. April 1, 1971 and Taxation Laws (Amendment) Act, 1975, coming into force with effect from 1st April, 1976.