H.U.F. TAX PLANNING AND ASSESSMENT (1985). By S. R. Kharabanda and Prem Nath. Commercial Publishing House, New Delhi. Pp. xliv+508. Price Rs. 110.

THE AUTHORS of the book[1] under review have pooled their rich professional experiences earned through decades as senior revenue officials to write a comprehensive study of the taxable unit known as Hindu undivided family (H.U.F.) for purposes of levying and assessing direct taxes on its assets. The interaction of Sastric Hindu law and those statutory modifications which have a bearing on tax laws has now warranted for long to organise the various issues and themes affecting the interests of such tax payers. The interest of individual in the H.U.F. property calls for the study and application of principles of Hindu law in matters of ownership, succession and inheritance.

It is gratifying to note that the book has been able to present the varied problems of the above kind and nature in 16 chapters. The range of study undertaken is vast. The authors have delved into the antique past in order to cull out the relevant principles from various schools of Hindu law. Successful attempts have also been made to create renewed awareness amongst the users of the book for the need of reckoning the utility of H.U.F. in tax planning for myriad state activities in modern times. Chapter 16 of the book has exclusively been devoted to this aspect of the problem.

The authors have also attempted to answer a few unresolved judicial controversies and have devoted a complete chapter (chapter 15) for the purpose. However, it may be worthwhile to bring to notice a few of such controversies that may require attention and discussion; to wit: the review of legal policy relating to H.U.F. and the recognition of female as *karta* (manager).

Under Hindu law corparcenership is a necessary qualification for the managership of a Hindu joint family.[2] Strictly speaking, coparcenary is peculiar feature of Hindu law and is distinct from tenants-in-common of English law. Coparcenary is a creation of law. It cannot be created by the act of parties.[3] The prerequisite of a coparcenary is not only possession of property, but the members should have interest in it by birth. Since a female has no vested interest in the coparcenary, she cannot be a coparcener, though she can be a member of the joint family. Thus

---

1. S.P. Kharabanda and Prem Nath, *H.U.F. Tax Planning and Assessment* (1985).
2. *Commissioner of Income-Tax* v. *Seth Govindram Sugar Mills*, [1965] 57 I.T.R. 510 (S.C.).
3. Adoption is an exception where coparcenary can be created by the act of parties. See P.V. Kane, *History of Dharmasastra*, vol. III at 591 (1946).

the affairs of the family are normally managed by the father, and if he be old, physically incompentent or dead, by the senior member or by an adult junior member. The managing member is called *karta* of the family. A minor can domestically become a manager but he cannot transact in that capacity with the outsiders.[4]

A manager has the right and power to represent the family in all transactions relating to it. He has power to contract debts and alienate property in case of legal necessity and for the benefit of the family. He can invest money in business transactions with the strangers. His powers to manage the family affairs are wider than those of a guardian of a minor. Under the *Mitakshara* joint family, a female member of the family cannot ordinarily assert the right to the position of a *karta* of the joint family in the presence of an adult coparcener, though her position under the *Dayabhaga* is somewhat different.

However, it is evident that under the *Mitakshara* joint family a female cannot assume powers of *karta* of the family in presence of an adult male member, because the status of a coparcener belongs to a male member only. But the point for consideration is that there is no inefficiency in an adult female member which debars her from that position. Moreover, there is no digression from *Dharmasastras*, because nowhere it is stressed that it is only a male coparcener who can occupy the chair of *karta*.[5] On the other hand, it has specifically been mentioned that a minor or a wife, in the absence of an adult member, can even bind the interest of other members of the family by incurring debts in distress and for the benefit of the family.[6]

The Hindu law texts are thus not averse to the proposition of a female assuming the functions of *karta* under the circumstances which necessitate her to do so. Nevertheless, the trend of judicial decisions has not been consistent and they do not seem to be favourably disposed towards such proposition. In *Commissioner of Income-Tax* v. *Seth Govindram Sugar Mills*,[7] the Supreme Court did not approve of a widow acting as *karta* of the joint family in the absence of an adult member, and has thus put the claim of coparcener on a higher pedestal than that of a widow. The court endorsed the view adopted by the Madras High Court in *Radha Ammal* v. *Commissioner of Income-Tax*[8] wherein it was held:

> The right to become a manager depends upon the fundamental fact that person on whom the right develoved was of a coparce-

---

4. See J. Duncan M. Derrett, *Introduction to Modern Hindu Law* 260 (1963).
5. J. Duncan M. Derrett, "*May a Hindn Woman Be the Manager of a Joint Family at Mitakshara Law*?", 68 *Bom. L.R. (Journal)* 1 at 3 (1966).
6. Kane, *supra* note 2, n. 761 at 451.
7. [1965] 57 I.T.R. 510 (S.C.).
8. A.I.R. 1950 Mad. 538.

> ner of the joint family....[T]he right is confined to the male members of the family as the female members were not treated as coparceners, though they may be members of the joint family.[9]

The competency of a mother to act as manager of the estate of her minor sons and alienate the joint family property has long been the law as laid down by the Privy Council.[10]

However, the concept that only a coparcener is competent to assume functions of *karta* of the joint family has rigidly been followed by the Madras High Court. In *Seethabai* v. *Marasimha Shet*,[11] the court stated that where the coparcenary consists of only two minor sons and there is no one who can be in juridical possession of the property as *karta*, a guardian can be appointed in respect of the joint family properties of minor members. Their widowed mothers are not members of the family. This view was again supported by the court in *Radha Ammal* where it was emphasised that the Hindu Women's Right to Property Act 1937 has conferred on a widow certain statutory interests in the joint family; she is also entitled to claim partition but all these rights either individually or cumulatively do not have the effect of conferring upon the widow the status of a coparcener in the family nor do they clothe her with the right to represent other members of the family as *karta*.[12] Justice Viswanatha Sastri was of the opinion that if a mother becomes the manager, then she would continue to be the manager for her life notwithstanding her son's attainment of majority. It seems almost axiomatic that a female cannot become a coparcener in the joint family property because that right devolves upon a male by birth. The new legislative trend is to bestow upon a widow certain rights in the joint family property and to have safeguarded her interest, but she has not been by any chance clothed with the status of a coparcener.

Judicial precedents are also known to have recognised a female to act as *de facto karta*. In *Pandurang Dahake* v. *Pandurang Gorle*,[13] the court maintained that the mother can be a *de facto* manager of a joint family and can incur debts which are for necessity, and that these are binding on the minors. Therefore, where the mother of minors manages the property as guardian and incurs a loan which is evidenced by pronotes for legal necessity, a decree can be passed against the estate of minors, as the same is liable for such a loan under Hindu law. In *Commissioner of Income-Tax* v. *Laxmi Narayan*,[14] a partnership business was carried on by four brothers. One of the brothers died

---

9. *Id.* at 539.
10. *Hunooman Persaud* v. *Mt. Babooee*, (1856) 6. M.I.A. 393.
11. A.I.R. 1945 Mad. 306.
12. See also *Rakhmabai* v. *Sitabai*, (1952) 54 Bom. L.R. 55.
13. A.I.R. 1947 Nag. 178.
14. A.I.R. 1949 Nag. 128.

leaving his widow and two minor sons. The widow representing as *karta* of the joint family, entered into a fresh partnership agreement with the brothers of her deceased husband. At the time of income-tax assessment, the question was raised whether there could be a valid partnership comprising a widow in the capacity of a *karta*. The court held that she was competent to enter into a contract of partnership in her representative capacity as *karta* of the undivided family. In another decision, the Nagpur High Court said that a part sale of immoveable property by a Hindu widow, managing the estate of her minor son and step son, for necessary purposes is valid and binding on the step son.[15] The Travancore-Cochin High Court has followed this precedent and has upheld a mother's claim to act as manager; if her acts are for legal necessity or for benefit to estate they would be binding on the joint family.[16] Illustrations can further be multiplied.

The point for consideration is that if we adhere to the qualifications of a coparcener for the position of a manager of Hindu joint family, then a female is deprived of that position because she is not a coparcener. The main consideration should be the welfare of minors and benefit accruing to their property irrespective of the question whether the act was done by a senior adult male or female member of the family in the capacity of a manager. The interest of minors as well as the benefit to the estate should be the primary consideration in the choice of *karta*, but ordinarily the claim of a member should not be sidelined on the ground of one being a woman in an era which emphasises equality of sexes and when the proven capacity and competence of women to manage affairs have not been lacking.

Hindu law has fundamentally been modified in many other fields by judicial decisions and legislative enactments.[17] Our society has immensely progressed in consonance with the changing needs of the times. Our notions regarding the status of women have also undergone changes in the field of law and other spheres It is, therefore, not justified to contend that a female is incompetent to manage the affairs of a joint family in the capacity of *karta* because she lacks the qualifications of a coparcener, prescribed by the *Sastric* law.

Another unresolved issue that requires debate is the need and utility of the H.U.F. to bring cohesiveness in the social fabric by enabling the families to grow themselves into economically viable units. The H.U.F. is a convenient and useful second personality in a family even though it may not have inherited any property. It had been wide open to every member of the family to put one's earnings in the hotchpotch without being labelled as

---

15. *Kesheo* v. *Jagannath*, A.I.R. 1926 Nag. 81 (F.B.).

16. *Balakrishna* v. *Ganesa*, A.I.R. 1954 T.C 209 (F B ). See also *Sushila Devi* v. *Income-Tax Officer*, A I.R. 1959 Cal. 697-700.

17. *E g.*, Hindu Marriage Act 1955; Hindu Succession Act 1956.

gift and being subjected to gift tax laws thereby. However, the statutory modifications have sought to make a dent in such an arrangement, particularly by section 37(4) of the Finance (No. 2) Act 1971. The courts have also not fully comprehended the value of the H.U.F. as an instrument of ushering in economic stability in a larger section of the society, mainly because of their obsession that all socio-economic problems concerning the individual—be it of old age or of providing employment—are the responsibilities of a welfare state. Alien jurisprudence seems to have alienated the understanding of the ethos as well as of the existing institutions. The H.U.F. is a case in point where technicalities seem to have robbed the spirit of the doctrine of H.U.F. Even in a family with no inherited property, the way was wide open for the earning member, usually the head of the family, to channel his savings into the joint family. There was no bar to anyone throwing whatever he liked into what is called in our current legal jargon the hotchpotch of the joint family. The doubt as to whether such transfers would be regarded as gifts for purposes of gifts tax, was removed by the Supreme Court in *Goli Eswariah* v. *Commissioner of Gift-Tax*,[18] but the amendment Act did put a severe restraint on the further growth of property in the hands of joint families.

It has been noticed that the jointness and unity of the families are kept by the members contributing to the family sources without making an express declaration in any formal way. Thus a sizeable accretion of the deceased, who had been *karta* of the family, grows with the supplemental additions from his sons. The character of such estate becomes that of the H.U.F. as borne out of the intentions and circumstances giving unity of possession to members of the family governed by *Mitakshara* when no partition had taken place. The family continues to remain undivided and joint for purposes of holdings and other properties in such cases. In *Mallesappa Desai* v. *Desai Mallappa*,[19] it was held that it inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and who desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. In *A. Ranganathan* v. *Controller of Estate Duty*,[20] it was held that for the purpose of impressing individual property with the character of joint family property no document is necessary. A unilateral declaration by the coparcener to the effect that he was making his separate acquisitions into joint family properties will be sufficient for the purpose.

---

18. [1970] 76 I.T.R. 675 (S.C.).
19. [1961] 3 S.C.R. 779.
20. [1963] 49 I.T.R. (E.D.). 137.

The foregoing may be a pointer to suggest an indepth study of these and many other important issues. However, the authors have concentrated their efforts on dealing with a very useful aspect of tax laws in a lucid manner. By and large the subject has been treated in an analytical way. Statutory provisions and case law form the core of the subject. Indeed this has added to the value of the book for tax practitioners. But their critical approach has further enhanced the value by listing and discussing a number of unresoved judicial controversies. All these may well provoke debates on policy issues and thus enable the legislature and the courts to shape the contours of fiscal laws properly. In this regard the book may also be of immense utility to researchers and policy makers.

*D.C. Pandey**

*Associate Research Professor, Indian Law Institute.