

Unit - 2

- * Assessment of Hindu Undivided families
- * Assessment of firms & Association of persons.

Hindu undivided family

- * A Hindu undivided family consists of two types of members.
 - (a) Members who are entitled to maintain maintenance only, eg. female members of the family.
 - (b) Members who are entitled to demand their share on a partition of the family. These persons are called coparceners.
- # For income tax purpose a Hindu Undivided family is one which has the common property of the family and at least two members.

(1) Common property of the family -

- (a) Ancestral property; and/or
- (b) Any other property of the family acquired with aid of ancestral property; and/or
- (c) Any property acquired by a member of the family by his personal ~~efo~~ efforts without the aid of ancestral property, but treated by him as the property of the family.

(2) H.V.F may consist of :-

- (a) All persons lineally descended from a common ancestor and include their wives and unmarried daughters;
- (b) A male and widow or widows of a deceased male member or members;
- (c) Husband and wife
- (d) Brothers only
- (e) Widows of the members of the family.

⊙ Karta of the family.

The senior most male member of the family is ordinarily regarded as the Karta of the family.

If he surrenders his right of management, a junior male member may be appointed by karta.

② Two schools of H.U.F according to Hindu law

+ Mitakshara school:-

It applies to the whole of India except the state of West Bengal, Assam and some parts of Orissa.

+ Dayabhaga school:-

It applies only in West Bengal, Assam and some parts of Orissa.

■ Jain and Sikh undivided families

They are also treated as Hindu Undivided Families unless special circumstances the assessee claims that it should not to be treated as such.

Residence of Hindu Undivided Family

A Hindu undivided family is resident in India if the control and management of its affairs are situated wholly or ~~partly~~ partly in India.

A Hindu Undivided family is said to be 'not ordinarily resident' in India in any previous year if :-

- (i) the manager of the family [is said] has been a non-resident in India in 9 out of 10 previous years preceding [under] that previous year; or
 - (ii) The manager of the family has been in India for a period amounting in all to 729 days or less during the 7 previous years preceding that previous year.
- Difference between a Hindu undivided family and a firm.
- (i) The interests of partners in a firm are determined by the Partnership Act and the interests of members of H.U.F ~~are~~ are decided by the Hindu Law.
 - (ii) If a partner is adjudicated an insolvent he ceases to be the partner of the firm but a member of H.U.F continues to be its member even after becoming insolvent.
 - (iii) A firm is [disc] dissolved after the death of a partner, while the death of a member of H.U.F does not affe

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- affect its continuance.
- (iv) Partners have a right to inspect the books of account and other documents to the firms, whereas the members of the family do not have the right.
 - (v) Without the consent of all other partners, a new partner cannot be admitted in the firm but the consent of other members of the family is not required in the case of any new entrant in the family, but he/she gets membership automatically by birth.
 - (vi) In a firm, there cannot be more than 50 members, whereas in the family there is no such restriction.
 - (vii) The liability of the partners is unlimited but the liability of the members of the H.U.F is limited to the extent of the assets acquired of the family.

■ Incomes which are not treated as family Income.

- (1) The personal earnings including income from the separate property of a member of the Hindu Undivided Family, even though he has sons shall be assessed as the income of an individual.

2)) Income from the self-acquired property of a father is assessable as the income of an individual. If the father makes a personal gift of his self-acquired property to his major son, the income from such property shall be ~~so~~ assessed as the personal income of the son like ~~(like)~~ an individual.

3)) After the death of her husband, if the wife is the sole owner of the property of the family she will be assessed as an individual in respect of income from such property.

4)) If a member of the joint family carries on his personal business, the income from business shall be assessed as the income of individual even if the capital employed in the business has been obtained by taking a loan from the funds of the family.

5)) Income of the members of the family from a partnership business carried on by them on personal account shall be assessed as the income of the firm.

6)) Income from an impartible estate is assessed in the hands of the holder of the estate as an individual.

* Assessment of Hindu Undivided Families.

A Hindu Undivided family is a distinct separate assessee. The assessment is done in the name of the family just like an individual, but the rules governing the residence of the family are different from those of an individual.

* Salary paid to Members of family

Salary is paid to any member of the family including the manager, it will be allowed as an admissible deduction in computing the total income of the family only if that member has rendered some service or has, in any manner, contributed to the earning of the family and the salary is genuine and not excessive.

■ Remuneration earned by a member of H.U.F as Director or Partner

If the funds of a H.U.F are invested in a company or partnership firm, any remuneration received by a member of the H.U.F as a director in the said company or as a partner in the said firm may be treated as his personal income or the income of the H.U.F.

Deductions from Gross Total Income for Computing Total Income.

A Hindu Undivided Family is ~~entitled~~ entitled to the deduction from its gross total income while computing its total income under the following sections:

80C, 80D, 80DD, 80G, 80GGA, 80IA, 80IB, 80IBA, 80IC, 80IE, 80IIA, 80IIAA and 80TTA.

* Income Tax slabs under the New Tax Regime for Individual or HUF for Financial Year 2020-21

Total Income	Applicable Tax Rate
Up to ₹ 2.5 lakh	Nil
₹ 2.5 lakh to 5 lakh	5%
₹ 5 lakh to 7.5 lakh	10%
₹ 7.5 lakh to 10 lakh	15%
₹ 10 lakh to 12.5 lakh	20%
₹ 12.5 lakh to 15 lakh	25%
₹ 15 lakh and above	30%

■ Rate of Surcharge on Income Tax #

S.No.	Particulars	Rate of Surcharge on Income Tax
(a)	Where the total income exceeds ₹ 50 lakh but does not exceeds ₹ 1 crore	10%
(b)	Where the total income exceeds ₹ 1 crore but does not exceeds ₹ 2 crores.	15%
(c)	Where the total income exceeds ₹ 2 crores but does not exceeds ₹ 5 crores	25%



Assessment of Partnership firms

Meaning of Partnership, Firm and Partner

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

+ These persons are called partners and collectively they are called 'firm'.

+ In the Income Tax Act, the term 'partner' also includes (i) a minor admitted to the benefits partnership, and (ii) a partner of a limited liability partnership.

→ A. Broadly partnership firm can be divided into two categories.

1. Limited liability partnerships:-

In such a case the total liability of the partners is limited to the extent of capital contributed by them to the firm.

2. Unlimited liability partnership:-

In such a case the liability of the partners is unlimited. It means the creditors and money lenders of the firm can recover

their dues from the assets of the firm as well as from the personal assets of the partners.

► B Further, the limited liability partnership and unlimited liability partnership can be divided into two categories.

1. Firm fulfils the conditions of section 184 of the Income Tax Act :-

In such a case, in computing the income chargeable under the head 'Profit and Gains of Business or Profession' the interest and remuneration payable to partners are deductible subject to the provisions of section 40(b).

2. Firm does not fulfil the conditions of section 184 of the Income Tax Act :-

In such a case provisions of sections 185 apply and in computing the income chargeable under the head 'Profits and Gains of Business or Profession' the Interest and remuneration payable to partners are not deductible.

① Who can be partner?

+ Individual :-

Individual who are major and of sound mind can be the partner of a firm.

+ Hindu Undivided family :-

Undivided family cannot be a partner in a partnership firm.

Similarly, the manager of the family cannot enter into a partnership with the family in his individual capacity.

+ Firm :- A firm cannot enter into a partnership with any other firm or an individual.

+ Limited Liability Partnership :-

Limited Liability Partnership (LLP) can form a partnership firm with an individual or other persons.

+ Company :-

Under the Companies Act, a company is a separate entity and possesses a legal personality, hence two or more companies can become partners in a firm.

+ Trust :- A Trust can be a partner of a firm.

Preparation and Filing of Return of Income.

* Return of Income

Return of income is that format in which the assessee furnishes information as to his total income tax payable. The format for filing [the] of returns by different is notified by the Central Board of Direct Taxes.

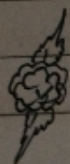
👤 Voluntary Return of Income

- 1) Return by an individual, HUF, AOP, BOI or an artificial juridical person:-
[Sec. 139(1)] Every individual, HUF, AOP, BOI or an artificial juridical person shall file the return on or before the due date, of his total income or the total income of any person, if the income without giving effect to the provisions of sections 80C to 80U exceeded the maximum amount which is not chargeable to income tax.

- 2) Return by a Company or a firm
Every company or a firm shall furnish on or before the due the return in respect of its income or loss in every previous year.

- 3)) Returns by Ordinarily Resident person having assets located outside India
An ordinarily resident person, who at any time during the previous year (a) holds, as a beneficial owner or otherwise any asset located outside India or has signing authority in any account located outside India or
(b) A beneficiary of an asset located outside in India, shall furnish on or before due date a return in respect of income or loss of for the previous year.
- 4)) Return on behalf of a Charitable Trust etc
If the total income of a charitable or religious trust exceeds the non-taxable maximum limit, it shall furnish a return of income for the previous year on or before the due date.
- 5)) Return on behalf of a Political Party
The chief executive officer of every political party, if the total income of the party exceeds the maximum amount which is not chargeable to tax, furnish a return of income of the previous year on or before the due date.
- 6)) Return by other Persons:- If the total income of a person ~~excess~~ exceeds

the maximum amount which is not chargeable to tax, furnish a return of income of the previous year on or before the due date.



Mandatory Requirement to File Return of Income

A person shall be mandatorily required to file his return of income, if during the previous year, he has:

- (i) deposited more than ₹ 1 crore in one or more current account maintained with a bank or a cooperative bank; or
- (ii) Incurred more than ₹ 2 lakh for himself or any other person for travel to a foreign country; or
- (iii) Incurred more than ₹ 1 lakh towards payments of electricity bill; or
- (iv) He fulfils such other conditions as may be prescribed.
- (v) Person being Resident other than RNOR, having any asset located outside India or signing authority in any account located outside India or is beneficiary of any asset located outside India.
- (vi) Individuals, HUFs, AOPs or BOIs and artificial juridical persons having total income exceeding basic exemption limit before giving effect to the provisions of Chapter VI - A or exemption u/s 54/54B/54D/54EC or 54F.

⊙ Return of Loss

If any person who has sustained a loss in any previous year under the head 'Profits and Gains of Business or Profession' [Non-speculative business (Sec. 72), speculative business (Sec 73), Specified business (Sec 73A) or 'Capital Gains' (Sec. 74) or owning and maintaining race horses (Sec. 74A) and claims that the loss should be carried forward, he should furnish a return of loss on or before the due date.

⊙ Due Date for Filing Return

- (a) Where the assessee is (i) a company, or
- (ii) a person whose accounts are required to be ~~out~~ audited or
- (iii) a working partner of a firm whose accounts are required to be audited, under this Act or any other law - 31st October of the Assessment year.
- (b) Assessee who is required to furnish a report from C.A regarding international transactions (u/s 92E) - 31st October of the Assc Assessment Year.
- (c) In any other case - 31st July of the Assessment year.
- (d) Due date of Filing of Belated or Received ITR from Assessment Year 2021-22 onwards is 31st December of the Assessment Year or

or before completion of assessment, whichever is earlier.

+ Notice under section 142(1) (i) By Prescribed Income Tax authority.

→ Notice where Return Filed.

Assessing Officer (w.e.f. Assessment Year 2021-22), Prescribed Income Tax Authority may serve notice on any person, who has furnished a Return u/s 139/115 WD requiring him as under

+ Requirement

To produce required accounts and documents

To furnish such information in writing, including a statement of Assets and Liabilities, as may be required by the assessing officer.

Conditions

Books should not relate to a period more than three years prior to the previous year.

Prior approval of JCIT is necessary before requiring the assessee to furnish a statement of assets and Liabilities not included in books of accounts.

Manners of furnishing the Return of Income

S.No	Person	Condition	Manner of furnishing return of income
(i)	(ii)	(iii)	(iv)
1.	Individual or hindu undivided family.	<p>(a) Accounts are required to be audited under section 44AB of the Act;</p> <p>(b) An individual resident of India and of the age of 80 years or more at any time during the previous year, who furnishes the return in Form No ITR-J (SAHAT) or Form No. ITR-4 (SUGAM)</p> <p>(c) In any other case.</p>	<p>Electronically under digital signature</p> <p>(A) Electronically under digital signature; or</p> <p>(B) Transmitting the data in the return electronically under electronic verification code or</p> <p>(C) Transmitting the data in the return electronically and there after submitting the verification of the return in form ITR-V; or</p> <p>(D) Paper form</p> <p>(A) Electronically under digital signature; or</p>

(B) Transmitting the data in the return electronically under electronic verification code; or

(C) Transmitting the data in the return electronically and thereafter after submitting the verification of the return in Form ITR-V.

2. Company Form ITR-6

In all cases.

Electronically under digital signature.

3. A person required to furnish the return in Form ITR-7

(a) In case of political party
(b) In any other case.

Electronically under digital signature

(A) Electronically under digital signature; or

(B) Transmitting the data in the return electronically under electronic verification code; or

(C) Transmitting the data in the return electronically and thereafter after

4. Firm or limited liability partnership or any person who is required to file returns in form ITR-5

(a) Accounts are required to ~~the~~ be audited under section 44AB of the Act

(b) In any other ~~case~~ case.

submitting the verification of the return in Form ITR-V

Electronically under digital signature;

(A) Electronically under digital signature; or
(B) Transmitting the data in the return electronically under electronic verification code; or
(C) Transmitting the data in the return electronically and there-after submitting the verification of the return in Form ITR-V

E-Filing of Income Tax Returns

According to section 139(1) of the Income Tax Act, 1961 of India, individuals whose total income during the previous year is more than the maximum amount not chargeable to tax, should file their income tax returns (ITR)

Advantages of e-filing of Returns:

1. Convenient and secure online transaction.
2. Available anytime, anywhere.
3. Higher data accuracy.
4. Faster processing of Returns and Quicker Refunds.
5. E-filing of Returns is paperless.

Steps for E-filing of Income Tax Return

1. Visit w.w.w. incometaxindiaefiling.gov.in.
2. Select the required ITR form and download Return Preparation software for the selected form.
3. Prepare your return offline at your convenience and follow simple steps to upload your Return.

4. On successful upload take the print of the acknowledgement form if the Return is digitally signed or under electronic verification code.

5. In case the Return is not digitally signed, or under electronic verification code, take the print of IR ITR-V form.

6. Send one copy ITR-V form duly signed and verified by Ordinary Post or speed Post within 120 days from the date of filing of the Return at the following address:
Income Tax Department, CPC
Post Bag No. 1,
Electronic City Post Office
Bengaluru - 560100 (Karnataka)

① Assessment as a firm.

1. A firm shall be assessed as a firm, if:
 - (i) the partnership is evidenced by an instrument; and
 - (ii) the individual shares of the partners are specified in that instrument.

2. A certified copy of the instrument of partnership deed shall accompany the return of the income of the firm for the previous year relevant to the assessment year in respect of which firm is first sought.

3. If once a firm is assessed as a firm for any assessment year, it shall continue to be assessed as firm for every subsequent year if there is no change in the constitution of the firm.

4. If any change occurs in the previous year, the firm shall furnish a certified copy of the ~~new~~ revised partnership deed along with return of income for the relevant previous year.

5. If there is, on the part of the firm, any failure to comply with the provisions of section 144, failure to file the return of income, failure to comply with the terms of a ~~not~~ notice issued under section 142(1)

or 143(2), the firm shall be assessed as a firm, in such a case the following provisions shall apply: -

(a) No deduction by way of payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by the firm to its partners shall be allowed in computing the income chargeable under the head 'Profit and Gains of Business or Profession'.

(b) Such interest, salary, bonus, commission or remuneration shall not be chargeable to tax in the hands of partners under the head 'Profits and Gains of Business or Profession'.

Assessment when Section 184 not complied with

(1) Where a firm does not comply with the provision of section 184 for any assessment year, the firm shall be assessed for the assessment year as a firm.

(2) No deduction by way of payment of interest, salary, bonus, commission or remuneration, by whatever name called made by firm to its partners shall be allowed in computing the income

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chargeable under the head 'Profit and Gains of Business or Profession'.

(3) Such interest, salary bonus, commission or remuneration shall not be chargeable to tax in the hands of partners under the head 'Profits and Gains of Business or Profession'.

Adjustment of Profit & Loss Account

If a profit and Loss account is given for the ~~purpose~~ purpose of computing the total income of the firm, the profit or loss per profit and loss account shall be ~~adjusted~~ adjusted in the same manner as done in the computing of income under the head 'Profits and Gains of Business or Profession'.

From the gross total income deductions permissible under section 80C to 80U shall be deducted and the balance shall be the total income of the firm. It is important to note that out of sections 80C to 80U, only the following sections are applicable to a firm:

Secs. 80G, 80G(A), 80G(C), 80IA, 80IAB, 80IB, 80IBA, 80IC, 80IE, 80ITA and 80J3AA.

Computation of Income of a partner from the firm

(a) Remuneration :-

Wherever and salary, bonus, commission or other remuneration is received by a partner as per the provision of the partnership deed. [but not exceeding as provided in section 40(b)], it is not taxable under the head 'salaries' because a partner of the firm is not an employee of the firm.

(b) Interest :-

When any interest is received by a partner as per the provisions of the partnership deed [but not exceeds 12% h.a.] such income is also treated as a part of the business income and included under the head 'Profits and Gains of Business or Profession'.

(c) Rent :-

If a partner lets out his buildings to the firm, the rent received by him will be taxable under the head 'Income from house property'.

(d) Share of profit :-

The share of profit of a partner in the firm is exempt.

exempt under section 10(2A). Hence it will not be included in his income.

Important Notes regarding computation of Book profit

- (1) Brought forward unabsorbed business loss is not deductible to arrive at the book profit.
- (2) Non-business incomes and their concerned non-business expenses are not included in computing Book Profit.

⊙ Alternate Minimum Tax (AMT)

A firm may be liable to pay AMT

Change in the Constitution of a firm

+ Meaning :-

Change in the constitution of a firm means as under :-

- (i) When one or more partners cease to be partners or one or more new partners are admitted in a firm, provided that at least one of the old partners continues to be a partner in the firm even after the aforesaid change it will be a change in the constitution of the firm.
- (ii) When there is a change in their respective share or in the share of some of them, it is said to be a change in the constitution of a firm.

Assessment after a change in the Constitution:

In case of a change in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

Succession of one firm by another firm.

- (i) All the partners of a firm are replaced by other partners.

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(ii) The firm is dissolved and reconstituted in the reconstituted firm all the partners may be the new partners or a few of them may be old ones.

Dissolution of a Firm or Discontinuance of Business

~~Dis~~ Discontinuance means complete cessation of business. It is not merely a change of ownership or a change in the constitution of the firm.

+ The provisions regarding the assessment of such business are as given ahead:

(i) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place.

2) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable by the firm.

(3) Where such discontinuance or dissolution takes place any proceeding in respect of the assessment year commenced, the proceedings may be continued against persons, referred to in (2) above.

Assessment of association of persons and Body of individuals

Association of persons:- When two or more persons associate themselves for managing a property for the purpose of production income, or when there is a combination of persons formed for the promotion of a joint enterprise, they are said to have formed an association of persons provided that it is not a Hindu undivided family, company or local authority.

+ Body of individuals :-

When two or more individuals associate themselves to earn income, it is called Body of Individuals.

② Difference Between AOP and BOI

S.No	Basis	AOP	BOI
1.	Creation	Created voluntarily	Created by operation
2.	Members	AOP may consist individual or non-individual.	BOI consist individual only.
3.	Condition	AOP means two or more persons joining together for a common purpose to earn income and without an intention to form a partnership.	The business run by a widow or her behalf or on behalf of her children would be assessed as BOI.
4.	Example	Co-Heirs, Co-Legates or co-owners joining together for common purpose shall be chargeable as AOP.	Co-executors, co-trustee are assessable as BOI.

③ Computation of share of a member of association of persons or Body of individuals

The share of a member of AOP or BOI

in the income of the AOP/BOB shall be computed as under:-

(1) Any interest, salary, commission or other remuneration paid to any member in respect of the previous year shall be deducted from the total income of the AOP/BOB and the balance ascertained and ~~apportioned~~ apportioned among the members.

(2) If the amount apportioned to a member under clause (1) is a profit, any salary, interest, commission or other remuneration paid to the member by the AOP/BOB in respect of the previous year shall be added to the amount, and the result be treated as the member's share in the income of the AOP/BOB.

(3) If the amount apportioned to a member under clause (1) is a loss, any salary, interest, commission or the remuneration paid to the member by the AOP/BOB in respect of the previous year shall be adjusted against that amount and the result be treated as member's share in the income or loss of AOP/BOB.

- (4) The share of a member in the income or loss of AOP/BOB, as computed in the manner described in above clauses, (1) to (3) shall, for the purpose of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the AOP/BOB has been determined under each head of income.

Exemption of share of a Member

- (1) If the association of person or body of individuals is taxed at the maximum marginal rate or any higher rate, the share of a member shall not be included in his total income at all.
- (2) If no income tax is chargeable on the total income of the association or body the share of a member therein shall be chargeable to tax as part of his total income, and no credit rebate will be allowed.
- (3) If tax has been paid by the association or body at normal rates, income tax shall not be payable in respect of such share, although it shall form part of the total income of the member. It means on such share [although it shall form part of] income tax relief shall be allowed at the average rate of tax.

Tax Liability

⇒ Charge of tax where shares of members in the Associations of Persons or Body of Individuals are unknown.

(1) If the individual shares of the members of an AOP or BOI in the income of such AOP or BOI are indeterminate or unknown, the tax shall be charged on its total ~~gross~~ income at the maximum marginal rate.

(2) If the total income of any member of such AOP or BOI is chargeable to tax at a rate which is higher than the maximum marginal rate the tax shall be charged on his total income at such higher rate.

Charge of tax where share of member in the AOP or BOI are known

(i) None of the members is liable to tax:- Where none of the member of an AOP or BOI has income in excess of the ~~max~~ maximum amount which is not chargeable to tax, the AOP or BOI shall pay tax on its income at same rates as are applicable to an individual or ~~not~~ normal rates.

(2) Members ~~liable~~ liable to tax at a rate higher than maximum ~~or~~ marginal rate :-

The total income of any member of the AOP or BOG for the previous year exceeds the minimum taxable limit, the tax shall be charged on its total income at the maximum marginal rate.

(3) Members liable to tax at a rate higher than maximum marginal rate :-

Where any member of such Association or Body is chargeable to tax for the previous year at a rate or rates which is higher than the maximum marginal rate, the tax shall be charged on that portion or portion of the total income of the associations or Body which is relatable to the share of such member at such ~~higher~~ higher rate as the case may be, and the balance of the total income of the Association or the Body shall be taxed at the maximum marginal rate.

Maximum Marginal Rate :- It means the rate of income tax applicable in relation to the highest slab of income in the case of an individual, Association of Person or Body of individuals as specified in the finance Act of the relevant year.