Prepared by : Adv. Mandar Vaidya,

Advocate: High Court.

Family Settlement/Arrangements & Income Tax Act.

1} Except where there is a specific provision of the IT Act which derogates from any other statutory law or personal law, the provision will have to be considered in the light of the relevant branches of law.- ***CIT V/s. Bhagyalakshmi & Co. 55 ITR 660 (SC***).

Halsbury's Law of England defines a family arrangement as an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family, either by compromising doubtful or disputed rights, or by preserving the family property or the peace and security of the family, by avoiding litigation or by saving its honour.

While many family disputes reach the courts, a majority of the cases are resolved, with some settlement arrived at by and

between the family members. In some cases, the family members may decide to arrive at an agreement for allocation and realignment of their rights, to settle a present or anticipated dispute, without having to take legal recourse. All such cases, where family members agree to change and realign their respective rights in various assets owned by the members, either through the courts or even outside it, are called family settlement/arrangements. The family settlement or arrangement need not necessarily be entered into in writing and can be agreed upon orally.

The term ‘family’, for the purpose of family arrangement/s is to be construed in a wider sense and the existence of a common tie or relation is considered enough, to treat a particular person as the member.

The existence of legal rights or succession rights to the family property, is not necessary for the purpose of arriving at a conclusion of a person being a member. The subject matter of the

family settlement, can only be either a joint property or a common property. A self-acquired property cannot be part of a family arrangement.

Principles governing family arrangements

Family arrangements are governed by principles which are not applicable to dealing between strangers. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account (see para 304 of Halsbury's Laws of England).

Should be bonafide.Since the consideration for a family arrangement is partly value and partly love and affection,

the pecuniary worth of the consideration is not regarded too closely. The court will not, as a general rule, inquire into the adequacy of the consideration, but there is an equity to set aside a family arrangement where the inadequacy of the consideration is so gross as to lead to the conclusion that the party either did not understand what he was about, or was the victim of some imposition (see para 312 of Halsbury's Laws of England).

What is family? The word "family" is not to be interpreted in the narrow sense of members of a joint Hindu family as defined in Hindu Law but it would include wide range of persons who belong to one family in its comprehensive sense. The basis on which such family settlements are held as valid and binding between all parties is the mutual consideration which flows between the parties while putting an end to the claims and counter claims between them. It has been held under the law of contract that it is

lawful consideration for a party when he gives up his claim to any property in return for any payment or transfer of property made to him or any obligation undertaken by the party. Existence of the right in the property is not necessary in order to make the family settlement valid and binding for a valuable consideration. The existence of the dispute or a threatened dispute between the members of the family is considered to be a precondition for a valid family settlement and such disputes and the consequent giving up of claims and counter-claims between the various members of the family constitutes good and valid consideration between the parties for enforcement of the rights and obligations created by such a family settlement. The family settlement, therefore, is not founded on existing rights or liabilities but rather on existing claims and disputes between the parties which are amicably resolved notices may be given by contending parties, even suits may

be filed matters may be referred to arbitration and award may work out as family settlement.

In ***Maturi Pullaiah & Anr. vs. Maturi Narasimham & Ors. AIR 1966 SC 1836*** , the apex Court has held as follows :

"Briefly stated, though conflict of legal claims *in praesenti* or *de futuro* is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it."

The real consideration in a family arrangement is based upon a recognition of a preexisting right hence, there is no transfer of property at all. The Hon'ble Apex Court in ***CGT vs NS Getti Chettiar 82 ITR 599 (SC)*** based its observation on that ground in a case of unequal family partition and held that it is not transfer, hence no gift tax liability is attracted.

2} The Hon'ble Supreme Court in ***Sahu Madho Das V/s. Pandit Mukand Ram AIR 1955 SC 481*** has laid down the principles of family settlement and the requirement of registration of a document of family settlement. The Hon'ble Apex Court observed as under:

" *It is well settled that a compromise or family settlement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of others, as*

they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and so strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its' various members and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number and are content

to take such properties as are assigned to their shares as gifts pure and simple from ……..".

A family arrangement does not result into a transfer or a conveyance ***Ramcharan Das V/s. Girija Devi AIR 1966 SC 323***. In this case, the Hon'ble Apex Court held as under:

> In *Mst. Hiran Bibi v. Mst. Sohan Bibi AIR 1914 PC 44* (3) L.R. 53 I.AII. approving the earlier decision in *Khunni Lal v. Govind Krishna Narain IL..R. 33. An. 356*, the Privy Council held that a compromise by way of family settlement is in no sense an alienation by a limited owner of family property.
>
> Once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest.
>
> As the Privy Council pointed out in *Mst. Hiran Bibi's*(*supra*), case, in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties.

It is not necessary, as would appear from the decision in *Rangasami Gounden v. Nachiappa Gounden L.R. 46 I.A. 72* , that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection.

3} That apprehended conflict can also be a ground for such settlement - AIR 1932 Cal 600, AIR 1932 Cal 664.

4) Even the parties to family settlement need not belong to the same family. The word ‘family’ in this context is quite flexible. The family is not to be taken in its rigid connotation in common parlance. It is enough if the parties are relations. Even collaterals having a remote common ancestor may join in an arrangement and can have relinquished or altered even their interest in

expectancy. - **Krishna Baharilal vs. Gulab Chand & Ors**. ***AIR 1971 SC 104***. The court, in that case, encountered by the question whether the want of direct family bond amongst the parties to the settlement detracts from the family character of the settlement. The answer is in the negative. Even though the parties were nothing but mere relations and not members of the same family, the dispute between the parties was in respect of certain property which was originally owned by their common ancestors, that was considered sufficient for a family settlement or arrangement. Thus, the family for the purpose of such settlement has a broad sense to embrace parties not belonging to the family.

THE STAMP ACT.

5) ***Cohen and Moore v. Commissioners of Inland Revenue 1933(2) KB 126,*** the court held that the Stamp Act deals only with documents.

6) **Section 35** of the Stamp Act, *inter alia*, states that no instrument chargeable with duty shall be admitted in

evidence for any purpose or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. The proviso to this section, however, permits an unstamped/insufficiently stamped instrument to be admitted in evidence, in case the document is stamped and the penalty provided by law is paid. Consequently, an instrument that is unstamped or insufficiently stamped does not suffer from a fatal defect, and it is not rendered inadmissible in evidence altogether. If the stamp duty along with the requisite penalty is paid, the document would become admissible in evidence.

Registration of the family deed.

7) Section 17 of the Registration Act, 1908 enlists the documents which shall be got registered under the Act. Clause (b) of Section 17(1) reads:

—other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

Section 17(2), inter alia, provides that nothing in clause(b) of Section(1) of Section 17 applies to:

(v) any document other than the documents specified in sub-section(1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject- matter of the suit or proceeding].

8) Section 49 of the Registration Act provides that no documents required by Section 17, inter alia, to be registered shall affect any immovable property comprised therein; confer any power to adopt; or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Consequently, unlike under Section 35 of the Stamp Act, an instrument/document that is compulsorily registrable, but is not so registered, is denuded of its efficacy and it is not receivable in evidence, and the law does not enable the party relying upon the instrument/document to unilaterally get the same subsequently registered.

9) It is settled position that a family settlement does not require registration- *Kale V/s. Dy. Director AIR 1976 SC 807; Shahu Madho das v/s. Mukand Ram AIR 1955 SC 804*. Hence no registration is required since there is no conveyance involved in this family settlement; the right/title/interest of the all the family members already existed in the property.

10) In ***Tek Bahadur Bhujil v. Debi Singh Bhujil AIR 1966 SC 292*** to submit that where the document was drawn up only to serve the purpose of proof or evidence of what had been decided by the parties, and not to form the basis of their rights in any form over the property, the same constitutes a mere memorandum recording something that has already taken place, and such a document would not require registration or stamping. Same view in ***Roshan Singh V. Zile Singh AIR 1988 SC 881*** .

11) **Sita Ram Bhama v. Ramvatar Bhama dated March 23, 2018**

Brief facts: In the case, Plaintiff and respondent were real brothers. Their father had decided to divide his self-acquired movable and immovable properties between Plaintiff and Defendant, however he did not execute any settlement deed and died in 1993. Later, the plaintiff and defendant recorded a memorandum of settlement as decided by their father. The settlement was signed by the mother as well as two sisters of the parties.

Later on account of dispute of property between the parties, the Plaintiff filed the said memorandum of family settlement in Court. However, the Respondent opposed the same contending that as the impugned document was not registered and not properly stamped, the same was not admissible in evidence.

In view of the aforesaid facts and circumstances, two issues were confronted by the Supreme Court pertaining to evidentiary value and admissibility of family settlement document.

Firstly, whether memorandum of family settlement could have been accepted in evidence– With reference to this issue, the Supreme Court observed that as theso called family settlement takes away the share of the sisters and mother, therefore the same was compulsorily registrable.

That the impugned document was not mere memorandum of family settlement rather a family settlement

itself. In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, the document was compulsorily registrable under Section 17 of the Registration Act.

To arrive at its decision, the Court also relied on the precedent ***Kale and Ors. v. Deputy Director of Consolidation and Others[1].*** The Supreme Court in the case has enumerated the essentials of a family settlement and states that **registration would be necessary only if the terms of the family arrangement are reduced to writing.**

Secondly, whether the impugned document of family settlement which though was inadmissible in evidence could be used for any collateral purpose– With reference to this issue, the Supreme Court held that in a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds of joint properties by metes and bounds.

That an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. .

12) In ***K. Panchpagesa Ayyar & Anr. V. Kalyansundaram Ayyar & Ors. AIR 1957 Madras 472***, it was observed:

If the parties elect to reduce the transaction of partition into writing with the intention that the document itself should constitute the sole repository and the only appropriate evidence of the partition and to serve, so to speak, as a document of title, the writing must be regarded as the formal and operative deed of partition and as such requiring registration under Section 17, Cl. (b), provided the property affected is of the value of over Rs. 100. It is not the less a partition deed because its terms and contents were previously discussed and decided upon and then alone put into writing. But if the document is drawn up only with the intention of reciting an already completed oral partition and is merely in the minutes or incidental recital of a fait-accompli it is not compulsorily registrable.

12) Thus documents so drawn up may fall under two heads viz.,

(a) a document may be drawn up with the intention of reciting an already completed oral partition or

(b) with that of superseding the oral bargain and formally reducing the terms of the partition to the form of a document.

In the former case when the document itself does not effect any partition but which maintains a partition already effected, or which simply acknowledges, or makes an admission, as to a prior partition, or which merely gives a right to have a document of partition executed it is not an instrument of partition which is compulsorily registrable.

But when the document is not intended by the parties to be merely the minutes or incidental recital of a fait accompli, i.e., of a partition that had already taken place, perhaps by oral arrangement, and was complete when the document was executed but forms an integral and essential part of the partition transaction i.e., of the process of dividing the property and was

intended to be the only evidence of and to be the formal instrument of partition superseding and embodying the oral bargain and was intended to serve as the sole repository of the arrangement of partition arrived at by them, and to be the only evidence, the document would undoubtedly require registration. The question to be determined in effect is, does the document constitute a bargain between the parties i.e., is it a deed of partition effected in praesenti or is it merely the record of an already completed transaction, i.e., partition or to put it shortly is it a speaking partition instrument .

13) ***In The Chief Controlling Revenue Authority v. Rasikchandra Tulsidas Patel (1958) 50 Bom. L.R. 1379***, the Court broadly classified deeds pertaining to partitions as follows:

- When you have a joint Hindu family, you may have a partition effected, which partition may only result in a

division of interest. Members of the joint family may not specifically divide the joint family property. The result of this would be that the members of the joint family would cease to be coparceners and would become tenants-in-common and would hold the property as tenants-in-common. At a subsequent stage by a document the tenants-in-common may specifically divide the property. In such a case, although in one sense the partition has already taken place, still the fact that the tenants-in-common are specifically dividing the property would attract the application of Section 2(15).

- You may have another case where a partition may take place not only in interest but also a specific partition of property. The coparceners may by this partition divide the property which belongs to the joint family and then you may have a subsequent document which may recite the fact not only of partition in interest but the actual partition

specifically of the property of the joint family. In such a case it is difficult to understand how the document which merely admits and acknowledges a past event, which recites a partition which has already taken place, and which does not in any sense of the term bring about a partition, can be considered to be an instrument of partition under Section 2(15).

- The third case may be where the document itself may bring about both a division in interest and a partition with regard to specific property. That would be a clear case of an instrument of partition partitioning the joint family property. If these principles are understood and appreciated, then there is not much difficulty in deciding in which category the document we are considering falls.

The Court further emphasized on one of the tests which may be safely applied, that is :

—Has everything which is necessary to be done in order to bring about a partition been done before the document is executed? If everything has been done, then there is nothing which the document brings about. If something is left to be done which is done by the document, then the document may be considered as an instrument of partition.

The court held that members of a joint family who have effected a partition, though not an actual physical partition by metes and bounds, cease to be coparceners but continue to be tenants in common. If, at a subsequent stage the tenants in common specifically divide the property, the document by which the property is partitioned would attract the application of Section 2 (15) of the Stamp Act as it would be an instrument of partition.

14) Where one of the brothers relinquishes all right/title/interest in an inherited property, in favour of another brother, in consideration of certain amount, ***Article 52 (a)*** Of the

Stamp Act is applicable. Under this article, the stamp duty will be Rs.200/- .

Release *whereby a person renounces a claim upon other person or property*

If the release is of an ancestral property in favour of certain specified relatives without any consideration. Viz. if it is executed by or in favour of brother or sister (children of renouncer's parents) or son or daughter or son of predeceased son or daughter of predeceased son or father or mother or spouse of the renouncer or the legal heirs of the above relations..

15) Article 34-Amendment from April 2015- if residential & agricultural property is gifted to husband, wife, son, daughter, grand son, grand daughter, wife of deceased son, the duty would be Rs.200/-.

Provided further that, if the residential and agricultural property is gifted to husband, wife, son, daughter, grandson, grand-daughter, wife of decesed son, the amount of duty chargeable shall be rupees two hundred."

INCOME TAX ACT.

15} A reference may be made here to the decision of the Hon'ble Madras high Court in the case of ***KAY ARR Enterprises 299 ITR 348 (Mad***.). In this case there was a rearrangement of share holding between the family to avoid disputes. The Hon'ble Madras High Court held that this was not a case of 'transfer'. Also a reference may be made to the decision of the Hon'ble Apex Court in the case of ***Kale V/s. Dy. Director {1976} 3 SCC 119***- family arrangements are governed by a special equity peculiar to themselves and that the Courts should endeavor to enforce such arrangements if made honestly. Also see: ***Sachin Ambulkar (Bom. HC***)- Does NOT amount to transfer and hence not exigible to capital gain- ***CIT V/s. Sachin Ambulkar ITXA/6975 of 2010 (decided on 23rd Oct 2012***); R. Nagaraja Rao 352 ITR 565 (Kar.). Ashwani Chopra 352 ITR 620 (P & H.).

16) **Relative**- Section 2(41)- "*relative*", in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

Explanation, clause (e) of section 56:

For the purposes of this clause, "relative" means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) brother or sister of either of the parents of the individual;

(v) any lineal ascendant or descendant of the individual;

(vi) any lineal ascendant or descendant of the spouse of the individual;

(vii) spouse of the persons referred to in clauses (ii) to (vi);]

Sr no.	Relative	Covered under
1.	Husband/wife	Clause(i)
2.	Brother and his wife	Clause(ii)with(vii)
3.	Sister and her husband	Clause(ii)with(vii)
4.	Wife's bro. and his wife	Clause(iii)with(vii)

5.	Wife’s sister and her husband	Clause(iii)with(vii)
6.	Kaka – Kaki	Clause(iv)with(vii)
7.	Fua – Foi	Clause(iv)with(vii)
8.	Mama – Mami	Clause(iv)with(vii)
9.	Masa – Masi	Clause(iv)with(vii)
10.	Father – Mother	Clause(v)with(vii)
11.	Grandfather – Grandmother	Clause(v)with(vii)
12.	Son and his wife	Clause(v)with(vii)
13.	Daughter and her Husband	Clause(v)with(vii)
14.	F I L and M I L	Clause(vi)with(vii)
15.	G F I L and G M I L	Clause(vi)with(vii)

F I L – Father in Law

M I L – Mother in Law

G F I L – Grand Father in Law

G M I L – Grand Mother in Law