

Planning For Daughter's Marriage, Father's Prerogative

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The daughter's marriage is In CIT vs. one of the most important occasions for a father, be he a man of means or of just average means. A man of means generally faces greater problems for he has to spare sufficient post-tax money for performing a marriage befitting his standard, as compared to a man of modest means, who has to manage the affairs in a limited way. It therefore is necessary for a father to do suitable planning so he has some income accumulated without having to pay any tax.

A planning of this nature requires detailed discussions in the light of the related provisions of the Income Tax

Act and the Hindu Law. It is to be noted that the Finance (No.2) Act, 1998 has abolished the Gift Tax Act. Therefore, after 30.09.1998, if any gift is made for the daughter's marriage it will not attract any gift-tax liability. Thus, planning is required only under the Income Tax Act and care has to be taken only against clubbing of income.

Obligation of father

Under the Hindu Law, a father as well as a Hindu undivided family is under legal as well as social obligation to perform the marriage of his daughter or daughters of the members of the family. Section 3 (b)(ii) of the Hindu Adoptions and Maintenance Act, 1956 provides for payment of reasonable expenses incidental to marriage. Hence, both under the general Hindu Law and the Hindu Adoptions and Maintenance Act, 1956, the father is under obligation to give some property/incur reasonable expenses on the occasion of the daughter's marriage. If some expenditure is incurred, it is not a transfer without consideration but is an act of the father to meet out certain obligations of his. The Hindu law is not applicable to Muslims and Parsis.

Settling amount on trust for marriage

To meet one's obligations towards his marriageable daughter; one may settle an amount or a property in trust. The income of the trust, if the same is wisely settled, may also not be assessable in the hands of the settler or the beneficiary.

In CIT vs. Princess – Trivikram Kumari (1995) 211 ITR 833 (Raj), before the Rajasthan High Court, the facts were that Maharana Bhagwat Singh settled a trust with the objective that the interest from corpus be accumulated and in the event of the beneficiary marrying, then after defraying the expenses, the corpus or any accumulation of interest, may be hand over to the beneficiary and until marriage the beneficiary was neither entitled to any income nor the corpus.

The Rajasthan High Court held that the income is contingent on the happening of an event, it cannot be said to have accrued till the event happened. The assessee had only a contingent interest and did not have a vested interest and therefore no income accrued to the assessee. And consequently nothing could be included in the father's income. The court relied on the judgement of the Gujarat High Court in Additional Commissioner of Income-Tax vs M K Doshi (1980) 1221TR 499 (Gujarat). The above decision of the Gujarat High Court has also been approved by the Supreme Court. As such the law on the point has acquired finality.

In view of the above decisions, if a father plans with a small investment just after the birth of a daughter, the amount may grow to a sizeable sum when the daughter becomes of marriageable age. Say, a father settles an amount of Rs 30,000 on the birth of daughter subject to the condition that the corpus and accumulated interest will be given to her at the time of her marriage. She will then have a sum of Rs

2,50,000 (approximately) free of tax and the father will also be saved of every botheration. If one plans for the marriage of his daughter out of his post-tax savings, then hardly half of the above amount will be at his disposal. Thus, by creating a trust, income-tax in the hands of the father can be saved to a large extent. This way, income will also not be clubbed in the hands of the father. After the abolition of the Gift Tax Act, a father can form a trust by transferring an amount even more than Rs 30,000 in a particular year.

Planning by providing for marriage of unmarried daughter at the time of partition of HUF

Under the Hindu Law, daughters of the family are entitled to be maintained and to be married off by the joint family. Not only customary, but it is also obligatory for the joint family members to perform the marriages of unmarried daughters, spending family funds for that purpose. There is, in fact, a general consensus which has emerged from the court's decisions that the legitimate marriage expenses of a daughter is a charge on the HUF property and as such any alienation of property to meet this obligation would be for legal necessity. In view of the legal position under Hindu Law and as held by the various high courts and the Supreme Court, there can be planning to make provisions of a reasonable amount for the marriages of the daughters in the family before the properties of the HUF are divided amongst members of the family.

The wealth going in the hands of the members can be reduced through such planning and a unit in the form of a trust may continue with the members of the family till the daughters married.

Planning for senior citizens

INCOME tax rebate in the case of senior citizens (Section 88B)

Rebate under this section is allowed when the following conditions are satisfied:

- (i) The assessee is an individual and resident in India (he maybe an r ordinary resident or not ordinarily are resident in India).
- (ii) He has attained the age of 65 years or more any time during the previous year.

Quantum of rebate

Rebate is admissible at 100 per cent of the income tax, computed before claiming rebate u/s 88 and relief u/s 89(1) or Rs 15,000, whichever is less. The rebate shall be available to all senior citizens irrespective of any Income level.

Section 88B qualifies the amount of income tax as that computed before allowing any deduction under this chapter. The qualifying words show that the rebate under Section 88B will have a priority over the rebate under Section 88.

Under the tax rates as per the Finance Bill 2002, if a senior citizen has income up to Rs 1.28,500, there is no tax liability on him as the tax payable on the income comes to Rs 15,000 only. But remember that you still have to file your income tax return.

Will the rebate be admissible on capital gains on sale of long-term capital asset by a senior citizen?

Section 112 of the Act providing for tax on long-term capital gains restricts the allowability of rebate under Section 88 and not the rebate under Section 88B. As such a senior citizen may claim the Section 88B rebate allowable to him against the liability of capital gains.

Would the rebate be admissible on winnings from lotteries, crossword puzzles, races, etc? In the case of winnings of lotteries, crossword puzzles, races, etc., although no deduction or allowance or any expense is allowed, as such income is taxable, at a special rate of 40 per cent. However, rebate u/s 88 and 88B will be allowed even on tax computed on such income from lottery etc.

What if the senior citizen has to choose the constitution of his business?

The senior citizen should undertake his business as sole proprietor rather than as a partner. In a partnership, the income is taxed in the hands of the firm and no income accrues to the partner, hence it is not wise to pay tax at 35 per cent as applicable to partnership firms at present.

Can the senior citizen status be used in partnerships as a tax planning device?

The senior citizen can be made to enter into a partnership with his sons and others. The share income from partnership does not form part of the total income u/s 10(2A), The senior citizen may receive interest and remuneration. The remuneration may be so arranged that his income does not exceed Rs 1,28,560. The balance amount of the remuneration, within however the ceiling of section 40(b), may thus be paid to other working partners. This way the partner salary paid to the senior citizen shall be exempt of tax in the hands of the senior citizen due to rebate u/s 88B, which would otherwise had been taxable in the hands of any other partner. The senior citizen may gift this salary to his son. There is no tax implication. Thus : the son can use this method as a Capital building exercise without any cost.

Planning for total income vis-à-vis tax rates .According to the applicable tax rates ,an individual is required to pay tax as under :

Rs. 50,000	Nil
Rs. 50,001 to Rs. 60,000	10%
Rs. 60,001 to Rs. 1,50,000	20%
Above Rs. 1,50,000	30%

Surcharge to be levied @ 5 per cent in case income exceeds Rs. 60,000 The senior citizen may plan that his income does not exceed rupees 1,50,000 for which he may adopt various means and methods. viz., may plan that his income does not exceed Rs 1,50,000 for which he may adopt various means and methods, such as:

(i) Planning through partnerships: Enter Into a partnership with your sons and others and Invest your capital therein. In view of Section 10(2A), the share income from partnership does not form part of the total income, hence there is no possibility of having any such income to be taxed.

However, where the other income is not sufficient to reach the figure of Rs 1,50,000, the senior citizen may receive interest and remuneration. The remuneration may be so arranged that his income does not exceed Rs 1,50,000.

(ii) Gifts to minor grand-children: The senior citizen may also gift to his/her grand-children. The gifts may be made by him to his/her grand minor children because with the amendment of Section 64(1)(vi), no part of the income of the minor grand-children is to be clubbed with the senior citizen's income and he may safely balance his income.

In view of the new Section 64(IA), the income of the minor child is to be added to the Income of his/her parents. If the parent's income is not very high, the addition to their income may suit them and the senior citizen may keep his income balanced.

Financial Advice

Though there are further ways of planning via relatives but in my opinion such planning are impractical nowadays with the weakening thread of emotions.

Paying a little income tax is better than planning to reduce tax through relatives. You have worked hard to earn your money now let your money work hard for you, in the bank.

Keep money in bank for meeting your needs and do not depend on the dependants, as not all of them are dependable anymore.

Information :

- (i) The senior citizens need not stand in the long queue. They can submit their returns, out of turn.
- (ii) For any assistance or grievance the PRO at the Income Tax Office can be contacted.

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