in default on the 5th October, 1955, was not presented in Court within a period of 30 days from the date of dismissal, the order of dismissal became final and conclusive between the parties. I would, accordingly, uphold the order of the Tribunal and dismiss the petition, but in view of the circumstances of the case leave the parties to bear their own costs. Ordered accordingly.

Girdhari Lal
v.
Panna Lal
———
Bhandari, C. J.

SUPREME COURT.

Before N. H. Bhagwati, Sudhanshu Kumar Das and J. L. Kapur, JJ.

THE COMMISSIONER OF INCOME-TAX,—*Appellant.*

versus

SHRIMATI SODRA DEVI,—*Respondent.*

AND

Civil Appeal No. 322 of 1955.

SHRIMATI DAMAYANTI SAHNI, PARTNER, OF M/S. ISHAWAR DAS SAHNI AND BROS.,—*Appellant.*

versus

THE COMMISSIONER OF INCOME-TAX,—*Respondent.*

Civil Appeal No. 25 of 1955.

1957
———
May, 17th

Income-tax Act (XI of 1922)—Section 16(3)(a)(ii)—the word "Individual"—Whether includes also a female—Income of minor sons from a partnership to the benefits of which they have been admitted—Whether liable to be included in the income of the mother, who is a member of that partnership—Interpretation of Statutes—Normal rule—When to be departed from—Words used being ambiguous—Reference to surrounding circumstances—Whether permissible—Statement of objects and reasons—Whether can be referred to—Construction—Meaning of—Intention of Legislature—How to be gathered in cases where the words used are unambiguous and where ambiguous.

Held, by majority (*N. H. Bhagwati and J. L. Kapur, JJ.*)—

(1) That the word "Individual" in section 16(3)(a)(ii) of the Income-tax Act does not include a female and the income of the minor sons derived from a partnership to the benefits of which they have been admitted is not liable to be included in the income of the mother who is a member of that partnership.

(2) That the words "any individual" and "such individual" occurring in section 16(3) and section 16(3)(a) of the Act are restricted in their connotation to mean only the male of the species, and do not include the female of the species, even though by a disjunctive reading of the expression "the wife" or "a minor child" of "such individual" in section 16(3)(a) and the expression "by such individual" for the benefit of his wife or a minor child or both" in section 16 (3) (b), it may be possible in the particular instances of the mothers being connected with the minor children in the manner suggested by the Revenue to include the mothers also within the connotaton of these words. Such inclusion which involves different interpretations of the words "any individual" or "such individual" in the different contexts could never have been intended by the Legislature and would in any event involve the addition of the words "as the case may be" which addition is not normally permissible in the interpretation of a statute.

(3) That the normal rule of construction of a statute is that the intention of the Legislature should be primarily gathered from the words which are used. This normal rule can be departed from only when the words used are ambiguous in which case they will stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice.

(4) That it is not legitimate to refer to the statement of objects and reasons appended to the Bill as an aid to the construction or for ascertaining the meaning of any particular word used in the Act or Statute but the same can be referred to for the

limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of evil which he sought to remedy.

Held, per S. K. Das, J.—

(1) That there is no ambiguity and the word "individual" in section 16(3) of the Income-tax Act has been used in its ordinary accepted connotation, that, is, either a male or a female individual; sub-clauses (i) and (iii) of clause (a) of section 16(3) are no doubt confined to a male individual and that has been made clear by the use of the words "wife" and "husband" instead of the words "such individual." But in sub-clauses (ii) and (iv) of clause (a) the word "individual" includes both a male and a female and the income of the minor sons which arises directly or indirectly from their admission to the benefits of partnership in a firm of which their mother is a member is to be included in computing the total income of the mother within the meaning of subsection (3), clause (a), sub-clause (ii) of section 16.

(2) That the expression "construction" includes two things: first, the meaning of the words; and, secondly, their legal effect or the effect which is to be given to them by the courts. As in the case of documents, so in the case of statutes also, they should be construed in a manner which carries out the intention of the Legislature. That intention must first be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be attained by it; in other words, the intention is best declared by the words themselves, and the words of a statute are to be interpreted as bearing their ordinary, natural meaning unless the context requires a different meaning to be given to them. If, however, the words are ambiguous, the policy of the legislation and the scope and object of the statute, where these can be discovered, will show the intention, which may further be brought to light by applying the

various well-settled rules and presumptions of construction. One such rule is that the statute must be read as a whole and the construction made of all the parts together.

(On Appeal from the Judgment and Order, dated the 26th August, 1952, of the Punjab High Court in Civil Reference No. 11 of 1952.)

For the Appellant in C. A. No. 322 of 1955 and Respondent in C. A. No. 25 of 1955: Mr. C. K. Daphtary, Solicitor-General of India (M/s. G. N. Joshi and R. H. Dhebar, Advocates, with him).

For the Respondent in C. A. No. 322 of 1955: M/s. R. J. Kolah, Advocate and M/s. J. B. Dadachanji, S. N. Andley and Rameshwar Nath, Advocates of M/s. Rajinder Narain and Co.

For the Appellant in C. A. No. 25 of 1955: Mr. G. S. Pathak, Senior Advocate, (Mr. M. L. Kapur, Advocate, with him).

JUDGMENT

Bhagwati, J.

BHAGWATI, J.—These two appeals with certificates under section 66A(2), of the Indian Income-tax Act (hereinafter referred to as the Act) raise a common question of law and will be governed by this common judgment.

The facts leading up to these appeals may be shortly stated as under:—

Prior to October. 18, 1944, one Rai Bahadur Narsingdas Daga (since deceased), his wife Shrimati Sodradevi (the assessee), and his three major and three minor sons constituted a joint and undivided Hindu family. There was a severance of joint status between the erstwhile members of the said joint family on October 18, 1944, and the joint properties were accordingly partitioned. On such partition, the business of the Spinning and Weaving

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

Mills and agency shop at Hinganghat fell to the share of the assessee and her three major and three minor sons. A partnership was entered into between the assessee and her three major sons for the purpose of carrying on the business of the Spinning and Weaving Mills and the agency firm at Hinganghat. The three minor sons of the assessee were admitted to the benefits of the partnership. The genuineness of the partnership was not disputed. The only question which arose for the consideration of the Tribunal was whether the income falling to the share of the three minor sons was liable to be included in the total income of the assessee. On a construction of section 16(3)(a)(ii) of the Act, the Tribunal held that the income falling to the shares of the three minor sons of the assessee was liable to be included in her total income. The assessee thereupon applied to the Tribunal for a reference to the High Court of Judicature at Nagpur of the question of law arising out of its order under section 66(1) of the Act and the Tribunal submitted a statement of case referring the following question of law for the determination of the High Court:

> "Whether on a true construction of the provisions of section 16(3) (a)(ii) of the Indian Income-tax Act, 1922, the income of the three minor sons of the assessee is liable to be included in her total income."

The High Court heard the reference and came to the conclusion that it was not the intention of the Legislature to include in the income of the mother, the income of her minor children arising from the benefits of partnership of a firm in which the mother is a partner and accordingly answered the referred question in the negative. The High Court, however, granted the necessary certificate under section 66A(2) of the Act to the Commissioner of Income-tax, Madhya Pradesh and Bhopal and hence Civil Appeal No. 322 of 1955 before us.

The Commissioner of Income-tax v. Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner. of M/s. Ishwar Das Sahni and Bros. v. The Commissioner of Income-tax

Bhagwati, J.

One Ishwardas Sahni, who died on November, 7, 1946, was a partner in the firm of Messrs Ishwardas Sahni and Brothers. The firm's accounting year ended on March 31, 1947. The said Ishwardas Sahni left him surviving his widow Damayanti (the assessee) and two minor sons. The assessee became a partner in the said firm which also admitted her two minor sons to the benefits of the partnership. The Income-tax authorities included the minor sons' shares in the reconstituted firm's profits in computing the income of the assessee on the ground that "individual" in section 16(3)(a)(ii) of the Act meant an individual person of either sex. The Income-tax Appellate Tribunal held that the word "individual" must be taken as referring only to a male assessee wherever that occurred in section 16(3) and directed the deletion from the assessee's income of the shares of her minor sons in the profits of the firm. At the instance of the Commissioner of Income-tax Delhi, the Tribunal referred to the High Court of Punjab at Simla the question of law arising out of its order under section 66(1) of the Act together with a statement of the case. The referred question was:—

> "Whether the word "individual" in Section 16(3)(a)(ii) of the Income-tax Act, 1922, includes also a female and whether the shares of the two minor sons of Shrimati Damayanti Sahni in the profits of the re-constituted firm of Messrs. Ishwardas Sahni and Brothers should be included in the income of Shrimati Damayanti Sahni in assessing her income, profits and gains."

The High Court heard the reference and following the decision given by the High Court of Allahabad in *Shrimati Chanda Devi* v. *The Commissioner of Income-tax* (1), answered the referred question in

(1) (1950) 18 I.T.R. 944

the affirmative. The assessee obtained the requisite certificate under section 66A(2) of the Act from the High Court and that is how Civil Appeal No. 25 of 1955 is before us.

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

The common question of law which we have to determine in these appeals is whether the word "individual" in section 16(3)(a) (ii) of the Act includes also a female and the income of the minor sons derived from a partnership to the benefits of which they have been admitted is liable to be included in the income of the mother who is a member of that partnership.

Section 16(3) of the Act provides:

"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:

(i) from the membership of the wife in a firm of which her husband is a partner;

(ii) from the admission of the minor to the benefits of the partnership in a firm of which such individual is a partner;

(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; or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration; and

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

Section 3 of the Act may also be referred to in this context and it runs as follows:

Section 3. Charge of Income-tax:

"Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

The same description of the assessee is also to be found in section 4A, which deals with residence in the taxable territories, section 48 dealing with refund and section 58 dealing with the charge of super-tax.

The word assessee is wide enough to cover not only an "individual" but also a Hindu undivided family, company and local authority and every firm and other association of persons or the partners of the firm or the members of the association individually.

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

Whereas the word "individual" is narrower in its connotation being one of the units for the purposes of taxation than the word "assessee", the word "individual" has not been defined in the Act and there is authority for the proposition that the word "individual" does not mean only a human being but is wide enough to include a group of persons forming a unit. It has been held that the word "individual" includes a Corporation created by a statute, e.g., a University or a Bar Council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind. If this is the connotation of the word "individual" it follows that when section 16(3) talks of an "individual" it is only in a restricted sense that the word has been used. The section only talks of "individual" capable of having a wife or minor child or both. It, therefore, necessarily excludes from its purview a group of persons forming a unit or a corporation created by a statute and is confined only to human beings who in the context would be comprised within that category.

The Revenue urges before us that the word "individual" as used qua human beings is capable of including within its connotation a male as well as a female of the species and having regard to the context in which the word has been used in section 16(3), it should be construed as meaning a male of the species when used in juxtaposition with "a wife" and as meaning both a male and a female, when used in juxtaposition with "minor child" so that when section 16(3) talks of "such individual" in sub-clauses (ii) and (iv) of column (a) thereof, it refers to both a male and a female of the species so as to include within its compass not only a father of the minor child but also a mother.

The assessees, on the other hand, contend that the word "individual" used in section 16(3) is not

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

used in its generic sense but is used in a restricted and narrower sense as connoting only human being and if it is thus restricted there is ample justification for restricting *it still further to the male of the* species when regarded in the context of section 16(3). Sub-clauses (i) to (iv) of column (a) are specific cases where the income of a wife or a minor child of "such individual" arising directly or indirectly from the several sources therein indicated is to be included in computing the total income of the "individual" for the purpose of assessment and the word could not have been used in a different sense for the purposes of sub-clauses (i) and (iii) and sub-clauses (ii) and (iv) of column (a). The words "such individual" as used in sub-clause (a) can only have been used in one sense and one sense only and if that is the sense in which it could have been used "such individual" should be one who is capable of having a wife or minor child or both and that individual can only be a male of the species and not a female.

The question for our determination *is* a very narrow one and it turns on the construction of section 16(3) of the Act. The High Court of Madhya Pradesh plunged headlong into a discussion of the reasons which motivated the Legislature into enacting section 16(3) by Act IV of 1937, and took into consideration the recommendations made in the Income-tax Enquiry Report, 1936 and also the statement of objects and reasons for the enactment of the same, without considering in the first instance whether there was any ambiguity in the word "individual" as used therein. It is clear that unless there is any such ambiguity it would not be open to the court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

surrounding circumstances and constitutional principle and practice (Per Lord Ashbourne in *Nairn* v. *University of St. Andrews and others* (1). In the latter event the following observations of Lord Lindley, M.R., in *Thomas* v. *Lord Clanmorris* (2), would be apposite:

> "In construing any statutory enactment, regard must be had not only to the words used, but to the history of the Act and the reasons which led to its being passed. You must look at the mischief which had to be cured as well as at the cure provided" (*See* also the observations of Goddard, C.J., in *R.* v. *Paddington and St. Marylebone Rent Tribunal* (3).

The position in law has been thus enunciated in the judgment of Das, Actg. C.J., (as he then was) in the *Bengal Immunity Company, Limited* v. *The State of Bihar and others* (4):

> "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's Case* (5), was decided that—
>
> "......for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:
>
> 1st. What was the common law before the making of the Act.

(1) (1909) A.C. 147
(2) (1900) I. Ch. D. 718, 725
(3) (1949) 65 T.L.R. 200, 203
(4) (1955) 2 S.C.R. 603, 632
(5) (1584) 3 Co. Rep. 7a; 76 E.R. 637

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

2nd. What was the mischief and defect for which the common law did not provide;

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth; and

4th. The true reason of the remedy; and then the office of all judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo,* and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico".*

In *In re Mayfair Property Company* (1), Lindley, M.R., in 1898 found the rule "as necessary now as it was when Lord Coke reported *Heydon's case*". In *Eastman Photographic Materials Company* v. *Comptroller-General of Patents, Designs and Trade Marks* (2), Earl of Halsbury reaffirmed the rule as follows:

"My Lords, it appears to me that to construe the statute now in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three things compared, I cannot doubt the conclusion."

The High Court of Punjab based its conclusion primarily on the use of the word "or" between the

(1) L.R. (1898) 2 Ch. 28, 35
(2) (1898) A.C. 571, 576

word "wife" and the words "minor child" in section 16 (3)(a) of the Act and it was of opinion that these words were used disjunctively and the "individual" referred to in section 16(3)(a) of the Act may have a wife and minor child or may not have a wife but have a minor child". If the individual assessed to income-tax is a female that individual will have no wife but she may have a minor child and, therefore, section 16(3)(a) of the Act does not imply that the individual must necessarily be a male.

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

The argument based on the disjunctive user of the word "wife" and the words "minor child" is capable of being summarily disposed of. Even if the words "such individual" in section 16(3)(a) of the Act meant only a male of the species the word "wife" and the words "minor child" could only have been used with the word "or" in between. A male of the species may not necessarily have both a wife and a minor child. He may have a wife but no "minor child". He may have a minor child but may have no wife at the relevant period. If, therefore, provision had to be made for the inclusion of the income of a wife or minor child or both in the total income of a male of the species the word "or" was absolutely necessary to be interposed between the word "wife" and the words "minor child". To construe the word "or" as disjunctive between the word "wife" and the words "minor child" does not necessarily lead to the conclusion that the words "such individual" were used for both a male and a female of the species and were necessarily inconsistent with the user of those words for the male of the species if the context otherwise lead to that conclusion. The reasoning adopted by the learned Judges of the High Court of Punjab, therefore, does not clinch the matter.

We have, therefore, got to examine whether the use of the word "individual" in section 16(3)(a) of

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

the Act is in any manner ambiguous. The opening words of section 16(3) talk of "any individual" whose total income has got to be computed for the purpose of assessment and the words "such individual" used in section 16(3)(a) have reference only to that individual. That individual must be an assessee and it is in the computation of his total income for the purpose of assessment that the income of the persons mentioned in clauses (a) and (b) have got to be included. Sub-clause (a) refers to two distinct sets of persons bearing a relationship with "such individual", the assessee. One is a wife and the other is a minor child. The case of the wife is dealt with in sub-clauses (i) and (iii) and the case of a minor child is dealt in sub-clauses (ii) and (iv). Sub-clauses (i) and (iii) use the word "her husband" or "the husband" in place of the words "such individual" with reference to the income derived by the wife in the circumstances therein mentioned, though, it may be observed that the user of the words "such individual" would not have made the slightest difference to the position. Sub-clauses (ii) and (iv) which deal with a "minor child" use the words "such individual" in relation to the minor child whose income under the circumstances therein mentioned has to be included in computing the total income of "such individual" for the purpose of assessment. Whereas the words used in sub-clauses (i) and (ii) are specific and refer only to "her husband" and "the husband" as "such individual", the words used in sub-clauses (ii) and (iv) leave it indefinite as to which is meant by the words "such individual" whether a male and/or a female of the species. If the words used in all these four sub-clauses were to be harmoniously read and the two cases which are mentioned in sub-clauses (i) and (iii) are not to be read differently from the cases mentioned in sub-clauses (ii) and (iv) the only way in which the words "such individual" as used in sub-clauses (ii) and (iv) could be understood would be to

The Commissioner of Income-tax v. Shrimati Sodra Devi and Shrimati Damayanti Sahni, partner of M/s. Ishawar Das Sahni and Bros. v. The Commissioner of Income-tax

Bhagwati, J.

read them as confined to a male of the species and not including the female. If these words "such individual" as used in sub-clauses (ii) and (iv) are thus read restricted to a male of the species, all these sub-clauses would have reference only to the male of the species irrespective of the fact that the words "her husband" and "the husband" have been used in sub-clauses (i) and (iii) instead of the words "such individual". If the words such individual" had been used in sub-clauses (i) and (iii) as they have been used in sub-clauses (ii) and (iv) the position would have been just the same because in that event also we would have had to determine whether there was any justification for reading the words "such individual" used with reference to sub-clauses (i) and (iii) in any different sense from the same words "such individual" as used in sub-clauses (ii) and (iv). The crux of the question, therefore, is whether the words "such individual" used in the opening part of section 16(3)(a) are used to mean a male of the species when they are read in juxtaposition with the words "a wife" and are used to mean both a male as well as a female of the species, as the case may be, when used in juxtaposition with the words "minor child".

If that was the intention of the Legislature there was nothing to prevent it from dividing clause (a) into two sub-clauses whether they were numbered (a) and (ai) or (a) and (b) respectively. The legislature could as well have enacted the provisions in the manner following:

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

(i) from the membership of the wife in a firm of which her husband (or such individual) is a partner; or

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

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

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

(i) from the admission of the minor to the benefits of the partnership in a firm of which such individual is a partner; or

(ii) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration.

If these provisions had been enacted in the manner aforesaid it would have been possible to urge, as has been urged before us by the Revenue, that clause (a) referred only to a male of the species who only could have a wife and column (ai) or (b) referred to a male and|or a female of the species.

The Legislature, however, chose to adopt a peculiar mode of enactment either for the purpose of economy of words or structural beauty and fixed up both these sets of provisions into the enactment of clause (a) of section 16(3) of the Act as it stands at present. It rolled in both these sets of cases and used the words "a wife" or "minor child" of "such individual" raising thus the question of construction which has got to be determined by us. "Such individual" as is talked of in section 16(3) (a) may have a wife, may have a minor child or may have both a wife and a

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

minor child. When "such individual" is thought of in connection with a wife, it can only be a male of the species, but when "such individual" is thought of in connection with a minor child it can be both a male as well as a female of the species, though, of course, when "such individual" is thought of in connection with "both" then again it would have to be a male of the species and certainly not a female. Such an interpretation would lead to the interpretation of the same words "such individual" as meaning two different things in two different contexts. They would mean one thing when used in relation to "a wife" and would mean another thing when used in relation to a "minor child". They would be capable of being understood in a narrower sense when used in connection with "a wife" and would be capable of being understood in a wider sense when used in connection with a "minor child". One may as well question the elegance or the propriety of such user of the words "such individual" where the words "as the case may be" are necessarily to be imported in order to understand the true import of these words, when again they are used not in different parts of the same section but at one place only.

If one turns to section 16(3) (b) the words used therein are "transferred...... by "such individual" for the benefit of his wife or a minor child or both". There is the indefinite article "a" used before the words "minor child". If that indefinite article "a" had not been used, the expression would have run "for the benefit of his wife or minor child or both" thus leaving no doubt at all that in cl. (b) at least the words "such individual" meant only a male of the species. It is urged, however, that the use of the indefinite article "a" shows that the words "his wife" and "minor child" and "both" have been used disjunctively and should be read in the same manner as in section 16(3)

The Commissioner of Income-tax v. Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner. of M/s. Ishawar Das Sahni and Bros. v. The Commissioner of Income-tax

Bhagwati, J.

(a) of the Act. The words "his wife" would appropriately go with a male of the species but the words "a minor child" would appropriately go with a male as well as a female of the species, though the word "both" could only be appropriate in relation to a male of the species and not a female who can have a minor child but not both a wife and a minor child. The same want of elegance or propriety can be predicated of this expression also and the use of such expressions both in section 16(3)(a) and section 16(3)(b) raise questions of construction whether what was meant by the Legislature was only a male of the species in both these contexts or a male and|or female of the species, as the case may be, applying one or the other in accordance with the circumstances attendant upon the computation of the total income of "any individual" for the purpose of assessment.

We are of opinion that the very manner in which all the four sub-clauses have been grouped together in section 16(3)(a) and the manner in which the expression "for the benefit of his wife, a minor child or both" is used in section 16(3)(b) renders the words "any individual" or "such individual" ambiguous. There is no knowing with certainty as to whether the Legislature meant to enact these provisions with reference only to a male of the species using the words "any individual" or "such individual" in the narrower sense of the term indicated above or intended to include within the connotation of the words "any individual" or "such individual" also a female of the species, wherever appropriate which would of course only be possible in the cases contemplated in sub-clauses (ii) and (iv) of section 16(3)(a) and in one of the three cases contemplated in section 16(3)(b). The Legislature certainly was guilty of using an ambiguous term in enacting section 16(3) of the Act as it did. In order to resolve this

ambiguity, therefore, we must of necessity have resort to the state of the law before the enactment of the provisions; the mischief and defect for which the law did not provide; the remedy which the legislature resolved and appointed to cure the defect and the true reason of the remedy within the meaning of the authorities referred to above.

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

Before the enactment of section 16(3) of the Act by the Indian Income-tax (Amendment) Act, 1937 (IV of 1937), there was no provision at all for the inclusion of the income of a wife or a minor child in the computation of the total income of "any individual" for the purpose of assessment. Whatever may have been the income of a wife from her membership in a firm of which her husband was a partner or from assets transferred directly or indirectly to her by her husband otherwise than for adequate consideration or in connection with an agreement to live apart, her income was not included in the income of her husband in computing the total income of the husband for the purpose of assessment. Similar was the position in the case of income derived by a minor child from the admission of the minor to the benefits of partnership in a firm of which "such individual" was a partner or from assets transferred directly or indirectly to the minor child, not being a married daughter, by "such individual" otherwise than for adequate consideration. The income derived by such minor child could not be added to the income of the father for the purpose of assessment. The income derived by the wife or minor child could only be included in computing his or its total income for the purposes of assessment and neither the husband nor the father could be made liable for income-tax in respect of such income, whatever may be the reason, which actuated them in providing such income for the wife or the minor child.

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

This position was pregnant with difficulties for the Revenue. There were no doubt genuine cases where a wife or the minor child, as the case may be, was provided with such income on *bona fide* severance of joint status between the erstwhile members of a joint and undivided Hindu family and where after such partition the adult member of the family entered into a *bona fide* partnership admitting the minors to the benefits of the partnership. There were, on the other hand, innumerable cases where such severance of joint status was resorted to mainly with a view to evade a higher incidence of income-tax. There were also cases where husbands and fathers provided shares for their wives and minor sons and thus evaded payment of income-tax in regard to their shares in the profits of such partnerships. This evil was so rampant that the Income-tax Enquiry Report, 1936, recognised the same and made the following recommendations for remedying the situation (*vide* pp. 19 and 20 of the Report).

CHAPTER III—ASSESSEES.

Section I—Individuals.

(a) *Wife's Income.*—Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife and minor children. In some parts of the country, avoidance of taxation by this means has attained very serious dimensions. The obvious remedy for this state of affairs so far as husband and wife are concerned is the aggregation for assessment of their incomes, but such a course would involve aggregation in a quite different class of case i.e., where the wife's income arises from sources unconnected with the

husband.....................................

....

We recommend, therefore, that the income of a wife

should be deemed to be, for income-tax purposes, the income of her husband, but that where the income of the wife is derived from her personal exertions and is unconnected with any business of her husband, her income from her personal exertions up to a certain limit, say Rs. 500, should not be so included........

....

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

(b) *Income of Minor Children.*—There is also a growing and serious tendency to avoid taxation by the admission of minor children to the benefits of partnership in the father's business. Moreover, the admission is, as a rule, merely nominal, but being supported by entries in the firm's books, the Income-tax Officer is rarely in a position to prove that the alleged participation in the benefits of partnership is unreal...

....

We suggest that the income of a minor *should be deemed to be the income of the father* (i) if it arises from the benefits of partnership in a business in which the father is a partner or (ii) if, being the income of a minor other than a married daughter, it is derived from assets transferred directly or indirectly to the minor by his or her father or mother, (iii) if it is derived from assets apportioned to him in the partition of a Hindu Undivided Family.

It may be noted that the recommendations of the Enquiry Committee even in the cases hereinbefore mentioned went to the length of including the income of the wife or the minor child as the case may be in the income of the husband or the father in the computation of his total income for the purpose of assessment. The mischief which the Enquiry Report sought to remedy by its recommendations was one

The Commissioner of Income-tax v. Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros. v. The Commissioner of Income-tax

Bhagwati, J.

which was the result of husbands entering into nominal partnerships between themselves and their wives and fathers admitting their minor children to the benefits of such partnerships. The mischief, if any, resulting from the mothers admitting their minor children to the benefits of partnerships in which they were members was farthest from the thoughts of the Enquiry Committee and was nowhere sought to be remedied. Having regard to the circumstances which prevailed at the time when the Enquiry Committee made its report, the only mischief which they sought to remedy by their recommendations was the one resulting from the male assessees indulging in such tactics for the evasion of income-tax by creating nominal partnerships between themselves and their wives on the one hand and their minor children on the other.

These recommendations were duly considered by the Government and as a result thereof Act IV of 1937 was enacted introducing section 16(3) in the Act. What was intended to be done by the Legislature in enacting this amendment may be gleaned to a certain extent from the statement of objects and reasons appended to the Bill which eventually became the amending Act. Though it is not legitimate to refer to the statement of objects and reasons as an aid to the construction or for ascertaining the meaning of any particular word used in the Act or Statute (See *Aswani Kumar Ghose* v. *Arabinda Bose* (1)), nevertheless this Court in the *State of West Bengal* v. *Subodh Gopal Bose and others* (2), referred to the same "for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of evil which he sought to remedy."

(1) 1953 S.C.R. 1
(2) 1954 S.C.R. 587, 628

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

The statement of objects and reasons which led to the passing of Act IV of 1937, ran as follows :

> "Reference is made in sections 1 and 4 of Chapter III of the Income-tax Enquiry Report, 1936, to the practice of avoiding taxation by means of nominal partnerships between husband and wife or parent and minor child or by the nominal transfer of assets to a wife or minor child (or to an "association" consisting of husband and wife) when there is no substantial separation of the interests of the assessee and the wife or child. These practices are reported to have become very widespread already, with considerable detriment to the revenue, and there is little doubt that if they are not checked there will be progressive deterioration. The proposals in the Report regarding the aggregation of the incomes of husband and wife go beyond the immediate necessities of the case and to that extent their adoption would involve the admission of a new principle which the Government of India do not desire to establish in advance of the general public discussion of the Report which has been arranged; and the present Bill has been so drafted as to deal only with the abuses to which I have referred."

It is clear from the above extracts that the evil which was sought to be remedied was the one resulting from the widespread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. This evil was sought to be remedied by the enactment of section 16(3) in the Act. If this background of the enactment of section 16(3) is borne

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

in mind, there is no room for any doubt that howsoever that mischief was sought to be remedied by the amending Act, the only intention of the Legislature in doing so was to include the income derived by the wife or a minor child, in the computation of the total income of the male assessee, the husband or the father, as the case may be, for the purpose of assessment. If that was the position, however wide the words "any individual" or "such individual" as used in section 16(3) and section 16(3) (a) may appear to be so as to include within their connotation the male as well as the female of the species taken by themselves, these words in the context could only have been meant as restricted to the male and not including the female of the species. If these words are used as referring only to the male of the species the whole of the section 16(3)(a) can be read harmoniously in the manner above comprehending within its scope all the four cases specified in sub-clauses (i) to (iv) thereof, and so also section 16(3)(b). We are, therefore, of opinion that the words "any individual" and "such individual" occurring in section 16(3) and section 16(3)(a) of the Act are restricted in their connotation to mean only the male of the species, and do not include the female of the species, even though by a disjunctive reading of the expression "the wife" or "a minor child" of "such individual" in section 16(3)(a) and the expression "by such individual for the benefit of his wife or a minor child or both" in section 16(3)(b), it may be possible in the particular instances of the mothers being connected with the minor children in the manner suggested by the Revenue to include the mothers also within the connotation of these words. Such inclusion which involves different interpretations of the words "any individual" or "such individual" in the different contexts could never have been intended by the Legislature and would in any event involve the addition

of the words "as the case may be" which addition is not normally permissible in the interpretation of a statute.

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

We shall now refer to the decisions of the several High Courts in India bearing on the construction of section 16(3) of the Act. The earliest decision is that of the High Court of Allahabad in *Shrimati Chanda Devi* v. *Commissioner of Income-tax, U.P.* (1). That decision emphasised that the sub-clause (i) of clause (a) of sub-section (3) of section 16 made it clear that where the husband was a partner the income of the wife, by reason of her being a member of the firm, was to be computed in the income of the husband, and if the Legislature had intended that the word "individual" in sub-clause (ii) should mean only the father and not the mother there was no reason why they should not have used similar language as in sub-clause (i) and said "from the admission of the minor to the benefits of partnership in a firm in which *his father* is a partner." Why the Legislature used a particular expression and why it did not use any expression which would have been clearer and better expressive of its intention is really difficult to fathom. We may as well wonder why the Legislature did not use the words "such individual" in sub-clauses (i) and (iii) of section 16(3) (a) in place of the words "her husband" or "the husband" when the intention of the Legislature would have been equally carried out by the use of those words. It may be that the draftsman considered the use of the words "her husband" or "the husband" when he used the same in juxtaposition with the words "a wife" as appropriate or more elegant and, therefore, ignored the obvious user of the words "such individual" which would have been equally appropriate in that context. It would have been better expressive of the intention of the Legislature, as we have already

(1) (1950) 18 I.T.R. 944

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

Bhagwati, J.

divined above (*viz.*, to use the words "any individual" and "such individual" in section 16(3) and section 16(3)(a) respectively in the restricted meaning of the male of the species), to have used the words "the father" in place of the words "such individual" in sub-clauses (ii) and (iv) of section 16(3)(a). It is, however, difficult to fathom the mind of the draftsman when he used one particular expression in preference to the other and not much help can be derived from the ratio adopted by the learned Judges of the High Court of Allahabad in the decision just referred to. It is also significant to observe that the learned Judges considered that the language of the section does not create any real difficulty and, therefore, did not think it worth their while to refer to the Income-tax Enquiry Report, 1936, and the passage therefrom, which we have quoted above. Suffice it to say that we do not concur with the reasoning adopted by the learned Judges of the High Court of Allahabad and are of the opinion that the decision just referred to in so far as it militates against the reasoning adopted by us herein is incorrect.

The later case of *Musta Quima Begum, In re* (1), decided by the same High Court merely follows the judgment in Shrimati Chanda Devi's case (2), and is subject to the same criticism as above.

The decision of the High Court of Punjab in *Shrimati Damayanti Sahni* v. *Commissioner of Income-tax, Delhi* (3), is the one under appeal before us in Civil Appeal No. 25 of 1955. The learned Judges there followed the decision of the High Court of Allahabad in *Shrimati Chanda Devi's case* (2), and answered the referred question in the affirmative. It follows from what we have said

(1) (1953) 23 I.T.R. 345.
(2) (1950) 18 I.T.R. 944
(3) (1953) 23 I.T.R. 41

above that that decision is also incorrect and the referred question ought to have been answered by them in the negative.

The Commissioner of Income-tax v. Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros. v. The Commissioner of Income-tax

Bhagwati, J.

The latest decision in this context is that of the High Court of Madhya Pradesh in the *Commissioner of Income-tax, Madhya Pradesh and Bhopal* v. *Smt. Sodra Devi* (1), which is the subject-matter of Civil Appeal No. 322 of 1955 before us. The High Court there observed that the word "individual" as used in section 16(3) of the Act was ambiguous and referred to the above-quoted passage from the Enquiry Committee's Report, 1936, as also the statement of objects and reasons and came to the conclusion that the word "individual" was restricted to the male of the species and it was not the intention of the Legislature to impose additional tax on a mother assessee by including in her income the income of her minor children arising from the benefits of partnership of a firm in which the mother and the minors were partners. We are of opinion that the decision reached by the learned judges of the High Court of Madhya Pradesh in that case was correct and the referred question was rightly answered by them in the negative.

The result, therefore, is that Civil Appeal No. 322 of 1955, will be dismissed with costs and Civil Appeal No. 25 of 1955 will be allowed with costs, the referred question being answered in the negative.

S. K. Das, J.

S. K. DAS, J.—The substantial question which falls for decision in these two appeals is if the word "individual" in sub-section (3) of section 16 of the Indian Income-tax Act, hereinafter referred to as the Act, includes also a female, and, therefore, the income of the minor sons which arises directly or

(1) (1955) 27 I.T.R. 9

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

indirectly from their admission to the benefits of partnership in a firm of which their mother is a member is to be included in computing the total income of the mother within the meaning of sub-section (3), clause (a), sub-clause (ii), of section 16. The question is really one of pure construction, that is, construction of subsection (3) of section 16 of the Act. Nothing turns upon the facts of the case, and as the material facts have been clearly set out in the judgment just read by my learned brother Bhagwati, J., I do not think that any useful purpose will be served by restating them.

Therefore, I proceed at once to a consideration of sub-section (3) of section 16 of the Act and state at the very outset that, to my great regret, I have come to a conclusion different from that of my learned brethren. I shall presently read the sub-section; but before I do so, it will help the exposition which follows if I explain in a few words the standpoint from which I have approached the question. Speaking generally, the expression "construction" includes two things; first, the meaning of the words and, secondly, their legal effect or the effect which is to be given to them by the courts. As in the case of documents, so in the case of statutes also, they should be construed in a manner which carries out the intention of the Legislature. It may be reasonably asked—how is the intention of the Legislature to be discovered? The answer is that the intention must first be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be attained by it; in other words, the intention is best declared by the words themselves, and the words of a statute are to be interpreted as bearing their ordinary, natural meaning unless the context

requires a different meaning to be given to them. If, however, the words are ambiguous, the policy of the legislation and the scope and object of the statute, where these can be discovered, will show the intention which may further be brought to light by applying the various well settled rules and presumptions of construction. One such rule is that the statute must be read as a whole and the construction made of all the parts together. I am emphasising this aspect of the question to guard against any possible suggestion that I have started with some *a priori* idea of the meaning or intention behind sub-section (3), of section 16 of the Act and have tried by construction to work that idea into the words of the sub-section. I have been conscious all through of the warning given by Lord Halsbury, in the following observations in *Leader* v. *Duffay* (1).

The Commissioner of Income-tax *v.* Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros. *v.* The Commissioner of Income-tax

S. K. Das, J.

> "All these refinements and nice distinctions of words appear to me to be inconsistent with the modern view, which is I think in accordance with reason and common-sense, that, whatever the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained. But I agree that you must look at the whole instrument, and, inasmuch as there may be inaccuracy and inconsistency, you must, if you can ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it. But it appears to me to be arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious

(1) (1888) 13 App. Cas. 294, 301

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

assumption to bend the language in favour of the presumption so made."

Keeping that warning in mind, I shall first take the words of sub-section (3) of section 16 and see if they are plain or unambiguous. Alternatively, I shall also consider the proper construction of sub-section (3) of section 16 on the assumption that the word "individual" used in the sub-section is ambiguous and should, therefore, be interpreted consistently with the principles laid down in the *locus classicus* on the subject, namely, the celebrated *Heydon's case* (1), reported by Lord Coke and decided by the Barons of the Exchequer in the sixteenth century.

I shall now read sub-section (3) of section 16 of the Act:

"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—

(i) from the membership of the wife in a firm of which her husband is a partner;

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;

(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; or

(1) (1584) 3 Co. Reu. 72

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration; and

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

I have already stated that the sub-section must be read as a whole and in the context of the other provisions of the Act, particularly section 16 of which it is a part; it is only then that we shall arrive at its correct meaning consistent with the other provisions of the Act. The word "individual" used in sub-section (3) of section 16 occurs in several other provisions of the Act, e.g., section 3, section 4A, section 48 and section 55. It is necessary to quote section 3 *in extenso*. That section is in these terms:

"Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

It is not disputed before us that the word "individual" occurring in sections 3, 4A, 48 and 55 means either

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

a male or a female; nor has it been disputed before us that, according to the ordinary accepted meaning of the word, it means a single human being as opposed to "society," "family", etc., and that a single human being may be of either sex. Learned counsel appearing for the assessees in the two appeals have pointed out, however, that the word "individual" has not the same width of meaning in sub-section (3), of section 16 as it has in the other provisions; for example, in section 3, the word "individual" has been held to include a Corporation created by a statute, e.g., a University or a Bar Council or the trustees of a baronetcy trust incorporated by a Baronetcy Act, etc., whereas sub-section (3) of section 16 makes it quite clear that the word "individual" there does not include a Corporation created by a statute. This indeed is correct. But the question before us is whether, in its context, sub-section (3) of section 16 imposes a further restriction on the word "individual", confining it to a male individual only. The critical question before us is whether such a further restriction is imposed on the word "individual" either by the express words used in the sub-section or by necessary implication from the clauses and sub-clauses thereof.

It is said to be a presumption in construction that the same words are used in the same meaning in the same statute and particularly in the same section or sub-section. The presumption is, however, of the slightest, and there are many instances where the application of this rule or presumption is impossible. The same words may often receive a different interpretation in different parts of the same Act, for words used with reference to one set of circumstances "may convey an intention quite different from what the self-same set of words used with reference to another set of circumstances

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishawar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

would or might have produced." (*Edinburgh Street Tramways Company* v. *Torbain* (1), ped *Lord Blackburn*). The classic example of the same word having a somewhat different meaning in the same section is provided by Offences against the Person Act, 1861, section 57 of which deals with bigamy and enacts: "Whosoever, being married, shall marry any other person during the life of the former husband or wife . . . . shall be guilty of felony." It is obvious that the word "marry", is used in two different senses in the same section. There is another classic example in Article 31 of our Constitution where the word "law" in clause (3) of the said Article has been used in different senses. This is referred to in a decision of this Court in the *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga* (2).

The word "individual" is not defined in the Act, but the meaning of the word in sections 3, 4A, 48 and 55 is reasonably clear. The word "assessee" is defined in clause (2) of section 2 of the Act, as meaning a person by whom income-tax or any other sum of money (which would include super-tax, penalty or interest) is payable under the Act. It also includes every person in respect of whom any proceeding under the Act is taken for the assessment (a) of his income (b) of his loss or (c) of the amount of refund due to him. Thus the definition covers two categories: first, persons by whom any tax, penalty or interest is payable under the Act, whether any proceeding under the Act has been actually taken against them or not; and secondly, persons against whom any of the proceedings specified in this clause has been taken, whether he is or is not liable to pay any tax, penalty or interest. 'A person' under section 3(42) of the General Clauses Act, includes any company or

(1) (1877) 3 App. Cas. 58, 68
(2) 1952 S.C.R. 889, 908, 909

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

association or body of individuals, whether incorporated or not; and under clause (9) of the section 'a person' also includes a Hindu undivided family and a local authority. Thus, we have six categories of assessees referred to in section 3—(a) the individual, (b) the Hindu undivided family, (c) the local authority, (d) the company, (e) the firm and (f) other association of persons. Read in the context of section 3 of the Act, the word "individual" means, in the other sections, one of the six categories of assessees referred to in section 3. The same category is also referred to in sub-section (3) of section 16, subject only to this restriction that in the context of the sub-section, the word "individual" does not include a Corporation, etc.

We now turn to the critical question before us—is there a further restriction in the sub-section confining the word "individual" to a male individual only? My answer is that there is nothing in the context of section 16 or of the sub-section which confines the word "individual" to a male individual only. Section 16 deals with the computation of total income and provides what sums are to be included or excluded in determining the total income. The effect of including exempted income in the assessee's total income is mainly two-fold: first, the tax payable by the assessee is determined with reference to the total income and, therefore, exempted income which is included in the total income would affect the rate of tax applicable to the chargeable portion of the total income; secondly, in several cases reliefs are given or calculations made with reference to the total income. Sub-section (3) of section 16 appears *ex facie* to be directed towards preventing an individual's attempt to avoid or reduce the incidence of tax by transferring the assets to his wife or a minor child or admitting the wife as a partner or admitting a minor child to

the benefits of partnership in afirm in which such individual is a partner. I agree that the sub-section creates, to some extent, an artificial liability to tax by including the income of A in the income of B, and must, therefore, be strictly construed; that merely means that the words of the sub-section must be given their strictly natural meaning, and there should be no attempt at artificial stretching one way or the other.

What then is the proper construction of the sub-section? It naturally falls into three interconnected parts. The first part controls both clause (a) and clause (b), and states that "in computing the total income of any individual for the purpose of assessment, there shall be included so much of the income etc." as is specified in clause (a) and (b). The second part is clause (a) itself which starts with an opening sentence that "so much of the income of a wife or minor child of such individual as arises directly or indirectly" from four specific cases shall be included in the total income of the individual, and then the cases are enumerated in four sub-clauses numbered (i), (ii), (iii) and (iv). Then, comes the third part which deals with clause (b). I have divided the sub-section into its three natural parts, but I must make it clear that all the three parts must be construed together as they are interconnected and interdependent. In the first part, there is no difficulty whatsoever, in my opinion, in giving the word "individual" its natural meaning, that is, that the word means either a male or a female. The opening sentence of clause (a) contains the expression "so much of the income of a wife or minor child of such individual". Does the use of the word "individual" in the opening sentence of clause (a) give rise to any ambiguity or difficulty? I do not think that it does. It is quite obvious that a female individual cannot have a wife, but she can have a minor child whereas

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

a male individual can have a wife, minor child or both. It has been argued that clause (a) must be interpreted *noscitur a sociis,* and as the expression "a wife or minor child" is capable of meaning only when used in connection with a male individual, the whole sub-section must be confined to a male individual. I am unable to accede to this argument. The collocation or association of the words "a wife or minor child" in connection with the words "such individual" in the opening sentence of clause (a) does not necessarily mean that the individual contemplated is a male individual only. I agree that the word "or" in between the words "wife" and "minor child" must be there, even when the individual talked of is a male only; in other words, the use of the disjunctive word "or" does not necessarily clinch the issue. But I do not see any real difficulty in reading the opening sentence of clause (a) distributively so as to mean a male individual when the wife is being talked of, and either a male or a female individual when a minor child is talked of. I do not think that such a construction does any violence to the words used; on the contrary, in my opinion, it gives effect to the plain meaning of the word "individual".

Turning now to the sub-clauses numbered (i) to (iv), there can be no doubt from the phraseology used that sub-clauses (i) and (iii) refer only to a male individual, because a female individual cannot have a wife. It is worthy of note, however—and this is very important—that sub-clauses (ii) and (iv) make it equally clear that they are not confined to the male individual only in the manner in which sub-clauses (i) and (iii) are so confined. In sub-clauses (i) and (iii) the word "individual" is not used, and the words used are "her husband" and "the husband". In sub-clauses (ii) and (iv) the words used are "such individual". Why did the Legislature make this

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

difference in phraseology? If the intention was to confine the entire sub-section to a male individual only, nothing could have been easier than to qualify the word "individual" by the adjective "male" in the first part of the sub-section which controls both clauses (a) and (b); alternatively, in sub-clauses (ii) and (iv) it would have been easy to use the word "father" instead of "such individual". It is true that a change of language is some, though possibly slight, indication of a change of intention. I am unable, however, to accept the argument advanced before us that the phraseology employed in sub-clauses (i) and (iii), different as it is from that employed in sub-clauses (ii) and (iv), can be accounted for on the ground of elegance or felicity of expression. It seems to me that if the intention was to confine the word "individual" to a male individual only, elegance and clarity both required that the word "individual" should be qualified by the adjective "male", and the word "father" should have been used in sub-clauses (ii) and (iv). I am aware that a draftsman often uses different words merely to avoid repetition. I am also aware that it is dangerous to suppose that the Legislature foresees every possible result that may ensue from the "unguarded use of a single word, or that the language used in statutes is so precisely accurate that you can pick out......this and that expression and, skilfully piecing them together, lay a safe foundation for some remote inference" (as per Lord Loreburn, L.C., in *Nairn* v. *University of St. Andrews and others* (1). But what is notworthy in the present case is that the difference in phraseology between sub-clauses (i) and (iii) on the one side and sub-clauses (ii) and (iv) on the other, is so striking that the conclusion appears to me to be reasonably plain; it is not really a case of the unguarded use of a single word or picking out an expression here or picking out

(1) (1909) A.C. 147, 161

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

another expression there in order to piece out some remote inference. The striking difference in phraseology hits, as it were, one in the face when one reads the four sub-clauses. It seems to me that the meaning is very clear. In the opening part of clause (a), the word "individual" is used to mean a male or a female; two of the sub-clauses, however, are confined to the male only and, therefore, the word "husband" is used in juxtaposition to the word "wife". In the other two sub-clauses, however, the word "individual" is used in order to make it clear that they refer either to a male or to a female individual. I do not see any incongruity or disharmony in the enumeration of the four sub-clauses, nor do I appreciate the argument urged before us that the word "individual", on the construction adopted by me, has a different meaning in two of the four sub-clauses of clause (a). The word "individual" has and retains the same meaning, namely, a male or a female, all throughout the sub-section. All that happens is that in two of the sub-clauses of clause (a), when the Legislature intends that they should be confined to a male individual only, the word "husband" is used to make the intention clear. On the same reasoning, when the Legislature intends in two other sub-clauses that they should apply to either a male or a female, the word "individual" is used to include either of them. I am unable to accept the contention that such an interpretation offends against the rule of harmonious construction. So far as clause (b) of the sub-section is concerned, the word "individual" is again used and that again relates to a male or a female. The last part of the clause reads "by such individual for the benefit of his wife or a minor child or both". Here again the sentence has to be read distributively—that is, when the wife is talked of, the individual can only be a male; when a minor child is talked of, the individual can be a

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

male or a female; when both wife and minor child are talked of, the individual can again be a male only. There was some argument before us with regard to the use of the indefinite article "a" before the words "minor child" and it was submitted by the learned Solicitor-General that if the Legislature intended to confine clause (b) to a male individual only, it could have easily dropped the indefinite article and used the word "his" before the words "minor child". Personally, I do not attach much significance to the use of the indefinite article "a". It is to be noted that no such indefinite article is used before the words "minor child" in the opening sentence of clause (a); but I do not see any compelling reasons why the natural meaning of the word "individual" should not be given to it in clause (a) and clause (b) of the sub-section. Such meaning can be easily given to both the clauses if they are read distributively, and such reading does not, in my opinion, do any violence to the language used.

On a plain reading of the sub-section, I have come to the conclusion that there really is no ambiguity and the word "individual" has been used in the sub-section in its ordinary accepted connotation, that is, either a male or a female individual; two of the sub-clauses of clause (a) are no doubt confined to a male individual and that has been made clear by the use of the words "wife" and "husband", instead of the words "such individual".

Assuming, however, that there is some ambiguity in the sub-section by reason of (1) the use of the phraseology in sub-clauses (i) and (iii) of clause (a), and (2), of the opening sentence of clause (a) which controls all the four sub-clauses of that clause, what then is the position? The four principles

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

laid down in Heydon's case have been thus summarised:

> "That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1) what was the common law before the passing of the Act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; (4) the true reason of the remedy. And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and *pro privato commedo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*."

Let me now apply these principles in the construction of sub-section (3) of section 16 of the Act.

The sub-section was introduced in 1937 and, before the enactment of the sub-section, there was no provision for the inclusion of the income of a wife or a minor child in the computation of the total income of an individual. The Income-tax Enquiry Report, 1936, referred to the widespread evil of the evasion of tax by the severance of the joint status amongst members of a joint and undivided Hindu family. The Report said:

> "Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife

The Commissioner of Income-tax v. Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros. v. The Commissioner of Income-tax

S. K. Das, J.

and minor children. In some parts of the country, avoidance of taxation by this means has attained very serious dimensions. The obvious remedy for this state of affairs so far as husband and wife are concerned is the aggregation for assessment of their incomes, but such a course would involve aggregation in a quite different class of case, i.e., where the wife's income arises from sources quite unconnected with the husband..............................
....

We recommend, therefore, that the income of a wife should be deemed to be, for Income-tax purposes, the income of her husband, but that where the income of the wife is derived from her personal exertions and is unconnected with any business of her husband, her income from her personal exertions up to a certain limit, say Rs. 500, should not be so included................

(b) *Income of minor children.*—There is also a growing and serious tendency to avoid taxation by the admission of minor children to the benefits of partnership in the father's business. Moreover, the admission is, as a rule, merely nominal, but being supported by entries in the firm's books, the Income-tax Officer is rarely in a position to prove that the alleged participation in the benefits of partnership is unreal.

....

We suggest that the income of a minor should be deemed to be the income of the father (i) if it arises from the benefits of partnership in a business in which the

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

father is a partner or (ii) if, being the income of a minor other than a married daughter, it is derived from assets transferred directly or indirectly to the minor by his or her father or mother, (iii) if it is derived from assets apportioned to him in the partition of a Hindu Undivided Family."

It is clear, however, that the report is of very little help in the construction of the sub-section, because the Legislature did not accept in full the recommendations made in the Report. Two of the rules in Heydon's case lay down (1) that we must find what was the mischief or defect for which the earlier law did not provide and (2) what remedy the Parliament has resolved and appointed to cure the mischief or defect. In the case under our consideration, the interpretation which has been put by me on subsection (3) of section 16 does not militate against any of the aforesaid rules of Heydon's case. The interpretation put by me undoubtedly remedies the mischief or defect for which the earlier law did not provide. The only serious criticism made by learned counsel for the assessees against that interpretation is that the remedy not merely cures the mischief for which the earlier law did not provide, but it goes a little further and attacks the evil even when the evil is committed by a female individual, though the Income-tax Enquiry Report (except in one part) did not in specific terms refer to such an evil committed by a female individual. I can see nothing in the rules laid down in Heydon's case which militates against the view taken by me. There is no presumption that, while remedying an evil, the Legislature may not cast its net very wide so as to remedy the evil in all its aspects. Let me again refer to subclauses (i) and (ii) of clause (a) of sub-section (3)

The Commissioner of Income-tax
v.
Shrimati Sodra Devi
and
Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

of section 16 of the Act. Those two sub-clauses are absolute and unqualified in terms and not subject to any exception. If the wife owns and manages a business and she takes her husband into partnership with her in the business, the result of the partnership would be that the wife's income from the business would be no longer taxable in her hands but would be included in the total income of her husband under the sub-section, even though the husband may be a dormant partner. This clearly shows that the Legislature was not confining itself to the recommendations made in the Income-tax Enquiry Report. What is to be included in the total income of an individual under clause (a) is the income of a wife or minor child arising directly or indirectly "from the membership of the wife" in the firm or "from the admission of the minor to the benefits of partnership" in the firm of which the individual is a partner. The clause covers the share of the profits of the firm received by the wife in her capacity as a partner or by the minor child in his or her capacity as one admitted to the benefits of partnership. But the income received from the firm by the wife or the minor child under any other contract with the firm or in any other capacity, does not fall within the clause and is not included in the husband's or parent's total income.

From what is stated above, it is clear that the Legislature did not confine itself strictly or solely to the recommendations made by the Income-tax Enquiry Committee but provided for all such aspects of the evil or mischief as it thought fit to remedy by the Indian Income-tax (Amendment) Act, 1937 (Act IV of 1937). In these circumstances, I do not think that the recommendations made by the Income-tax Enquiry Committee can be relied upon to restrict the meaning of the word "individual" used in sub-section (3) of section 16 of the Act. As to the Statement of

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

Objects and Reasons which led to the passing of Act IV of 1937 and which has been set out in the judgment of the High Court of Madhya Pradesh, I do not think that the Statement can be referred to as an aid to construction for ascertaining the meaning of the word "individual" used in the sub-section. Even if it is referred to "for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy", the use of the word "parent" in the Statement of Objects and Reasons shows that the evil was not confined to the male individual only, and the sponsor of the Bill was aware of it. The Statement reads: "Section 16(3) was thus designed to bring within the ambit of taxation incomes of wives and minor children as income of husband or *parent,* which otherwise would escape the whole burden of taxation." I emphasise the use of the word "parent" which would show that the evil contemplated was an evil which was not confined to the "father" only but included the mother as well.

My conclusion, therefore, is that there is nothing in the policy of the legislation and the scope and object of the statute which compels one to cut down the natural meaning of the word "individual" used in sub-section (3) of section 16 of the Act so as to confine it to a male individual alone.

I now turn to such authorities as have been cited before us. There has been a difference of opinion in the High Courts with regard to the interpretation of sub-section (3) of section 16 of the Act. In *Shrimati Chanda Devi* v. *Commissioner of Income-tax* (1), the Allahabad High Court has taken the view that the minor's income which arises directly or indirectly from the admission of the minor to the benefits of partnership in a firm of which the mother is a partner,

(1) (1950) 18 I.T.R. 944

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishwar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

can be included in the mother's assessable income under section 16(3) (a) (ii) of the Act. The Allahabad High Court proceeded on the footing that the language of the sub-section did not create any real difficulty and it was not open to it to take the help of the Income-tax Enquiry Report. I have considered this case from both the points of view, and have arrived at the same conclusion at which the Allahabad High Court arrived. It is not necessary to mention the other reasons given by the Allahabad High Court, because they have already been stated by me in an earlier part of this judgment. This decision of the Allahabad High Court was followed by the Punjab High Court in the *Commissioner of Income-tax, Delhi* v. *Shrimati Damayanti Sahni* (1), which has given rise to one of the two appeals before us. The Punjab High Court gave no additional reason except to state that in clause (a) of sub-section (3) of section 16, the word "wife" and the words "minor child" were used disjunctively. I have already stated that the use of the disjunctive "or" is not decisive; but there is no real difficulty in reading clauses (a) and (b) distributively. The Madhya Pradesh High Court took a different view in *Sahodradevi N. Daga* v. *Commissioner of Income-tax* (2), which has given rise to the other appeal before us. In my view, the learned Judges in that case did not attach sufficient importance to sub-clauses (ii) and (iv) of clause (a). If I may say so with great respect, they confined their attention primarily to sub-clauses (i) and (iii) of clause (a) and to clause (b), and from those provisions they inferred that the intention was to confine the word "individual" to a male individual. I venture to think that all the three parts of the sub-section, including the four sub-clauses of clause (a), must be read together in order to understand the

(1) (1953) 23 I.T.R. 41
(2) (1955) 27 I.T.R. 9.

The Commissioner of Income-tax
v.
Shrimati Sodra Devi and Shrimati Damayanti Sahni, Partner of M/s. Ishar Das Sahni and Bros.
v.
The Commissioner of Income-tax

S. K. Das, J.

true meaning and effect of the sub-section. The learned Judges further seemed to think that the use of the words "such individual" in sub-clause (ii) of clause (a) was due to inadvertence. I am unable to agree. I have already pointed out that the phraseology in sub-clauses (i) and (iii) of clause (a) is so strikingly different from the phraseology used in sub-clauses (ii) and (iv) that only one and one reasonable conclusion can be drawn, namely, that the word "individual" has been used in its accepted connotation, and when the Legislature wanted to confine the operation of a sub-clause to the male individual only, it used the word "wife" and "husband"; where, however, the Legislature wanted to refer to either a male or a female, it used the word "individual" which, in its ordinary connotation, means either a male or a female.

For the reasons given above, I agree with the view expressed by the Allahabad and the Punjab High Courts and do not accept the interpretation given by the Madhya Pradesh High Court. In my opinion, the question should be answered in the way the Allahabad and the Punjab High Courts answered it; therefore, Civil Appeal No. 322 of 1955 should be allowed with costs and Civil Appeal No. 25 of 1955 should be dismissed with costs.

ORDER

BY THE COURT: In accordance with the Judgment of the majority Civil Appeal No. 322 of 1955 is dismissed with costs and Civil Appeal No. 25 of 1955 is allowed with costs, the referred question being answered in the nagative.

SUPREME COURT

Before N. H. Bhagwati, Sudhanshu Kumar Dass and J. L. Kapur, JJ.

THE COMMISSIONER OF INCOME-TAX,—*Appellant*

versus

THE PATIALA CEMENT CO. LTD.,—*Respondent*

Civil Appeal No. 118 of 1955

1957

May, 17th

Indian Income-tax Act (XI of 1922)—Section 2(14)A and Finance Act (XXV of 1950)—Section 13—Assessment year from which Indian Income-tax Act became applicable to Part B States indicated—Assessee, a company registered in the erstwhile Pepsu State, a Part B State—Years of assessment 1948-49 and 1949-50—Law applicable thereto—Whether Patiala Income-tax Act or Indian Income-tax Act applied—Appeal against the order of Income-tax Officer—Whether competent, if Patiala Income-tax law applied.

Held, that section 13 of the Finance Act of 1950 shows that the Indian Income-tax Act became applicable to Part B States as from the assessment year 1950-51 or the accounting year 1949-50.

Held, that the effect of the Finance Act of 1950 is that as regards assessment for the year ending 31st March, 1951, the Indian Income-tax Act would be applicable—accounting year being the year ending 31st March, 1950, and for any assessment year previous to that the Patiala Income-tax Act would be applicable. The effect of section 2(14) A proviso (b)(ii) and (iii) is that taxable territories would comprise the whole of India excluding the State of Jammu and Kashmir as respects any period included in the previous year for the purpose of making an assessment for the year ending 31st March, 1951, i.e., for the assessment year 1950-51 or the accounting year 1949-50. Therefore, both for the assessment years 1948-49 and 1949-50 the law applicable would be the Patiala Income-tax law and not the Indian Income-tax Act and consequently no appeal against the order of the Income-tax Officer was competent.

(On Appeal from the Judgment ond Order dated the 26th May, 1954, of the P.E.P.S.U. High Court in Misc. Case No. 31 of 1953).

For the Appellant: Messrs. G. N. Joshi and R. H, Dhebar, Advocates.

For the Respondent: Nemo.

JUDGMENT

The Judgment of the Court was delivered by:

Kapur, J.

KAPUR, J.—This is an appeal under certificate of the Pepsu High Court and the question for decision relates to the applicability of the Indian Income-tax Act, 1922, to the erstwhile Pepsu area in the years of assessment 1948-49 and 1949-50.

The assessee company, (the Respondent before us), was incorporated in the Patiala State and had its registered office at Surajpur in Pepsu. For the year of assessment, 1948-49 the company failed to deduct from out of the remuneration paid to its Managing Agents, who were non- residents, the income-tax and the super-tax which it, under the law, was required to do. It also paid to its auditors auditing fees and from out of this sum also it did not deduct the income-tax and super-tax under the provisions of the Patiala Income-tax Act. The two sums in dispute were Rs. 59,787-1-0 and Rs. 581-4-0 respectively. For the assessment year 1949-50 also the assessee company failed to make the deduction from the remuneration paid to its Managing Agents and the income-tax deductable was Rs. 52,484-14-0 and super-tax Rs. 21,611-6-0. The Income-tax Officer took action against the assessee company under sections 18(3a) and 18(7) of the Patiala Income-tax Act and consequently issued two demand notices for the amounts above mentioned. Against this order of the Income-tax Officer the assessee company took an

The Commissioner of Income-tax
v.
The Patiala Cement Co., Ltd.

Kapur, J.

appeal to the Appellate Assistant Commissioner who reduced the amount demanded but did not decide the question whether the assessee company was bound to make the deductions or not. The assessee company then appealed to the Income-tax Appellate Tribunal and it held that under section 18(7) of the Patiala Income-tax Act no order was required to be passed by the Income-tax Officer and that no appeal lay to the Appellate Assistant Commissioner against the order under section 18(3a) as there was no provision for it under the Patiala Income-tax Act. Before the Tribunal it was contended that at the time when the appeals were decided by the Appellate Assistant Commissioner, the Patiala Income-tax Act had ceased to be in force and, therefore, the appeals were sustainable under the provisions of the Indian Income-tax Act, which had been extended to all Part B States by section 13 of the Indian Finance Act of 1950 (XXV of 1950) but this contention was repelled and the Tribunal held that the only remedy for the assessee company was to take a revision under section 33 of the Patiala Income-tax Act to the Commissioner. The Tribunal at the request of the assessee company referred the following three questions for the opinion of the High Court:

(1) Whether the appeals before the Appellate Assistant Commissioner fell to be decided in accordance with the provisions of the Patiala Income-tax Act or the Indian Income-tax Act ?

(2) Whether the appeals before the Appellate Tribunal fell to be decided in accordance with the provisions of the Patiala Income-tax Act or the Indian Income-tax Act?

(3) Whether, on the assumption that the assessee company was not bound to deduct tax, its appeals before the Appellate

The Commissioner of Income-tax
v.
The Patiala Cement Co., Ltd.

Kapur, J.

Assistant Commissioner were competent in law ?

The High Court decided that in regard to the assessment year 1948-49, the law applicable was the Patiala Income-tax Act, and, therefore, no appeal lay to the Appellate Assistant Commissioner but in regard to the assessment year 1949-50 the Indian Law became applicable and, therefore, the order of the Income-tax Officer was appealable. The Revenue have come up in appeal under a certificate of the High Court and the submission is that to the assessment year 1949-50 also the Patiala Income-tax Act applied and not the Indian Income-tax Act and, therefore, the order of the Income-tax Officer was not appealable.

In order to resolve the controversy, reference may be made to certain provisions of the Indian Income-tax Act, 1922 and the Finance Act of 1950. Section 13 of the Finance Act provides:

Section 13. "If immediately before the 1st day of April, 1950, there is in force in any Part B State other than Jammu and Kashmir or in Manipur, Tripura or Vindya Pradesh or in the merged territory of Cooch Behar any law relating to income-tax or super-tax or tax on profits of business, that law shall cease to have effect except for the purpose of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purpose of assessment under the Indian Income-tax Act, 1922 for the year ending on the 31st day of March, 1951, or for any subsequent year or, as the case may be, the levy, assessment and collection of tax on profits of business for any chargeable

accounting period ending on or before the 31st day of March, 1949;"

The Commissioner of Income-tax
v.
The Patiala Cement Co., Ltd.

Kapur, J.

Section 13 of the Finance Act of 1950 shows that the Indian Income-tax Act became applicable to the assessees residing in any Part B State as from the assessment years 1950-51 or the accounting year 1949-50.

The provisions of section 2(14) A of the Indian Income-tax Act, 1922, shows that the Act became applicable to Part B States as from the 1st April, 1950. The relevant provisions of this section are:

Section 2(14) A "taxable territories" means—

....

(d) as respects any period after the 31st day of March, 1950, and before the 13th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir and the Patiala and East Punjab States Union.

Provided that the "taxable territories" shall be deemed to include—

(b) the whole of the territory of India excluding the State of Jammu and Kashmir—

(i)...............

(ii) as respects any period after the 31st day of March, 1950, for any of the purposes of this Act and

(iii) as respect any period included in the previous year for the purpose of making any assessment of the year ending on the 31st day of March, 1951, or for any subsequent year;"

The Commissioner of Income-tax
v.
The Patiala Cement Co., Ltd.

Kapur, J.

It will be noticed that the language used in section 2(14)A proviso (b)(iii) is the same as the language under section 13 of the Finance Act of 1950. The effect of the Finance Act of 1950 is that as regards assessment for the year ending 31st March, 1951 the Indian Income-tax Act would be applicable—accounting year being the year ending 31st March, 1950, and for any assessment year previous to that the Patiala Income-tax Act would be applicable. The effect of section 2(14) A proviso (b) (ii) and (iii) is that taxable territories would comprise the whole of India excluding the State of Jammu and Kashmir as respects any period included in the previous year for the purpose of making an assessment for the year ending 31st March, 1951, i.e., for the assessment year 1950-51 or the accounting year 1949-50.

The application of Indian Income-tax Act as a result of section 13 of the Finance Act of 1950 was decided in *The Union of India* v. *Madan Gopal Kabra* (1), which was a case from Rajasthan, where there was no Income-tax in the previous year but the assessee was sought to be assessed for the year 1950-51, under the Indian Income-tax Act. It was held that under sub-clause (i) of clause (b) of the proviso to section 2(14)A the whole of the territory of India including Rajasthan would be deemed "taxable territory" for the purpose of section 4A of the Indian Income-tax Act "as respects any period" meaning any period *before* or *after* March. 31st, 1950, and the assessee was, therefore, liable to income-tax. Patanjali Shastri, C.J., who delivered the judgment of the court said:

> "A close reading of that provision will show that it saves the operation of the State law only in respect of 1948-49 or any earlier period which is the period not included in the previous year (1949-50) for the purpose of assessment for the year 1950-51.

(1) [1954] S.C.R. 541, 552

> In other words, there remained no State law of Income-tax in operation in any Part B State in the year 1949-50."

The Commissioner of Income-tax
v.
The Patiala Cement Co., Ltd.

Kapur, J.

This passage from the judgment supports the contention of the appellant that as regards income of the accounting year 1949-50 or the year of assessment 1950-51 no State law of Income-tax was operative in any Part B State. It appears that the error which has crept in the judgment of the High Court has been due to misreading the year 1949-50 as being assessment year and not accounting year. In another case *D. R. Madhavakrishnaiah* v. *The Income-tax Officer* (1), section 13 of the Finance Act of 1950 was similarly interpreted. Therefore, both for the assessment years 1948-49 and 1949-50 the law applicable would be the Patiala Income-tax Law and not Indian Income-tax Act and consequently no appeal against the order of the Income-tax Officer was competent.

The answers to the questions would be as follows *Questions Nos.* 1 *and* 2 : The Patiala Income-tax Act was in operation and no appeals lay. *Question No. 3*: In the negative.

The appeal is, therefore, allowed but as the Respondent company has not appeared and contested the appeal, there will be no order as to costs, in this court.

CIVIL WRIT

Before Bishan Narain, J.

MOHAN SINGH CHAUDHARI,—*Petitioner.*

versus

THE DIVISIONAL PERSONNEL OFFICER, NORTHERN RAILWAY, FEROZEPORE CANTT, AND OTHERS,—*Respondents.*

Civil Writ Application No. 29 of 1957.

1957

May, 17th

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