CIVIL REFERENCE (APPELLATE SIDE)

Before Eric Weston, C.J., and Harnam Singh, J.

IN THE MATTER OF COMMISSIONER OF INCOME-TAX, DELHI, AJMER, RAJASTHAN AND MADHYA BHARAT, DELHI,—*Applicant*

versus

Shrimati DAMAYANTI SAHNI,—*Respondent.*

Civil Reference (Income-tax) No. II of 1952

1952

August, 26th

Income-tax Act (XI of 1922), section 16 (3) (a) (ii)—"Individual", whether includes a female—Widow becoming partner in the firm in place of her husband and her two minor sons also admitted to the benefits of the partnership—Whether the shares of the minors in the profits could be included in the income of the widow in assessing her income.

Held, that in section 16 (3) (a) of the Act the word "wife" and the words "minor child" are used disjunctively. The individual may have a wife and minor child or may not have wife but have minor child. If the individual assessed to income-tax is a female that individual will have no wife but she may have minor child. Section 16 (3) (2) does not imply that the individual must necessarily be a male. If the legislature thought that the "individual" in the section must in all cases be a male it could have drafted the concluding part of the section to read "by such individual for the benefit of his wife or his minor child or both."

Shrimati Chanda Devi v. *The Commissioner of Income-tax* (1), followed.

Held further, that under section 16 (3) (a) (ii) the minors' share in the profits of the firm could be included in the mother's assessable income.

Case referred by the Income-tax Appellate Tribunal, Delhi Bench, with his letter No. R.A. No. 750/1951-52, dated the 24th April 1952, *under section* 66 (1) *of the Indian Income-tax Act, 1922 (Act XI of 1922), as amended by section* 92 *of the Income-tax (Amendment) Act,* 1939 (*Act VII of* 1939), *for the decision of the Hon'ble Judges of the High Court.*

A. N. KIRPAL and D. K. KAPUR, for Petitioner.

BHAGWAT DYAL and PARKASH NARAIN, for Respondent.

(1) A.I.R. 1951 All. 586

JUDGMENT

HARNAM SINGH, J. This is a reference under section 66(1) of the Income-tax Act by the Income-tax Appellate Tribunal, Delhi Bench. The question referred to us for answer is—

> "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 reconstituted firm of Messrs Ishwardas Sahni & Bros. should be included in the income of *Shrimati* Damayanti Sahni in assessing her income, profits and gains?"

Ishwardas Sahni was a partner in the firm of Messrs. Ishwardas Sahni and Brothers till his death on the 7th of November 1946. The firm's accounting year ended on the 31st of March 1947. Ishwardas Sahni left him surviving his widow *Shrimati* Damayanti and two minor sons from that widow. *Shrimati* Damayanti became a partner in the firm, which also admitted her two minor sons to the benefits of partnership. In the assessment year 1946-47 the Income-tax Officer found that the income of the two minor sons who were admitted to the benefits of that partnership should be assessed in the hands of *Shrimati* Damayanti under section 16(3) (a)(ii) of the Indian Income-tax Act. On appeal the Appellate Assistant Commissioner confirmed the finding given by the Income-tax Officer, but the Appellate Tribunal has found that the word 'individual' occurring in section 16(3) (a) (ii) does not refer to a female assessee. Section 16(3) of the Act reads as under:—

> "(3) In computing the total income of any individual for the purposes 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;

The Commissioner of Income-tax, Delhi, Ajmer, Rajasthan and Madhya Bharat
v.
Shrimati Damayanti Sahni

Harnam Singh, J.

(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

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual and 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".

Basing himself on Shrimati *Chanda Devi* v. *The Commissioner of Income-tax* (1) Mr Amar Nath Kirpal urges that the minors' shares of profit in Messrs Ishwardas Sahni and Brothers can be included under section 16(3) (a) (ii) of the Act in the mother's assessable income.

In Shrimati *Chanda Devi* v. *The Commissioner of Income-tax* (1) the material facts giving rise to the reference were identical with the facts of the present case. In that case Madan Lal and his four sons, Kishan Lal being major, and the other three sons Ramesh Chandra, Mahesh Chandra and Hari Mohan being minors, were partners of firm Baij Nath-Madan Lal. Madanlal died on the 3rd of April 1942, and a fresh partnership deed was executed on the 13th of April 1942, under which *Shrimati* Chanda Devi, widow of Madan Lal, and her four sons became partners, each having a one-fifth share. The three minor sons were still minor on the 13th of April 1942, and in the relevant assessment year. In that year the

(1) A.I.R. 1951 All. 586.

Income-tax authorities purporting to act under section 16(3) (a)(ii) of the Income-tax Act included the income of the minors in the income of the mother for purposes of assessment. On those facts Malik, C. J. (Bhargava, J., concurring) said:—

> "The minors' shares of profits in the firm of Messrs Baijnath-Madanlal can be included under section 16(3) (a)(ii) in the mother's assessable income."

Clearly, the decision given in A.I.R. 1951 All. 586 governs the present case.

Mr. Bhagwat Dyal urges that the word 'individual' occurring in section 16(3) of the Act must mean an individual capable of having both a wife and a minor child. In my judgment the argument raised has no substance. In section 16(3) (a) of the Act the word 'wife' and the words 'minor child' are used disjunctively. The individual referred to in section 16(3) (a) of the Act may have a wife and minor child or may not have wife but have minor child. If the individual assessed to income-tax is a female that individual will have no wife but she may have minor child. Section 16(3) (a) of the Act, in my opinion, does not imply that the individual must necessarily be a male.

Mr. Bhagwat Dyal then urges that the concluding part of section 16(3) (b) of the Act shows that the individual referred to in section 16(3) (a) (ii) of the Act must be a male. The words on which reliance is placed are these—

> "by such individual for the benefit of his wife or a minor child or both."

Now, if the Legislature thought that the 'individual' referred to in section 16(3) (a)(ii) of the Act must in all cases be a male, the Legislature could have drafted the concluding part of section 16(3) (b) of the Act to read "by such individual for the benefit of his wife or his minor child or both".

The Commissioner of Income-tax, Delhi, Ajmer, Rajasthan and Madhya Bharat
v.
Shrimati Damayanti Sahni

Harnam Singh, J.

As pointed out in the Allahabad case 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.'

With very great respect I follow the decision given in Shrimati *Chanda Devi* v. *The Commissioner of Income-tax* (1), and answer the question referred to us in the affirmative. No order as to costs.

Weston, C. J.

WESTON, C.J.—I agree.

APPELLATE CIVIL

Before Kapur and Soni, JJ.

M/S D. D. JAISHI RAM, CO.—*Plaintiffs-Appellants*

versus

DOMINION OF INDIA,—*Defendant-Respondent.*

Regular First Appeal No. 70 of 1950

1952

August, 27th

The Indian Railways Act (IX of 1890)—Section 72—Liability of the Railway for loss of goods—Effect of the execution of risk notes 'A' and 'B' by the consignor.

Four bales of cotton piece-goods were sent from Madras to Amritsar under Railway Receipt, dated 9th August 1947. These goods reached Amritsar after a long period and were taken delivery of on the 1st January 1948. At the time of the delivery of the goods it was found that one of the bales containing 186 pieces was absolutely empty. The plaintiffs who were the consignees of the Railway Receipt sued the Dominion of India for the price of the missing pieces which were valued at Rs 6,343-12-0. The consignor had executed risk notes 'A' and 'B' at the time the goods were despatched.

Held, that where risk notes 'A' and 'B' are both executed, it is not open to the consignor to agitate in a Court of law that packing was proper, because when risk note

(1) A.I.R. 1951 All. 586.