

ALLAHABAD HIGH COURT

Chanda Devi

Vs.

Commissioner of Income-tax,

Mis. Case No. 366 of 1945

(Malik, C.J. and V. Bhargava, J.)

14.09.1950

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66 (1), Income-tax Act by the Income-tax Tribunal, Allahabad Bench. The question referred to us for answer is:

"Whether, in the circumstances of the case, the inclusion under Section 16 (3) (a) (ii) of the Act of the three minors' shares of profits from the firm of Messrs. Bajj Nath Madanlal in the mother's assessment is correct?"

There was a partnership firm in the name of Bajj Nath Madan Lal of which the partners were Madanlal and his four sons Kishan Lal being major and the other three sons, Ramesh Chandra Mahesh Chandra and Hari Mohan being minors. This partnership was registered under the Income-tax Act. Madanlal died on 3-4-1942, and a fresh partnership deed was executed on 13-4-1942, under which Sm. Chanda Devi, widow of Madanlal, and her four sons became partners each having a one fifth share. The three minor sons were still minors on the date this partnership deed was entered into and in the relevant assessment year. In that year the Income-tax authorities purporting to act under Section 16 (3) (a) (ii), Income-tax Act included the income of the minors' share in the income of the mother's share and assessed it all together to a tax of Rs. 16,353. The question that has, therefore, arisen is whether under the provision mentioned above the income of the minors could be added to the income of their mother for purposes of assessment.

2. The relevant provision of Section 16 (3) is as follows:

"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).....

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

It is not disputed by learned counsel that the word 'individual' here was intended to be used as the unit for purposes of Income-tax in contradistinction to a Hindu undivided family and such others. It is also admitted that an individual may be a male or a female and the word 'individual' can include both a man or a woman. The words 'in computing the total income of any individual' therefore, must mean whether such an individual is a male or a female as opposed to a Hindu undivided family and others who form units of taxation. The argument of learned counsel is that though the words 'any individual' may include both a male or a female, the words of clause (a) of sub-section (3) make it clear that such individual must be a female. The learned counsel has urged that in clause (a) the words 'such individual' must mean an individual capable of having both a wife and a minor child. The word 'such' in this clause refers back to the individual whose total income is being computed for purposes of assessment and 'such individual' cannot here mean an individual who is capable of having both a wife and a child. Sub-clause (i) of clause (a) of sub-section (3) of Section 16 makes it clear that where the husband is a partner the income of the wife by reason of her being a member of the firm, is to be computed in the income of the husband. 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.'

3. Learned counsel has referred us to the Income-tax Enquiry Report, chap. 3, Section 1 (b) and has urged that the main object behind this amendment was to put an end to the practice of fathers transferring property in the names of their minor children or their wives with the object of reducing the liability under the Income-tax Act. We do not think we can take the help of the report when the language of the section does not appear to create any real difficulty. Cases of fathers trying to avoid their liability may be more frequent than cases of mothers trying to evade liability in the same way, but there is no reason why the section should be so interpreted as to apply only to a male when it is capable of being applied both to a male and a female.

4. We, therefore, answer the question referred to us in the affirmative. 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.

5. The opposite party is entitled to its costs which we assess at Rs. 300.

Answer in the affirmative.