

# PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax

Vs

Damayanti Sahni

(Weston, C.J. Harnam Singh, J.)

26.08.1952

## JUDGMENT

### **Harnam Singh, J.**

1. This is a reference under Section 66(1), 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), Income-tax Act, 1922, includes also a female and whether the shares of the two minor sons of Sm. Damayanti Sahni in the profits of the re-constituted firm of Messrs. Ishwardas Sahni & Bros. should be included in the income of Sm. Damayanti Sahni in assessing her income, profits and gains?"

(2) Ishwardas Sahni was a partner in the firm of Messrs. Ishwardas Sahni & Brothers till his death on 7-11-1946. The firm's accounting year ended on 31-3-1947. Ishwardas Sahni left him surviving his widow Sm. Damayanti and two minor sons from that widow. Sm. 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 Sm. Damayanti under Section 16 (3) (a) (ii), 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 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

(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."

3. Basing himself on -- '*Chanda Devi v. Commr. of Income-tax*', (A), Mr. Amai Nath Kirpal urges that the minors' shares of profit in Messrs. Ishwardas Sahni & Bros, can be included under Section 16 (3) (a) (ii) of the Act in the mother's assessable income.

4. In -- '*Chanda Devi v. Commr. of Income-tax*', (A) 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. Mohan Lal died on 3-4-1942 and a fresh partnership deed was executed on 13-4-1942, under which Sm. 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 13-4-1942, 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 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. Eajinath Madanlal can be included under Section 16 (3) (a) (ii) in the mother's assessable income."

Clearly, the decision given in AIR 1951 All 586 (A) governs the present case.

5. Mr. Bhagwat Dayal 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.

6. Mr. Bhagwat Dayal 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."

7. 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.'

8. With very great respect I follow the decision given in -- 'AIR 1951 All 586' (A) and answer the question referred us to in the affirmative. NO order as to costs Weston, C.J.

9. I agree. Answer in affirmative.