

**THE COMMISSIONER OF INCOME TAX, MADHYA PRADESH****AND BHOPAL VS. SODRA DEVI****[CIVIL APPEAL NOS. 322 & 25 OF 1955]****COURT:** Supreme Court of India**DECIDED ON:** 17<sup>th</sup> May, 1957**BENCH:** J.L. Kapur, N.H. Bhagwati and S.K. Das, JJ**FACTS OF THE CASE**

Prior to October 18, 1944, one Rai Bahadur Narsingdas Daga (since deceased), his wife Shrimati Sodra devi (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 family properties were accordingly partitioned. On such partition, the business of the Spinning and Weaving 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 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 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 assessee. On a construction of s. 16(3) (a) (ii) of the Act, the Tribunal held that the income falling to the shares of the three minor sons of 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 s. 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." 4. 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 benefit 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 s. 66A (2) of the Act to the Commissioner of Income-tax, Madhya Pradesh and Bhopal, and hence Civil Appeal No. 322 of 1955 before Supreme Court.

### **ISSUES**

Whether the word "individual" in Section 16(3) (a) (ii) of the Income Tax Act, 1922, includes 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 Shani and Brothers should be included in the income of Shrimati Damayanti Sahni in assessing her income, profits and gains.

### **RULE**

The word assesses 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. Whereas the word "individual" is narrower in its connotation being one of the units for the purposes of taxation than the word "assesses", 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.

### **APPLICATION**

The Supreme Court applied the Mischief Rule of interpretation, do constructing the word "individual" in the context of sec 16(3) of the Indian Income Tax Act, 1922 after it came to the conclusion that the said word in its setting was ambiguous. Bhagwati J. pointed out that the evil which was sought to be remedied was the one resulting from the wide spread practices of husband entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnership of which they were members. If this f this back of

the enactment of sec 1693) is kept in view, there is no room for any doubt that the words any individual in this provision is restriction to males and it was so constructed accordingly.

### **CONCLUSION**

BY 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 negative.

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-s. (3) of section 16 of the Act so as to confine it to a male individual alone.



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