Supreme Court of India
M/S. Meera Company,Ludhiana vs The Commissioner Of Income ... on 11 March, 1997
Author: Sen
Bench: B.P. Jeevan Reddy, Suhas C. Sen, G.T. Nanavati

PETITIONER:
M/S. MEERA COMPANY,LUDHIANA

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME TAX,PUNJAB, J&K AND CHANDIGARH,PA

DATE OF JUDGMENT: 11/03/1997

BENCH:
B.P. JEEVAN REDDY, SUHAS C. SEN, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

(WITH C.A. Nos.1664-66/1986. 4365-69/1985 AND 1694/1995 J U D G M E N T SEN, J.

This is an appeal against an order passed by the Division Bench of the Punjab & Haryana High Court disposing of an Income Tax Reference relating to assessments of the Assessment years 1963-64 to 1967-68.

The following questions of law had been referred to the High Court by the Income Tax Appellate Tribunal:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was circumstances of the case, the Tribunal was right in law, in holding that Meera & Co. is a body of individuals and is assessable as such?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment of the body of individuals identified as Meera & Co. should be made under Section 4 read with Section 2(31)(v) and not under Section 160, 161 or 166?:

The High Court has given brief summary of the relevant facts as under:

Shri Prem Narain, an individual, carried on business under the name M/S. Meera & Co. at Ludhiana. He died intestate on August 25, 1962 survived by his mother, widow and three minor children. All the assets of the deceased including the business styled as Meera & Co. devolved on his five legal heirs. The mother of the deceased relinquished her interest in the assets of the deceased against a lump sum payment. For the purpose of these references, we are concerned with the widow and three minor children of the deceased. The business of M/S. Meera & Co. was continued as a single unit in the same name by Smt. Krishna Gupta, widow of the deceased, obviously on her behalf and on behalf of all the three minor children as their guardian, The accounts were maintained in the name of m/s. Meera & Co. The yearly profits were ascertained and divided. The Income Tax Return for the assessment years 1963-64 to 1967-68 were filed by Smt. Krishan Gupta on behalf of m/s. Meers & Co. The status of the assessee was described as `association of persons'. These returns reflected the entire income from business previously carried on by shri Prem Narain, deceased. On January 25, 1968, Smt. Krishna Gupta filed the return under protest and further revised the returns for the assessment years 1963-64 to 1966-67, declaring the same income that had been shown in the returns already filed but without specifying the status therein. It was contended that the income from the business should be assessed in equal shares in the hands of four legal heirs of the deceased. The minor children of the deceased also filed separate returns where the share of profit from m/s. Meera & Co. was included for rate purposes only. The Income-tax Officer did not agree with the altered position taken by the assessee that the income from the business was liable to be assessed in equal shares in the hands of the four heirs of the deceased. He held that the business was for one and common unit and the same was assessable in the status of `body of individuals'. The assessee, being dissatisfied with the order of the Income Tax Officer, filed an appeal and the Appellate Assistant Commissioner held that the entire income of the business was assessable in the hands of Smt. Krishna Gupta as a person carrying on business in individual capacity. The Revenue and the assessee both filed appeals before the Income Tax Appellate Tribunal. The Accountant member of the Appellate Tribunal found that the business was carried on as an organic unit by Smt. Krishna Gupta on her own behalf and on behalf of her three minor children as their natural guardian. On the death of Shri Prem Narain, his estate fell to his legal heirs under Section 8 of the Hindu Succession Act as tenants-in-common. The special provisions regarding the minors and guardians contained in Sections regarding the minors and guardians contained in Sections 160. 161 or 166 of the Income Tax Act, (hereinafter referred to as the `Act') shall apply and will override the general provisions contained in Sections 4 and 2(31)(v) of the Act. The Judicial member took a different view. According to him, the entity was liable to be assessed under Section 4 read with Section 2(31)(v) of the Act. He repelled the contention of the assessee that the assessments of the minors should have been done under the special provisions meant for representative assessees, i.e. Sections 160 etc. He held that before the assessee could be so treated, he must filter through the charging Section 4 read with Section 2(31)(v) of the Act and if he cannot do so, he must stay there. In the event of the assessee being a body of individuals, as defined in Section 2(31)(v), the question of the applicability of Sections 160, 161 etc. of the Act did not arise. As the two members of the Appellate Tribunal differed, the matter was referred to a third member who agreed with the view taken by the Judicial member and the appeals of the assessee were consequently dismissed.

Before the High Court, the contention made on behalf of the appellant was that Smt. Krishna Gupta had two capacities in this matter. She was managing the business of Meera & Co. in her own right as well as a guardian of the minor children. As a guardian-trustee of the minor children, she should have been assessed as a representative assessee in accordance with the provisions of Sections 160, 166 of the Act. Krishna Gupta acted on behalf of the minors in running the business of Meera & Co, Income from the business representing the share of the minors accrued to them or to their guardian representing them. That being the case, the mode of assessment contained in Chapter XV of the Act shall get precedence being special provisions relating to the minors and assessment should be made accordingly. It was further contended that the assessments could not be made in the status of `body of individuals' which postulates more than one individual. In this case, the business was being managed by Krishna Gupta on her own behalf and also on behalf of the minors. There is no question of assessing the income of the father in the status of `body of individuals'.

The High Court was, however, of the view that the expression `body of individuals' should receive wide interpretation to include a combination of individuals who have unity of interest (mother and her three minor children) and were actively engaged in the business carried on for the benefit of all of them by one of them and therefore, they would constitute a `body of individuals'. In the instant case, on the death of Prem Narain, business under the trade name Meera & Co. passed on to Krishna Gupta and her three minor children. The fact that the minors had no legal capacity to enter into an agreement was irrelevant for determining their status as a constituent in the `body of individuals' in terms of Section 2(31)(v) of the Act. In that view of the matter, the High Court answered both the questions in the affirmative and in favour of the Revenue.

In the appeal before us, it has been contended that in the facts of this case, it could not be said that the mother and three assessable as a unit. The business profit should have been apportioned and assessed in the hands of each of the heirs of Prem Narain separately and in the status of individual. Secondly, it was contended that the special provisions relating to the minor contained in Chapter XV of the Act will override the general provisions relating to assessment in other parts of the Act. When the income of the firm accrued to the minor, assessment should have been done in accordance with the provisions of Sections 160, 161 and 166 of the Act, We are unable to uphold any of these two contentions. The business of Meera & Co. was set up by Prem Narain who ran this business as a sole-proprietory concern till his death. After his death, the entire business devolved upon his mother, widow and minor children. The mother's share was bought by the widow and her children and they carried on the business in the name of Meera & Co. The business was carried on as before jointly by the widow on her own behalf as well as on behalf of the minor children. The profits that arose out of the business were a result of the business activities carried on jointly by the mother on her own behalf and also on behalf of minor children. In such a situation, the assessments had to be made in respect of the income generated in the business in the status of `body of individuals'.

On behalf of the appellant it has been contended that "a body of invididuals" is an altogether different entity and should not be equated to "an association of persons". The phrase "an association of persons" is well un-derstood in the Income Tax Act and has been explained in a number of cases. The legislature is presumed to know the judicial interpretations given to the phrase "Association of Person". "Body of individuals" in this background of facts must be held to be some other entity not

akin to "Association of Persons". A Board of Trustees or a society of persons can be treated as "a body of individuals". A group of individuals cannot be treated as "a body of individuals". A group of individuals cannot be treated as "a body of persons" more so when the group is receiving income from an enterprise not set up by that group. The meaning ascribed to "association of persons" cannot be applied to "body of individuals".

Before examining this question, we shall notice how the expression "association of persons" had been understood under the Tax Act, 1922 over the Years.

Initially, the charge under Section 3 of the Indian Income Tax Act, 1922 was on income of "individual, company, firm and other association of individuals". These words were substituted by Section 3 of the Indian Income Tax (Amendment) Act, 1939 by the words "individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the partners of the firm or the members of the association individually". Commenting on this charging Section, it was observed by Beamount, C.J. in Commissioner of Income Tax, Bombay v. Laxmidas Devidas and another, (1937) 5 ITR 584 at page 589 as under:

> "It seems to me that an association of two or more persons for acquisition of property which is to be managed for the purpose of producing income, profits or gains falls within the words "other association of individuals". The fact that one of the assessees during the year of assessment was a minor, does not, I think affect the question.....What we have got is the ownership of property by that property of profits or gains."
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> In the case of Commissioner of Income Tax, Madras v.

Salem District Urban Bank Ltd. 8 ITR 269, a Bench of three judges of the Madras High Court took the view that `association of individuals' in Section 3 of the Income Tax Act, 1922 would apply even to a corporate body which for the most part was composed of co-operative societies. On behalf of the appellant reliance was placed on the judgment in the case of Commissioner of Income Tax, Bombay v. Ahmedabad Mill-owners' Association. 7 ITR 369, where it was held that the expression `association of individuals' in Section 3 meant an association of human beings. Leach, C.J., considered the opinion expressed in The Trustees of Sir Currimbhoy Ebrahim Baronetcy Trust v. Commissioner of Income Tax. (1932) 5 ITC 484, preferable to that expressed in the case of Ahmedabad Mill Owners' Association, (supra) and held that `Association of Individuals' did not mean an Association of human beings only. Leach, C.J., observed:-

> "If a corporate body created by a statute is an individual within the meaning of the section and I hold that it is, a cooperative society registered under the Co-operative Societies Act must fall within the same category, It is a corporae body and has perpetual succession. I consider that it is not reasonable to suppose that the Legislature intended that there should be a difference in the meaning of the word `individual' and the plural `individuals'. If the word `individual' includes a corportion, the words `association of individuals' must embrace an association of

corporate bodies, and therefore, the assessee is an `association of individuals'."

Possibly because of this difference of the opinion about the meaning of the phrase `association of individuals', Section 3 of the 1922 Act was amended in 1939 and charge was imposed on "every individual, Hindu undivided family, a company and local authority, every firm and other association of persons or the partners of the firm or the members of the association individually".

This amendment took care of the controversy as to whether the phrase "association of individuals" will take in association of natural and artificial persons or bodies like co-operative societies. Derbyshire, C.J. explained the amended charge in the case of Re. B.N.Elias & Others, 3 ITR 408, in the following words:

> "Previous to the year 1924, the words of the section in question were "individual, company, firm and Hindu undivided family". By the Indian Income Tax Amendment Act of 1924 (Act XI of 1924) the words "individual, Hindu undivided family, company, firm and other association of individuals" have to be construed in their plain, ordinary meaning. There is no difficulty about the word "individuals". "Associate" means, according to the Oxford Dictionary, "to join in common purpose. or to join in an action". Did these individuals join in a common purpose, or common action, thereby becoming an association of individuals? In my view, they did....In arriving at that conclusion, I am fortified by the words of LORD JUSTICE COTTON in the case of Smith v. Anderson (15 Ch.
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> 247. at page 282). There the learned LORD JUSTICE is discussing the meaning of the word "association" as used in Section 4 of the Companies Act of 1862. The word occurs along with the words "company or partnership". Cotton, L.J. says at page 282: "U do not think it very material to consider how far the word "association"
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> differs from company or partnership, but I think we may say that if "association" is intended to denote something different from a company or partnership, it must be judged by its two companions between which it stands, and it must denote something where the associates are in the nature of partners. It seems to me (not that I think it material) that it might have been intended to hit the case which we have frequently seen, of a number of persons or a number of firms joining themselves together for the purpose of carrying on a particular adventure in order to make gain by it". Then he goes on to describe instances of that.
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> In my view, these persons have joined themselves together and remained, joined together for the purpose of buying, holding, and using that property "Norton Buildings" in order to make gain by it. In so doing they have become and were, at the time of this assessment an "association of individuals" within the meaning of Section 3 of the Indian Income Tax Act."

Costello, J. in his concurring judgment observed:

> "Mr. Banerji was at very great pains to demonstrate to us that the combination of individuals with which we are concerned could not properly be described as partnership and he emphasised the face that they were co-owners of the property which is known as the "Norton Building". I have no doubt whatever that Mr. Banerji was perfectly justified and correct in inviting us to take the view that this was not a partnership but it seems to me bearing in mind the juxtaposition which I have mentioned, that although these four persons did not constitute a body which was the same as partnership it was in many respects similar to a partnership and was approximate to a partnership and it may well be that the intention of the legislature was to hit combinations of individuals who were engaged together in some joint enterprise but did not in law constitute partnerships within the meaning of both Section 3 and Section 55 of the Indian Income Tax Act, 1922,"

Costello, J.`s observation that the intention of the legislature was to hit combinations of individuals who were engaged together in some joint enterprise but did not in law constitute partnerships aptly sums up the position. Bodies or Associations which were neither companies nor partnerships in law were sought to be taxed if the persons or individuals constituting the body of the association combined to engage in an activity to produce income.

It is also important to note that in that case Costello, J. was invited to give a general definition of the expression "association of individuals". He observed:-

> "Mr. Banerji invited us to take upon ourselves the difficult but not indeed impossible of the expression "association of individuals". In my opinion that is not desirable from any point of view whatever. Each case must be decided upon its own peculiar facts and circumstances. When we find, as we do find in this case, that there is a combination of persons formed for the promotion of a joint enterprise banded together if I may so put it, as co-adventurers to use an archaic expression then I think no difficulty whatever arises in the way of saying that in this particular case these four persons did constitute an "association of individuals" within the meaning of both Section 3 and Section 55 of the Indian Income Tax Act, 1922."

We were also referred to the case of Re: Keshardeo Chamria, 5 ITR 246 and it was contended that in a family business, a situation may arise where some members of the family carry on the business jointly, From that it does not follow that the members of the family must be assessed as an "association of persons". In that case, there was a partition suit followed by appointment of a Commissioner for Partition for dividing the Properties among the members of the family. Panckridge, J. observed that the status of the members of a Mitakshara family changed after the preliminary decree of partition. He went on to observe:

> "The members of such a family appear to me to be in the same position as the members of a Dayabhaga family, and it has never been suggested as far as I know that members of such a family cannot be individually assessed in respect of their shares"

It was held in that case that the members of the family could not be treated as an "association of persons". It is to be noted that in that case no business was carried out jointly by two individual members of the family, but after partition the members of the family held properties as tenants in common like the members of a Dayabhaga family.

In the case of Commissioner of Income Tax, Bombay North Kutch and Saurashtra v. Indira Balkrishna, (1960) 39 ITR 546, this Court held that "association of persons" meant an association in which two or more persons joined in a common purpose or common action. As the words occurred in a section which imposed a tax on income, the association must be one the object of which was to produce income, profits or gains. In that case, co-widows of a Hindu governed by Mitakshara law inherited his estate which consisted of immovable properties, shares, money lying in deposit and a share in a registered firm. The Appellate Tribunal found that they had not exercised their right to separate enjoyment and that except for jointly receiving the dividends from the shares and the interest from the deposits, they had done no act which had helped to produce income. This Court held that the co-widows succeeded as co-heirs to the estate of the deceased husband. It was held that since the widows had an equal share in the income from immovable properties, Section 9(3) of the Indian Income Tax Act, 1922 will apply. So far as other incomes were concerned, it was held:

> "Coming back to the facts found by the Tribunal, there is no finding that the three widows have combined in a joint enterprise to produce income. The only finding is that they have not exercised their right to separate enjoyment, and except for receiving the dividends and interest jointly, it has been found that they have done no act which has helped to produce income in respect of the shares and deposits. On these findings it cannot be held that the three widows had the status of an association of persons within the meaning of section 3 of the Indian Income Tax Act."

The meaning of "an association of persons" was also examined by this Court in the case of G. Murugesan & Brothers v. Commissioner of Income Tax Madras, (1973) 88 ITR

432. It was held in that case that an association of persons could be formed only when two or more individuals voluntarily combined together for certain purposes. Volition on the part of the members of the association was an essential ingredient. It was further held that even a minor could join "an association of persons" if his lawful guardian gave his consent. The income in that case arose under two heads house property and dividends from shares. The question before this Court was whether the dividend income should be assessed in the hand of an association of persons or individuals. One Sinnamani Nadar executed a settlement deed in favour of his four grand-sons. The property covered by the settlement deed comprised of a house property which had been let out and some shares. The donees were to enjoy the income of these properties during their life-time. Thereafter, the properties were to devolve on their children. In that case, it was Pointed out that Income Tax return was filed in the status of association of persons prior to the assessment year 1959-60 to 1962-63, the returns were submitted as individuals specifically stating that the donees were not functioning as an association of persons.

In the case of Mohamed Noorullah v. Commissioner of Income Tax, Madras, (1961) 42 ITR 115, one Oomer Sahib used to carry on business of manufacture and sale of Spade Clover brand beedies. After his death minor son, Mohamed Noorullah, and his widow Luthfunnissa Begum, and four children by her who were all minors at the date of the death of Oomr Sahib, carried on the business. Noorullah through his next friend applied to sue in forma pauperis and during the pendency of those proceedings two advocates of the High Court were appointed joint receivers of the properties of the deceased on March 17, 1943. On May 10. 1943, the widow, Luthfunnissa, filed a suit for partition and also applied for the continued and they carried on the business as before. In due course a preliminary decree for partition was passed. The High Court noted that none of the parties wanted to break the continuity of the business after the death of Oomer Sahib. The joint receivers continued the business till November 25, 1946 when the business was put up for sale by auction and was purchased by Noorullah. The question was as to the status in which the income of the business was to be taxed.

This Court held that the High Court had rightly come to the conclusion that the business was the business of an association of persons. None of the partners wanted to break the unity of control of the business or its continuity and the business was of such a natural that it could not be carried on without such consensus. The income was the income of a business which was carried on as a single business by the consent of all the parties. The mere fact that a suit was pending at the time for the administration of the estate of the deceased or for the separation of the shares of the co-heirs did not affect the incidence of taxation.

Although strong reliance was placed on these three decisions on behalf of the appellant, none of these decisions come to the aid of the contentions made on behalf of the appellant.

The finding fact in the case of Indira Balakrishna (supra) was that the widows except for receiving the interest and dividend jointly had done no act which had helped to produce the income.

In the case of G.Murukesan (supra), dividend from shares and income from properties were received by the heirs. Here again no business activity was involved.

Mohamed Noorullah's (supra) comes very close to the facts of the case before us. The business was continuing after the death of the father. None of the heirs wanted the business to come to an end. Although the widow and the minor children had not started the business together. Therefore, income from the business had to be assessed without dividing the income between the widow and the minor children. To borrow the language of Costello, J., the intention of the charging Section even under the Act of 1961 is to hit the combinations of individuals who engaged together in some joint enterprise, even though they did not in law constitute a partnership.

The contention on behalf of the appellant is that the assessment has been wrongly done in the status of "body of individuals". This phrase is not to be found in the repealed Act of 1922 and the meaning ascribed to this phrase must be quite distinct and separate from the meaning given by the Courts to the phrase "association of persons".

Section 4 is the charging section under the 1961 Act. It has imposed a tax on the income earned by a `Person' in the previous year. `Person' has been defined in Section 2(31) of the Act as under:

> "(31) `Person' includes-
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> (i) an individual,
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> (ii) a Hindu undivided family
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> (iii) a company
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> (iv) a firm,
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> (v) an association of persons or a body of individuals, whether incorporated or not,
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> (vi) a local authority, and
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> (vii) every artificial juridical person, not falling within any of the preceding sub-clauses;"

In this definition, in clause (v), both `association of persons' and `body' of individuals' have been included with the added words "whether incorporated or not". Another thing to note is that clause (v) speaks of "an association of persons or a body of individuals". This implies that an "association of persons" is not something distinct and separate from "body of individuals". It has been added to obviate any controversy as to whether only combinations of human beings are to be treated as a unit of assessment. The intention clearly is to hit combinations individuals and individuals, combinations of individuals and non-individuals and also combinations of non-individuals with other non- individuals who are engaged together in some joint enterprise when such joint enterprise does not fall within any of the other categories enumerated in sub-section (31) of Section 2 of the Act.

It is of interest to note that the phrase "body of individuals" has been used by the Parliament in a revenue Act even before the Income Tax Act, 1961 was passed. Under the Gift Tax Act, tax was imposed on gifts made in course of every assessment year commencing on and from the first day of April, 1987 at the prescribed rate by a "person". "person" was defined in clause (xviii) of Section 2 as under:

> "(xviii) `person' includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not;"

When the Gift Tax Bill was introduced in the Parliament, `person in clause (xviii) of Section 2 was defined as " `person' includes a Hindu undivided family". The charge of Gift Tax was on gifts made by a person during the previous year.

In the Statement of Objects and Reasons to the Gift Tax Bill, it was stated:-

> "The object of this Bill is to lavy a tax on gifts made by individuals, Hindu undivided families, companies, firms and associations of persons. Gifts from one person to another provide a convenient means of avoiding or reducing liability to estate duty, income- tax, wealth-tax and expenditure- tax."

In spite of this Statement of Objects and Reasons, there was no specific mention of any other entity apart from Hindu undivided family in the inclusive definition of `person' in the Bill, although it was stated that one of the objects of the Bill was to prevent evasion or reduction of income tax liability.

After the Bill passed through the Select Committee clause (xviii) of Section 2 was modified and `person' was defined as under:-

> "(xviii) `person' includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not :-

The Income Tax Bill was introduced in Parliament in 1961. There the charge was on total income of a person. In the Notes on Clauses it was explained in Clause 4 that for the different entities, individual, Hindu undivided family etc. mentioned in Section 3 of the existing Act, the word `person' had been substituted. Sub-clause (31) of Clause 3 explained the definition of `person' in the following words:-

> "(31). The definition of `person' in section 2(9) of the existing Act has been amplified. The existing definition includes (a) a Hindu undivided family and (b) a local authority. The General Clauses Act defines `person' as including a company or association or body of individuals, whether incorporaed or not. The charging section of the existing Act enumerates the units for taxation as "individual, Hindu undivided family, company, local authority, firm and other association of persons or the partners of a firm or the members of the association individually". Section 4 of the existing Act refers to a `person'. It is , therefore, desirable to have a comprehensive definition of the word `person' so as to cover all the entities mentioned in (i) the existing definition in section 2(9), (ii) the existing charging provisions in sections 3 and 4 and
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> (iii) the General Clauses Act."

In the Indian Income Tax, 1922 `person' has been defined to include a Hindu undivided family and a local authority. The object of giving the expanded definition was to cover all entities taxable under the Indian Income Tax Act, 1922 as well as the entities falling within the definition of `person' under the General Clauses Act. In other words, the intention of the Legislature was not to limit the charge to certain specified entities only.

In the background of these definitions, when several individuals are found to have joined together for the purpose of making profit, the group of individuals may be conveniently described as "a body of individuals". We have seen how the controversy arose under the Indian Income Tax Act as to the meaning of "association of individuals". There was a conflict of opinion on whether `individuals' include artificial or non-juridical persons. But there can be no scope of any controversy now. "An association of person" or "a body of individuals", whether incorporated or not, has been brought within the net of taxation. The intention of the legislature is clearly to hit combination of individuals or other persons who were engaged together in some joint enterprise. The combinations of or may not be incorporated. A profit-yielding joint venture has to be taxed as a single unite.

In the case before us, we have a window and her minor sons who are engaged in the business activity which sons who are engaged in the business activity which generates income. It does not make any difference that the window and the minor sons did not start the business. The business was inherited. But the fact that the business has been continued by the widow on her own behalf as well as on behalf of the minor sons after buying the interest of the mother goes to show that there is an organised activity jointly carried on to produce income. It is a clear case of joint business venture of a few individuals. The income of this business has been rightly assessed in the status of a "body of individuals".

We are of the view that the High Court has come to a correct decision. It is not necessary to refer to the large number of cases that have been cited before us but it is well settled by this Court under the Act of 1922, by a series of judgments that `association of persons' must be an association is also well settled by a number of decision right from the case of Commissioner of Income Tax, Bombay Laxmidas and another (supra).

Two more arguments were advanced on behalf of the appellant which must be noted. The first was that a "body of individuals" implied an artificial body like a Board of Trustees or Board of Commissioners etc. Such bodies may be brought within the ambit of the expression "body of individuals". But that will not limit the scope of the expression "body of individuals'. It may take in artificial persons as well as natural persons.

The second argument was made with reference to Sections 160, 161 and 166 of the Income Tax Act that since the mother was acting as guardian of the minors, the mother's liability under the Income Tax Act was as representative assessee. Sections 161 and 166 of the Income Tax Act are as under:

> "161. Liability of representative assessee. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(1a) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate:

Provided that the provisions of this sub-section shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him. Explanation-For the purposes of this sub-section, "maximum marginal rate" shall have the meaning assigned to it in Explanation 2 below sub-section (3) of Section

164. (2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that of that income, be assessed under any other provision of this Act".

"166. Direct Assessment or recovery not barred. Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income."

It was contended on behalf of the appellant that the minors' income had to be assessee. It could not be clubbed with any other income of the mother. Mother was the legal guardian and her personal income must be assessed separately altogether. In view of the provisions of Section 161 it was not open to the Income Tax Officer to tax the income of the minors as well as the mother in the status of "body of individuals".

We are unable to uphold this argument. Section 161 is an enabling provision. The charge that is imposed by Section 4 may be computed and recovered in the manner laid down in the Act including Section 160,161 and 166. When the minors along with their mother form a body to generate income, levy of tax under section 4 is on that body. The mother cannot insist that the income of the joint venture must be assessed separately on the minors and her even when a joint business is carried on.

The underlying idea behind these sections was explained by Addison, J. in the case of Hotz Trust of Simla v. The Commissioner of Income Tax, Punjab and N 1 Frontier Provinces, 5 ITC 8 at 16. Dealing with the corresponding provisions of the 1922 Act, it was held that where trustees carried on a business under a testamentary trust, the assessment in respect of the business profits should be made not on the beneficiaries in repsect of their individual not shares of the profits but on the trustees as an "association of persons". It was observed :

"Section 40 is merely a machinery section, making the trustee liable for beneficiaries are difficult or impossible to get at, and where the trustee acts as a conduit-pipe for the conveyance of the income to the beneficiaries. It does not affect the charging

sections 3 and 10 of the Indian Act under which the trustees as an association of individuals, carrying on a business, are liable to be assessed in respect of the gains of the business carried on by them. In fact it is clear that this is the only way that the profits and gains of the business, carried on by the trustees, can be taxed. For it is obvious that, if what goes to each beneficiary every year only can be taxed, much of the income acquired by the business will altogether escape taxation, and that the income received by the beneficiaries is not the true assessable income as many of the expenses incurred by the trustees, which would be paid out before the distribution takes place, would not be admissible under the Act. The profits and gains of this business carried on by the trustees, can only be calculated in the hands of the trustees as such and the assessment in the hands of the beneficiaries would be in reality inconsistent with the intention of the Income-tax Act. The trustees both carry on the business and are in receipt of the profits and it is they who must be taxed under the charging sections."

The full Bench of Madras High Court in the case of J.V.

Saldhana v. The Commissioner of Income-tax, Madras 6 ITC 114, reiterated the same principle in a case where a widow with her six minor children succeeded to the estate of her deceased husband consisting of coffee plantations, house properties and a third share in a firm of coffee curers and settlers. The widow continued to carry on the business in the same manner as was done by the deceased. It was held by the Full Bench that when properties of a number of individuals were put together and one business was carried on with the combined resources, it was open to the Income Tax Officer to regard it as one business carried on by an "association of individuals" within the meaning of section 3 of the Act. A single assessment should be made under Section 10(1) of the Income Tax Act on the entire income from the business. It was also held that Section 40 and the following sections were machinery and enabling sections and not charging sections.

In our view, these two decisions correctly stated the law under the Act of 1922. These principles will also apply to the corresponding provisions of the Income Tax Act, 1961.

In view of the aforesaid, the appeals are dismissed. There will be no order as to costs.

C.A.NOS. 1664-66/86 AND 4365-69/85 In view of our judgment in C.A. No. 1297-1301/1980, these appeals are also dismissed with to order as to costs.

C.A. No. 1694 of 1995.

In appears that in this case, the question was whether there was a sub-partnership between A.N.Agarwal and his wife and minor son and as such the income of the sup- partnership could not be assessed in the hands of the assessee under Section 64(1)(i) and (iii) of the Income Tax Act, 1961. It has also been stated in the appeal that in the case of A.N.Agarwal, assessment was made in the status of individual for the years 1964-65 and 1965-66. In those proceedings special leave petitions have also been filed. The point involved in this case is not the same as the point that came up for

consideration in the case of C.A. No. 1297- 1301/1980. Therefore, this appeal is directed to be delinked from the other appeals that are being disposed of today.