Supreme Court of India
The Commissioner Of ... vs Sodra Devi(With Connected ... on 17 May, 1957
Equivalent citations: 1957 AIR 832, 1958 SCR 1
Author: N H Bhagwati
Bench: Bhagwati, Natwarlal H.

PETITIONER:
THE COMMISSIONER OF INCOME-TAX,MADHYA PRADESH AND BHOPAL

Vs.

RESPONDENT:
SODRA DEVI(with connected appeal)

DATE OF JUDGMENT:
17/05/1957

BENCH:
BHAGWATI, NATWARLAL H.
BENCH:
BHAGWATI, NATWARLAL H.
DAS, S.K.
KAPUR, J.L.

CITATION:
1957 AIR 832 1958 SCR 1

ACT:
Income-tax-Computation of total income-'Individual', Meaning of-Indian Income-tax Act, 1922 (XI Of 1922), as amended by the Indian Income-tax (Amendment) Act, 1937 (IV Of 1937), S. 16(3).

HEADNOTE:
The common question of law for determination in these two appeals was whether the word 'individual ' in s. 16(3) of the 'Indian Income-tax Act, 1922, as amended by Act IV of 1937, includes a female and whether the income of minor sons from a partnership, to the benefits of which they were admitted, was liable to be included in computing the total income of the mother who was a member of the partnership.
Held, (Per Bhagwati and Kapur jj., S. K. Das J. dissenting) that the question must be answered in the negative.
The word 'individual' occurring in s. 16(3) of the Indian Income-tax Act, as amended by Act IV Of 1937, means only a male and does not include a female.
Shrimati Chanda Devi v. The Commissioner of Income-tax, (1950) 18 I.T.R. 944 and Musta Quima Begum, In re, (1953) 23 I.T.R. 345, disapproved.
Where the Legislature uses ambiguous language in enacting a

statute, as it has undoubtedly done in the instant case, recourse must necessarily be had, for a clarification of such ambiguity, to the pre-existing state of the law in order to see what defect or mischief therein was being sought to be remedied, the remedy that was prescribed by the statute and the reason for it.

Bengal Immunity Company Limited v. The State of Bihar, (1955) 2 S.C.R. 603, Thomson v. Lord Clanmorris, (1900) 1 Ch. D. 718 and Eastman Photographic Materials Company v. Comptroller General of Patents, Designs and Trade Marks, (1898) A.C. 571, relied on.

A reference to the Income-Tax Enquiry Report, 1936, and the Statement of objects and reasons that led to the passing of the Indian Income-tax (Amendment) Act IV of 1937 makes it clear beyond doubt that the mischief the Legislature was seeking to remedy was one that resulted from a husband entering into a

2

nominal partnership with his wife or a father admitting his minor children to the benefits of a partnership, and the possibility of a mother doing so was not even thought of.

Per S. K. Das J.-There is no ambiguity in s. 16(3) of the Indian Income-Tax Act, as amended by Act IV Of 1937, and, read in the context of the other provisions of the Act and construed as a whole, it clearly indicates that the Legislature used the word 'individual ' in that sub-section in its ordinary connotation to mean both a male and a female person.

Even if, on the assumption that there is ambiguity in the phraseology used in the sub-section, reference is made to the Income-Tax Enquiry Report, 1936, and the Statement of objects and reasons of the Amending Act IV of 1937 for the limited purpose for which it is permissible to do so, they disclose nothing concerning the policy adopted by the Legislature or the object the, statute was intended to accomplish that makes any other meaning inevitable. The recommendations made by the Report were not fully accepted by the Legislature and it cannot be a reliable guide and the use of the word 'parent' in the Statement clearly shows that the mischief envisaged was not confined to the father alone.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 322 and 25 of 1955.

Appeal from the judgment and order dated April 13, 1954, of the Nagpur High Court in Miscellaneous Civil Case No. 71 of 1956 and appeal from the judgment and order dated August 26, 1952, of the Punjab High Court in Civil Reference No. 11 of 1952.

C. K. Daphtary, Solicitor-General of India, G. N. Joshi and R. H. Dhebar, for the appellant in C.A. No. 322 of 1955 and respondent in C.A. No. 25 of 1955.

R. J. Kolah, J. B. Dadachanji, S. N. Andley and Rameshwar Nath, for the respondent in C.A. No. 322 of 1955. G. S. Pathak and M. L. Kapur, for the appellant in C.A. No. 25 of 1955.

1957. May 17. The Judgment of Bhagwati and J.L. Kapur JJ. was delivered by Bhagwati J. S.K. Das J. delivered a separate judgment.

BHAGWATI J.-These two appeals with certificates under Section 66A (2) of the Indian Income-Tax Act (hereinafter referred to as the Act) raise a common question of law and will be governed by this common judgment.

The facts leading up to these appeals may be shortly stated as under.

Prior to October 18, 1944, one Rai Bahadur Narsingdas Daga (since deceased), his wife Shrimati Sodradevi (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 the 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 the 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 the assessee. Oil 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 the 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. "

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 benefits 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 us. One Ishwardas Sahni who died on November 7, 1946, was a partner in the firm of Messrs. Ishwardas Sahni & Bros. The firm's accounting year ended on March 31, 1947. The said Ishwardas Sahni left him surviving his widow Damayanti (the assessee) and two minor sons. The assessee became a partner in the said firm which also admitted her two minor sons

to the benefits of the partnership. The Income-tax authorities included the minor sons' shares in the reconstituted firm's profits in computing the income of the assessee on the ground that " individual " in s. 16 (3) (a) (ii) of the Act meant an individual person of either sex. The Income-tax Appellate Tribunal held that the word "individual" must be taken as referring only to a male assessee wherever that occurred in s. 16 (3) and directed the deletion from the assessee's income of the shares of her minor sons in the profits of the firm. At the instance of the Commissioner of Income-tax, Delhi, the Tribunal referred to the High Court of Punjab at Simla the question of law arising out of its order under s. 66 (1) of the Act together with a statement of case. The referred question was:-

" 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 re-constituted firm of Messrs. Ishwardas Sahni and Brothers should be included in the income of Shrimati Damayanti Sahni in assessing her income, profits and gains. "

The High Court heard the reference and following the decision given by the High Court of Allahabad in Shrimati Chanda Devi v. The Commissioner of Incometax (1), answered the referred question in the affirmative. (1) [1950] 18 I.T.R. 944.

The assessee obtained the requisite certificate under s. 66A (2) of the Act from the High Court and that is how Civil Appeal No. 25 of 1955 is before us.

The common question of law which we have to determine in these appeals is whether the word " individual " in s. 16 (3) (a) (ii) of the Act includes also a female and the income of the minor sons derived from a partnership to the benefits of which they have been admitted is liable to be included in the income of the mother who is a member of that partnership.

Section 16(3) of the Act provides:

" 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 the 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 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."

Section 3 of the Act may also be referred to in this context and it runs as follows:

Section 3. Charge of Income Tax:

" Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year- of every individual, Hindu undivided family, company and local authority, and of every firm and- other association of persons or the partners of the firm or the members of the association individually." The same description of the assessee is also to be found in s. 4A, which deals with residence in the taxable territories, s. 48 dealing with refund and s. 58 dealing with the charge of super-tax.

The word assessee 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 " assessee ", 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 Corpora- tion 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 s. 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. It therefore necessarily excludes from its purview a group of persons forming a unit or a corporation created by a statute and is confined only to human beings who in the context would be -comprised within that category. The Revenue urges before us that the word " individual " as used qua human beings is capable of including within its connotation a male as well as a female of the species and having regard to the context in which the word has been used in s. 16(3), it should be construed as meaning a male of the species when used in Juxtaposition with " a wife " and as meaning both a male and a female when used in juxtaposition with "minor child" so that when s. 16(3) talks of such individual" in sub-cls. (ii) and (iv) of cl. (a) thereof it refers to both a male and a female of the species so as to include within its compass not only a father of the minor child but also a mother.

The assessees, on the other hand, contend that the word " individual " used in s. 16(3) is not used in its generic sense but is used in a restricted and narrower sense as connoting only human being and if it is thus restricted there is ample justification for restricting it still further to the male of the species when regarded in the context of s. 16(3). Sub-clauses (i) to (iv) of cl. (a) are specific cases where the income of a wife or a minor child of ,such individual" arising directly or indirectly from the several sources therein indicated is to be included in computing the total income of the "individual" for the

purpose of assessment and the word could not have been 'Used in a different sense for the purposes of sub-cls. (i) and

(iii) and sub cls. (ii) and (iv) of cl. (a). The word " such individual " as used in sub-cl. (a) can only have been used in one sense and one sense only and if that is the sense in which it could have been used " such individual " should be one who is capable of having a wife or minor child or both and that individual can only be a male of the species and not a female.

The question for our determination is a very narrow one and it turns on the construction of s. 16(3) of the Act. The High Court of Madhya Pradesh plunged headlong into a discussion of the reasons which motivated the Legislature into enacting s. 16 (3) by Act IV of 1937, and took into consideration the recommendations made in the Income Tax Enquiry Report, 1936 and also the statement of objects and reasons for the enactment of the same, without considering in the first instance whether there was any ambiguity in the word individual " as used therein. It is clear that unless there is any such ambiguity it would not be open to the court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice (Per Lord Ashbourne in Nairn v. University of St. Andrews(1). In the latter event the following observations of Lord Lindley M. R. in Thomson v. Lord Clanmorris(2) would be apposite:

" In construing any statutory enactment, regard must be had not only to the words used, but to the history of the Act and the reasons which led to its being passed. You must look at the mischief which had to be cured as well as at the cure provided" (See also the observations of Goddard C. J. in B. v. Paddington and St. Marylebone Rent Tribunal (3). The position in law has been thus enunciated in the judgment of Das, Actg. C.J. (as he then was) in the Bengal Immunity Company Limited v. The State of Bihar (4) :

" It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's Case (5) was decided that-

"..... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act., 2nd. What was the mischief and defect for which the common law did not provide., 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and 4th. The true reason of the remedy; and then the office of all judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. "

(1) (1909) A.C. 147.

(2) (1900) 1 Ch. D. 718, 725 (3) (1949) 65 T.L.R. 200, 203.

(4) (1955) 2 S.C.R. 603, 632.

(5) (1584) 3 Co. Rep. 7a; 76 E.R. 637, In In re Mayfair Property Company (1) Lindley M. R. in 1898 found the rule " as necessary now as it was when Lord Coke reported Heydon's case ". In Eastman Photographic Materials Company v. Comptroller General of Patents, Designs and Trade Marks (2) Earl of Halsbury re-affirmed the rule as follows: " My Lords, it appears to me that to construe the statute now in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three things being compared, I cannot doubt the conclusion." The High Court of Punjab based its conclusion primarily on the use of the word "or" between the word "wife" and the words "minor child" in s. 16(3)(a) of the Act and it was of opinion that these words were used disjunctively and the "individual" referred to in s. 16(3) (a) of the Act may have a wife and minor child or may not have a wife but have a " minor child ". If the individual assessed to income tax is a female that individual will have no wife but she may have a minor child and therefore s. 16 (3) (a) of the Act does not imply that the individual must necessarily be a male. The argument based on the disjunctive user of the word "wife" and the words "minor child" is capable of being summarily disposed of. Even if the words "such individual" in s. 16 (3)(a) of the Act meant only a male of the species the word "wife" and the words "minor child" could only have been used with the word "or" in between. A male of the species may. not necessarily have both a wife and a minor child. He may have a wife but no "minor child". He may have a minor child but may have no wife at the relevant period. If therefore provision had to be made for the inclusion of the income of a wife or minor child or both in the total income of a male of the species the word "or" was absolutely necessary to be interposed between the word "wife" and the words 'minor child". To construe the word "or" as disjunctive between the word "wife" and (1) L.R. (1898) 2 Ch. 28, 35.

(2) (1898) A.C. 571, 576.

the words "minor child" does not necessarily lead to the conclusion that the words "such individual" were used for both a male and a female of the species and were necessarily inconsistent with the user of those words for the male of the species if the context otherwise lead to that conclusion. The reasoning adopted by the learned Judges of the High Court of Punjab therefore does not clinch the matter.

We have therefore got to examine whether the use of the word "individual" in s. 16(3) (a) of the Act is in any manner ambiguous. The opening words of s. 16(3) talk of "any individual" whose total income has got to be computed for the purpose of assessment and the words "such individual" used in section 16(3) (a) have reference only to that individual. That individual must be an assessee and it is in the computation of his total income for the purpose of assessment that the income of the persons mentioned in cls.

(a) and (b) have got to be included. Sub-clause (a) refers to two distinct sets of persons bearing a relationship with "such individual", the assessee. One is a wife and the other is a minor child. The

case of the wife is dealt with in sub-cls. (i) and (iii) and the case of a minor child is dealt in sub-cls. (ii) and (iv). Sub-clauses (i) and (iii) use the word "her husband" or "the husband" in place of the words "such individual" with reference to the income derived by the wife in the circumstances therein mentioned, though, it may be observed that the user of the words "such individual" would not have made the slightest difference to the position. Subclauses (ii) and (iv) which deal with a "minor child" use the words "such individual" in relation to the minor child whose income under the circumstances therein mentioned has to be included in computing the total income of "such individual" for the purpose of assessment. Whereas the words used in sub-cls. (i) and (iii) are specific and refer only to "her husband" and "the husband" as "such individual", the words used in sub-cls. (ii) and (iv) leave it indefinite as to which is meant by the words "such individual" whether a male and/or a female of the species. If the words used in all these four sub-clauses were to be harmoniously read and the two cases which are mentioned in sub-cls. (i) and (iii) are not to be read differently from the cases mentioned in sub-cls. (ii) and (iv) the only way in which the words "such individual" as used in sub-cls.

(ii) and (iv) could be understood would be to read them as confined to a male of the species and not including the female. If these words "such individual" as used in sub- cls. (ii) and (iv) are thus read restricted to a male of the species, all these sub-clauses would have reference only to the male of the species irrespective of the fact that the words "her husband" and "the husband" have been used in sub- cls. (i) and (iii) instead of the words "such individual". If the words "such individual" had been used in sub-cls. (i) and (iii) as they have been used in sub-cls. (ii) and (iv) the position would have been just the same because in that event also we would have had to determine whether there was any justification for reading the words "such individual" used with reference to sub-cls. (i) and (iii) in any different sense from the same words "such individual" as used in sub-cls. (ii) and (iv). The crux of the question, therefore, is whether the words "such individual" used in the opening part of s. 16 (3) (a) are used to mean a male of the species when they are read in juxtaposition with the words "a wife" and are used to mean both a male as well as a female of the species, as the case may be, when used in juxtaposition with the words "minor child". If that was the intention of the Legislature there was nothing to prevent it from dividing cl. (a) into two sub- clauses whether they were numbered (a) and (ai) or (a) and

(b) respectively. The Legislature could as well have enacted the provisions in the manner following:

(a):so much of the income of a wife of such individual as arises directly or indirectly;

(i)from the membership of the wife in a firm of which her husband (or such individual) is a partner; or

(ii)from assets transferred directly or indirectly to the wife by the husband (or such individual) otherwise than for adequate consideration or in connection with an agreement to live apart;

(ai) or (b): so much of the income of a minor child of such individual as arises directly or indirectly ;

(i)from the admission of the minor to the benefits of the partnership in a firm of which such individual is a partner; or

(ii)from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration. If these provisions had been enacted in the manner aforesaid it would have been possible to urge, as has been urged before us by the Revenue, that cl. (a) referred only to a male of the species who only could have a wife and cl. (ai) or (b) referred to a male and/or a female of the species. The Legislature however chose to adopt a peculiar mode of enactment either for the purpose of economy of words or structural beauty and mixed up both these sets of provisions into the enactment of cl. (a) of s. 16(3) of the Act as it stands at present. It rolled in both these sets of cases and used the words "a wife" or "minor child" of "such individual" raising thus the question of construction which has got to be determined by us. "Such individual" as is talked of in s. 16(3) (a) may have a wife, may have a minor child or may have both a wife and a minor child. When "such individual" is thought of in connection with a wife, it can only be a male of the species, but when "such individual" is thought of in connection with a minor child it can be both a male as well as a female of the species, though, of course, when "such individual" is thought of in connection with "both" then again it would have to be a male of the species and certainly not a female. Such an interpretation would lead to the interpretation of the same words "such individual" as meaning two different things in two different contexts. They would mean one thing when used in relation to "a wife" and would mean another thing when used in relation to a " minor child". They would be capable' of being understood in a narrower sense when used in connection with "a wife" and would be capable of being understood in a wider sense when used in connection with a "minor child". One may as well question the elegance or the propriety of such user of the words "such individual" where the words "as the case may be" are necessarily to be imported in order to understand the true import of these words, when again they are used not in different parts of the same section but at one place only.

If one turns to s. 16 (3) (b) the words used therein are "transferred..... by "such individual" for the benefit of his wife or a minor child or both". There is the indefinite article "a" used before the words "minor child". If that indefinite article "a" had not been used, the expression would have run "for the benefit of his wife or minor child or both" thus leaving no doubt at all that in cl. (b) at least the words "such individual" meant only a male of the species. It is urged however that the use of the indefinite article "a" shows that the words "his wife" and "minor child" mid "both" have been used disjunctively and should be read in the same manner as in s. 16(3)(a) of the Act. The words " his wife " would appropriately go with a male of the species but the words "a minor child" would appropriately go with a male as well as a female of the species, though the word "both" could only be appropriate in relation to a male of the species and not a female who can have a minor child but not both a wife and a minor child. The same want of elegance or propriety can be predicated of this expression also and the use of such expressions both in s. 16 (3)(a) and s. 16 (3)(b) raise questions of construction whether what was meant by the Legislature was only a male of the species in both these contexts or a male and/or female of the species, as the case may be, applying one or the other in accordance with the circumstances attendant, upon the computation of the total income of " any individual " for the purpose of assessment. We are of opinion that the very manner in which all the four sub-clauses have been grouped together in s. 16 (3) (a) and the manner in which the expression

"for the benefit of his wife, a minor child or both" is used in s. 16 (3) (b) renders the words "any individual"

or " such individual " ambiguous. There is no knowing with certainty as to whether the Legislature meant to enact these provisions with reference only to a male of the species using the words "any individual" or " such individual " in the narrower sense of the term indicated above or intended to include within the connotation of the words "any individual" or " such individual " also a female of the species, wherever appropriate which would of course only be possible in the cases contemplated in sub-cls. (ii) and (iv) of s. 16 (3)(a) and in one of the three cases contemplated in s. 16 (3)(b). The Legislature certainly was guilty of using, an ambiguous term in enacting s. 16 (3) of the Act as it did. In order to resolve this ambiguity therefore we must of necessity have resort to the state of the law before the enactment of the provisions; the mischief and defect for which the law did not provide; the remedy which the legislature resolved and appointed to cure the defect and; the true reason of the remedy within the meaning of the authorities referred to above. Before the enactment of s. 16 (3) of the Act by the Indian Income-tax (Amendment) Act, 1937 (IV of 1937), there was no provision at all for the inclusion of the income of a wife or a minor child in the computation of the total income of " any individual " for the purpose of assessment. Whatever may have been the income of a wife from her membership in a firm of which her husband was a partner or from assets transferred directly or indirectly to her by her husband otherwise than for adequate consideration or in connection with an agreement to live apart, her income was not included in the income of her husband in computing the total income of the husband for the purpose of assessment. Similar was the position in the case of income derived by a minor child from the admission of the minor to the benefits of partnership in a firm of which "such individual" was a partner or from assets transferred directly or indirectly to the minor child, not being a married daughter, by "such individual" otherwise than for adequate consideration. The income derived by such minor child could not be added to the income of the father for the purpose of assessment. The income derived by the wife or minor child could only be included in computing his or its total income for the purposes of assessment and neither the husband nor the father could be made liable for income-tax in respect of such income, whatever may be the reason which actuated them in providing such income for the wife or the minor child. The position was pregnant with difficulties for the Revenue. There were no doubt genuine cases where a wife or the minor child as the case may be, was provided with such income on bona fide severance of joint status between the erstwhile members of a joint and undivided Hindu family and where after such partition the adult member of the family entered into a bona fide -partnership admitting the minors to the benefits of the partnership. There were, on the other hand, innumerable cases where such severance of joint status was resorted to mainly with a view to evade a higher incidence of income tax. There were also cases where husbands and fathers provided shares for their wives and minor sons and thus evaded payment of income tax in regard to their shares in the profits of such partnerships. This evil was so rampant that the Income Tax Enquiry Report, 1936, recognised the same and made the following recommendations for remedying the situation (vide pp. 19 & 20 of the Report). CHAPTER III-Assessees Section I-Individuals.

(a) Wife's Income. Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife and minor children. In some parts of the country, avoidance of taxation by this means has attained very serious dimensions. The obvious remedy for

this state of affairs so far as husband and wife are concerned is the aggregation for assessment of their incomes, but such a course would involve aggregation in a quite different class of cases i.e., where the wife's income arises from sources unconnected with the husband..... .....

.

We recommend, therefore, that the incomes of a wife should be deemed to be, for income tax purposes, the income of her husband, but that where the income of the wife is derived from her personal exertions and is unconnected with any business of her husband, her income from her personal exertions upto a certain limit, say Rs. 500, should not be so included .

(b) Income of Minor Children. There is also a growing and serious tendency to avoid taxation by the admission of minor children to the benefits of partnership in the father's business. Moreover, the admission is, as a rule, merely nominal, but being supported by entries in the firm's books, the Income-Tax Officer is rarely in a position to prove that the alleged participation in the benefits of partnership is unreal. ..... We suggest that the income of a minor should be deemed to be the income of the father (i) if it arises from the benefits of partnership in a business in which the father is a partner or (ii) if, being the income of a minor other than a married daughter, it is derived from assets transferred directly or indirectly to the minor by his or her father or mother, (iii) if it is derived from assets apportioned to him in the partition of a Hindu Undivided Family. It may be noted that the recommendations of the Enquiry Committee even in the cases hereinbefore mentioned went to the length of including the income of the wife or the minor child as the case may be in the income of the husband or the father in the computation of his total income for the purpose of assessment. The mischief which the Enquiry Report sought to remedy by its recommendations was one which was the result of husbands entering into nominal partner- ships between themselves and their wives and fathers admitting their minor children to the benefits of such partnerships. The mischief, if any, resulting from the mothers admitting their minor children to the benefits of partnerships in which they were members was farthest from the thoughts of the Enquiry Committee and was nowhere sought to be remedied. Having regard to the circumstances which prevailed at the time when the Enquiry Committee made its report, the only mischief which they sought to remedy by their recommendations was the one resulting from the male assessees indulging in such tactics for the evasion of income tax by creating nominal partnerships between themselves and their wives on the one hand and their minor children on the other. These recommendations were duly considered by the Government and as a result thereof Act IV of 1937 was enacted introducing a. 16(3) in the Act. What was intended to be done by the Legislature in enacting this amendment may be gleaned to a certain extent from the statement of objects and reasons appended to the Bill which eventually became the amending Act. Though it is not legitimate to refer to the statement of objects and reasons as an aid to the construction or for ascertaining the meaning of any particular word used in the Act or Statute (See Aswani Kumar Ghose v. Arabinda Bose (1), nevertheless, this Court in The State of West Bengal v. Subodh Gopal Bose(2) referred to the same "for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of evil which he sought to remedy."

The statement of objects and reasons which led to the passing of Act IV of 1937 ran as follows:

" Reference is made in sections I and 4 of Chapter III of the Income Tax Enquiry Report, 1936, to the practice of avoiding taxation by means of nominal partnerships between husband and wife or parent and minor child or by the nominal transfer of assets to a wife or minor child (or to an " Association " consisting of husband and wife) when there is no substantial separation of the interests of the assessee and the wife or child. These practices are reported to have become very widespread already, with considerable detriment to the revenue, and there is little doubt that if they are not checked there will be progressive deterioration. The proposals in the Report regarding the aggregation (1) (1953) S.C.R. 1. (2) (1954) S.C.R. 587, 628.

of the incomes of husband and wife go beyond the immediate necessities of the case and to that extent their adoption would involve the admission of a new principle which the Government of India do not desire to establish in advance of the general public discussion of the Report which has been arranged; and the present Bill has been so drafted as to deal only with the abuses to which I have referred." It is clear from the above extracts that the evil which was sought to be remedied was the one resulting from the widespread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. This evil was sought to be remedied by the enactment of s. 16(3) in the Act. If this background of the enactment of s. 16(3) is borne in mind, there is no room for any doubt that howsoever that mischief was sought to be remedied by the amending Act, the only intention of the Legislature in doing so was to include the income derived by the wife or a minor child, in the computation of the total income of the male assessee, the husband or the father, as the case may be, for the purpose of assessment. If that was the position, howsoever wide the words "any individual" or "such individual" as used in s. 16(3) and s. 16(3)(a) may appear be so as to include within their connotation the male as well as the female of the species taken by the themselves, these words in the context could only have been meant as restricted to the male and not including the female of the species. If these words are used as referring only to the male of the species the whole of the s. 16(3)(a) can be read harmoniously in the manner above comprehending within its scope all the four cases specified in sub-cls.

(i) to (iv) thereof and so also s. 16(3)(b).We are, therefore, of opinion that the words" any individual" and "such individual" occurring in s. 16(3) and s. 16(3)(a) of the Act are restricted in their connotation to mean only the male of the species, and do not include the female of the species, even though by a disjunctive reading of the expression "the wife" or "a minor child" of "such individual" in s. 16(3)(a) and the expression "by such individual" for the benefit of his wife or a minor child or both" in s. 16(3)(b), it may be possible in the particular instances of the mothers being connected with the minor children in the manner suggested by the Revenue to include the mothers also within the connotation of these words. Such inclusion which involves different interpretations of the words "any individual" or "such individual" in the different contexts could never have been intended by the Legislature and would in any event involve the addition of the words "as the case may be" which addition is not normally permissible in the interpretation of a statute.

We shall now refer to the decisions of the several High Courts in India bearing on the construction of s. 16(3) of the Act. The earliest decision is that of the High Court of Allahabad in Shrimati Chanda Devi v. Commissioner of Income- tax, U.P. (1). That decision emphasised that the sub-cl.

(i) of cl. (a) of sub-s. (3) of s. 16 made it clear that where the husband was a partner the income of the wife, by reason of her being a member of the firm, was to be computed in the income of the husband, and if the Legislature had intended that the word "individual" in sub-cl. (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-cl.

(i) and said "from the admission of the minor to the benefits of partnership in a firm in which his father is a partner." Why the Legislature used a particular expression and why it did not use any expression which would have been clearer and better expressive of its intention is really difficult to fathom. We may as well wonder why the Legislature did not use the words "such individual" in sub-cls. (i) and (iii), of s. 16(3)(a) in place of the words "her husband" or "the husband" when the intention of the Legislature would have been equally carried out by the use of those words. It may be that the draftsman considered the use of the words "her husband" or "the husband" when he used the same in juxtaposition with the words "a wife" as appropriate or more elegant and therefore ignored the obvious user of the words "such (1) [1950] 18 I.T.R. 944.

individual" which would have been equally appropriate in that context. It would have been better expressive of the intention of the Legislature, as we have already divined above (viz., to use the words "any individual" and "such individual" in s. 16(3) and 16(3)(a) respectively in the restricted meaning of the male of the species), to have used the words "the father" in place of the words "such individual" in sub-cls. (ii) and (iv) of s. 16(3)(a). It is however difficult to fathom the mind of the draftsman when he used one particular expression in preference to the other and not much help can be derived from the ratio adopted by the learned Judges of the High Court of Allahabad in the decision just referred to. It is also significant to observe that the learned Judges considered that the language of the -section does not create any real difficulty and therefore did not think it worth their while to refer to the Income Tax Enquiry Report, 1936, and the passage therefrom which we have quoted above. Suffice it to say that we do not concur with the reasoning adopted by the learned Judges of the High Court of Allahabad and are of the opinion that the decision just referred to in so far as it militates against the reasoning adopted by us herein is incorrect. The later case of Musta Quima Begum, In re(1) decided by the same High Court merely follows the judgment in Shrimati Chanda Devi's case (2) and is subject to the same criticism as above.

The decision of the High Court of Punjab in Shrimati Damayanti Sahni v. Commissioner of Incometax, Delhi (3) is the one under appeal before us in Civil Appeal No. 25 of 1955. The learned Judges there followed the decision of the High Court of Allahabad in Shrimati Chanda Devi's case (2) and answered the referred question in the affirmative. It follows from what we have said above that that decision is also incorrect and the referred question ought to have been answered by them in the negative.

The latest decision in this context is that of the High Court of Madhya Pradesh in commissioner of (1) [1953] 23 I.T.R. 345.

(2) [1950] 18 I.T.R. 944.

(3) [1953] 23 I.T.R. 41.

Income tax,Madhya Pradesh and Bhopal v. Smt. Sodra Devi (1) which is the subject-matter of Civil Appeal No. 322 of 1955 before us. The High Court there observed that the word "individual" as used in s. 16(3) of the Act was ambiguous and referred to the above quoted passage from the -Inquiry Committee's Report, 1936, as also the statement of objects and reasons and came to the conclusion that the word "individual" was restricted to the male of the species and it was not the intention of the Legislature to impose additional tax on a mother assessee by including in her income the income of her minor children arising from the benefits of partnership of a firm in which the mother and the minors were partners. We are of opinion that the decision reached by the learned judges of the High Court of Madhya Pradesh in that case was correct and the referred question was rightly answered by them in the negative. The result therefore is that Civil Appeal No. 322 of 1955 will be dismissed with costs, and Civil Appeal No. 25 of 1955 will be allowed with costs, the referred question being answered in the negative.

S. K. DAS J.-The substantial question which falls for decision in these two appeals is if the word "individual" in sub-s. (3) of s. 16 of the Indian Income-tax Act, hereinafter referred to as the Act, includes also a female, and therefore the income of the minor sons which arises directly or indirectly from their admission to the benefits of partnership in a firm of which their mother is a member is to be included in computing the total income of the mother within the meaning of sub-s. (3), cl. (a), sub-cl.

(ii), of s. 16. The question is really one of pure construction, that is, construction of sub-s. (3) of s. 16 of the Act. Nothing turns upon the facts of the case, and as the material facts have been clearly set out in the judgment just read by my learned brother Bhagwati J. I do not think that any useful purpose will be served by restating them.

Therefore, I proceed at once to a consideration of sub-s. (3) of s. 16 of the Act and state at the very (1) [1955] 27 I.T.R. 9.

outset that, to my great regret, I have come to a conclusion different from that of my learned brethren. I shall presently read the sub-section; but before I do so, it will help the exposition which follows if I explain in a few words the standpoint from which I have approached the question. Speaking generally, the expression "construction" includes two things: first, the meaning of the words; and, secondly, their legal effect or the effect which is to be given to them by the courts. As in the case of documents, so in the case of statutes also, they should be construed in a manner which carries out the intention of the Legislature. It may be reasonably asked-how is the intention of the Legislature to be discovered? The answer is that the intention must first be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with

which the statute was passed and the object to be attained by it; in other words, the intention is best declared by the words themselves, and the words of a statute are to be interpreted as bearing their ordinary, natural meaning unless the context requires a different meaning to be given to them. If, however, the words are ambiguous, the policy of the legislation and the scope and object of the statute, where these can be discovered, will show the intention, which may further be brought to light by applying the various well settled rules and presumptions of construction. One such rule is that the statute must be read as a whole and the construction made of all the parts together. I am emphasising this aspect of the question to guard against any possible suggestion that I have started with some a priori idea of the meaning or intention behind subs. (3) of s. 16 of the Act and have tried by construction to work that idea into the words of the sub-section. I have been conscious all through of the warning given by Lord Halsbury, in the following observations in Leader v. Duffey (1):

" All these refinements and nice distinctions of words appear to me to be inconsistent with the modern view, which is I think in accordance with reason and

(i) (1888) 13 App. Cas. 294, 301.

common sense, that, whatever the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained. But I agree that you must look at the whole instrument, and, inasmuch as there may be inaccuracy and inconsistency, you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it. But it appears to me to be arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious assumption to bend the language in favour of the presumption so made." Keeping that warning in mind, I shall first take the words of sub-s. (3) of s. 16 and see if they are plain or unambiguous. Alternatively, I shall also consider the proper construction of sub-s. (3) of s. 16 on the assumption that the word "individual" used in the sub-section is ambiguous and should therefore be interpreted consistently with the principles laid down in the locus classicus on the subject, namely, the celebrated Heydon's case (1) reported by Lord Coke and decided by the Barons of the Exchequer in the sixteenth century.

I shall now read sub-s. (3) of s. 16 of the Act: " 16. (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 (1) (1584) 3 Co. Rep. 7a,

(iv)from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration ; and

(b) so much of the income of any person or association of persons as arises from asset,,; 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." I have already stated that the sub-section must be read as a whole and in the context of the other provisions of the Act, particularly s. 16 of which it is a part; it is only then that we shall arrive at its correct meaning consistent with the other provisions of the Act. The word "individual" used in sub-s. (3) of s. 16 occurs in several other provisions of the Act, e.g., s. 3, s. 4A, s. 48 and s.

55. It is necessary to quote s. 3 in extensor That section is in these terms:

" Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

It is not disputed before us that the word "individual " occurring in ss. 3, 4A, 48 and 55 means either a male or a female; nor has it been disputed before us that, according to the ordinary accepted meaning of the word, it means a single human being as opposed to "society," "family" etc., and that a single human being may be of either sex. Learned counsel appearing for the assessees in the two appeals have pointed out, however, that the word "individual" has not the same width of meaning in sub-s. (3) of s. 16 as it has in the other provisions; for example, in s. 3, the word "individual" has been held to include 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 etc; whereas sub-s. (3) of s. 16 makes it quite clear that the word " individual " there does not include a Corporation created by a statute. This indeed is correct. But the question before us is whether, in its context, sub-s. (3) of s. 16 imposes a further restriction on the word "individual", confining it to a male individual only. The critical question before us is whether such a further restriction is imposed on the word "individual" either by the express words used in the sub-section or by necessary implication from the clauses and sub-clauses thereof. It is said to be a presumption in construction that the same words are used in the same meaning in the same statute and particularly in the same section or sub-section. The presumption is, however, of the slightest, and there are many instances where the application of this rule or presumption is impossible. The same words may often receive a different interpretation in different parts of the same Act, for words used with reference to one set of circumstances "may convey an intention quite different from what the selfsame set of words used with reference to another set of circumstances would or might have produced." (Edinburgh Street Tramways Co. v. Torbain (1), per Lord Blackburn). The classic example of the same word having a somewhat different meaning in the same section is provided by Offences against the Person Act, 1861, s. 57 of which deals with bigamy and enacts: "Whosoever, being married, shall marry any other person during the life of the former husband or wife... ..... Shall be guilty of felony." It is obvious that the word "marry" is used in two different senses in the same section. There is another classic example in

Art. 31 of our Constitution where the word "law" in el. (3) of the said Article has been used in different senses. This is referred to in a decision of this Court in The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga (2).

(1) (1877) 3 App. Cas. 58, 68. (2) 1952 S.C.R. 889, 908,

909. The word "individual" is not defined in the Act, but the meaning of the word in ss. 3, 4A, 48 and 55 is reasonably clear. The word "assessee" is defined in cl. (2) of s. 2 of the Act, as meaning a person by whom income-tax or any other sum of money (which would include super-tax, penalty or interest) is payable under the Act. It also includes every person in respect of whom any proceeding under the Act is taken for the assessment (a) of his income, (b) of his loss or (c) of the amount of refund due to him. Thus the definition covers two categories: first, persons by whom any tax, penalty or interest is payable under the Act, whether any proceeding under the Act has been actually taken against them or not; and secondly, persons against whom any of the proceedings specified in this clause has been taken, whether he is or is not liable to pay any tax, penalty or interest. 'A person', under s. 3(42) of the General Clauses Act, includes any company or association or. body of individuals, whether incorporated or not; and under cl. (9) of the section 'a person' also includes a Hindu undivided family and a local authority. Thus, we have six categories of assessees referred to in s. 3-(a) the individual, (b) the Hindu undivided family, (c) the local authority, (d) the company, (e) the firm and (f) other association of persons. Read in the context of s. 3 of the Act, the word "individual" means, in the other sections, one of the six categories of assessees referred to in s. 3. The same category is also referred to in sub-s. (3) of s. 16, subject only to this restriction that in the context of the sub- section, the word "individual" does not include a Corporation etc. We now turn to the critical question before us-is there a further restriction in the sub-section confining the word "individual" to a male individual only? My answer is that there is nothing in the context of s. 16 or of the sub- section which confines the word "individual" to a male individual only. Section 16 deals with the computation of total income and provides what sums are to be included or excluded in determining the total income. The effect of including exempted income in the assessee's total income is mainly two-fold: first, the tax payable by the assessee is determined with reference to the total income and therefore exempted income which is included in the total income would affect the rate of tax applicable to the chargeable portion of the total income; secondly, in several cases reliefs are given or calculations made with reference to the total income. Sub-section (3) of s. 16 appears ex facie to be directed towards preventing an individual's attempt to avoid or reduce the incidence of tax by transferring the assets to his wife or a minor child or admitting the wife as a partner or admitting a minor child to the benefits of partnership in a firm in which such individual is a partner. I agree that the sub-section creates, to some extent, an artificial liability to tax by including the income of A in the income of B, and must therefore be strictly construed; that merely means that the words of the subsection must be given their strictly natural meaning, and there should be no attempt at artificial stretching one way or the other. What then is the proper construction of the subsection ? It naturally falls into three interconnected parts. The first part controls both cl. (a) and cl. (b), and states that "in computing the total income of any individual for the purpose of assessment, there shall be included so much of the income etc." as is specified in cls. (a) and (b). The second part is cl. ('a) itself which starts with an opening sentence that "so much of the income of a wife or minor child of such individual as arises directly or indirectly" from four specific cases shall

be included in the total income of the individual, and then the cases are enumerated in four sub-clauses numbered (i), (ii), (iii) and (iv). Then, comes the third part which deals with cl. (b). I have divided the sub-section into its three natural parts, but I must make it clear that all the three parts must be construed together as they are interconnected and interdependent. In the first part, there is no difficulty whatsoever, in my opinion, in giving the word "individual" its natural meaning, that is, that the word means either a male or a female. The opening sentence of cl. (a) contains the expression "so much of the income of a wife or minor child of such individual". Does the use of the word "individual" in the opening sentence of cl. (a) give rise to any ambiguity or difficulty? I do not think that it does. It is quite obvious that a female individual cannot have a wife, but she can have a minor child whereas a male individual can have a wife, minor child or both. It has been argued that el. (a) must be interpreted noscitur a sociis, and as the expression "a wife or minor child" is capable of meaning only when used in connection with a male individual, the whole sub-section must be confined to a male individual. I am unable to accede to this argument. The collocation or association of the words "a wife or minor child" in connection with the words "such individual" in the opening sentence of cl. (a) does not necessarily mean that the individual contemplated is a male individual only. I agree that the -word "or" in between the words "wife" and "minor child" must be there, even when the individual talked of is a male only; in other words, the use of the dis- junctive word "or" does not necessarily clinch the issue. But I do not see any real difficulty in reading the opening sentence of el. (a) distributively so as to mean a male individual when the wife is being talked of and either a male or a female individual when a minor child is talked of I do not think that such a construction does any violence to the words used; on the contrary, in my opinion, it gives effect to the plain meaning of the word "individual". Turning now to the sub-clauses numbered (i) to (iv), there can be no doubt from the phraseology used that sub-cls. (i) and (iii) refer only to a male individual, because a female individual cannot have a wife. It is worthy of note, however-and this is very important -that sub-cls. (ii) and

(iv) make it equally clear that they are not confined to the male individual only in the manner in which sub-cls. (i) and

(iii) are so confined. In sub-cls. (i) and (iii) the word "individual" is not used, and the words used are "her husband" and "the husband". In sub-cls. (ii) and (iv) the words used are "such individual". Why did the Legislature make this difference in phraseology? If the intention was to confine the entire sub-section to a male individual only, nothing could have been easier than to qualify the word "individual" by the adjective "male" in the first part of the sub-section which controls both clauses (a) and (b); alternatively, in sub-cls. (ii) and (iv) it would have been easy to use the word "father" instead of "such individual". It is true that a change of language is some, though possibly slight, indication of a change of intention. I am unable, however, to accept the argument advanced before us that the phraseology employed in sub-cls. (i) and (iii) different as it is from that employed in sub-cls. (ii) and

(iv) can be accounted for on the ground of elegance or felicity of expression. It seems to me that if the intention was to confine the word "individual" to a male individual only, elegance and clarity both required that the word "individual" should be qualified by the adjective "male", and the word "father" should have been used in sub- cls. (ii) and (iv). I am aware that a draftsman often uses

different words merely to avoid repetition. I am also aware that it is dangerous to suppose that the Legislature foresees every possible result that may ensue from the "unguarded use of a single word, or that the language used in statutes is so precisely accurate that you can pick out..... this and that expression and skilfully, piecing them together, lay a safe foundation for some remote inference." (as per Lord Loreburn, L.C., in Nairn v. University of St. Andrews and Others (1). But what is noteworthy in the present case is that the difference in phraseology between sub-cls. (i) and (iii) on the one side and sub-cls. (ii) and (iv) on the other, is so striking that the conclusion appears to me to be reasonably plain; it is not really a case of the unguarded use of a single word or picking out an expression here or picking out another expression there in order to piece out some remote inference. The striking difference in phraseology hits, as it were, one in the face when one reads the four sub-clauses. It seems to me that the meaning, is very clear. In the opening part of el. (a), the word "individual" is used to mean a male or a female; two of the sub-clauses, however, are confined (1) [1909] A.C. 147, 161.

to the male only and therefore the word "husband" is used in juxtaposition to the word "wife". In the other two sub- clauses, however, the word "individual " is used in order to make it clear that they refer either to a male or to a female individual. I do not see any incongruity or disharmony in the enumeration of the four sub-clauses, nor do I appreciate the argument urged before us that the word " individual ", on the construction adopted by me, has a different meaning in two of the four sub-clauses of cl. (a). The word "individual" has and retains the same meaning, namely a male or a female, all throughout the subsection. All that happens is that in two of the subclauses of cl.

(a), when the Legislature intends that they should be confined to a male individual only, the word "husband" is used to make the intention clear. On the same reasoning, when the Legislature intends in two other sub-clauses that they should apply to either a male or a female, the word " individual " is used to include either of them. I am unable to accept the contention that such an interpretation offends against the rule of harmonious construction. So far as el.

(b) of the sub-section is concerned, the word " individual " is again used and that again relates to a male or a female. The last part of the clause reads "by such individual for the benefit of his wife or a minor child or both." Here again the sentence has to be read distributively-that is, when the wife is talked of, the individual can only be a male; when a minor child is talked of, the individual can be a male or a female; when both wife and minor child are talked of, the individual can again be a male only. There was some argument before us with regard to the use of the indefinite article "a" before the words "minor child" and it was submitted by the learned Solicitor-General that if the Legislature intended to confine cl. (b) to a male individual only, it could have easily dropped the indefinite article and used the word "his" before the words "minor child". Personally, I do not attach much significance to the use of the indefinite article "a". It is to be noted that no such indefinite article is used before the words "minor child" in the opening sentence of cl. (a); but I do not see any compelling reasons why the natural meaning of the word " individual " should not be given to it in el. (a) and cl. (b) of the sub- section. Such meaning can be easily given to both the clauses if they are read distributively, and such reading does not, in my opinion, do any violence to the language used.

On a plain reading of the sub-section, I have come to the conclusion that there really is no ambiguity and the word "individual" has been used in the sub-section in its ordinary accepted connotation, that is, either a male or a female individual; two of the sub-clauses of cl. (a) are no doubt confined to a male individual and that has been made clear by the use of the words " wife" and "husband", instead of the words "such individual ".

Assuming, however, that there is some ambiguity in the sub- section by reason of (1) the use of the phraseology in sub- cls. (i) and (iii) of cl. (a), and (2) of the opening sentence of cl. (a) which controls all the four sub-clauses of that clause, what then is the position ? The four principles laid down in Heydon's case have been thus summarised:

" That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1) what was the common law before the passing of the Act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; (4) the true reason of the remedy. And then the office all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and pro privato commedo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico." Let me now apply these principles in the construction of sub-s. (3) of S. 16 of the Act, The subjection was introduced in 1937, and before the enactment of the sub-section, there was no provision for the inclusion of the income of a wife or a, minor child in the computation of the total income of an individual. The Income Tax Enquiry Report, 1936, referred to the widespread evil of the evasion of tax by the severance of the joint status amongst members of a joint and undivided Hindu family. The Report said :

" Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife and minor children. In some parts of the country, avoidance of taxation by this means has attained very serious dimensions. The obvious remedy for this state of affairs so far as husband and wife are concerned is the aggregation for assessment of their incomes, but such a course would involve aggregation in a quite different class of case, i.e., where the wife's income arises from sources quite unconnected with the husband We recommend, therefore, that the incomes of a wife should be deemed to be, for Income-tax purposes, the income of her husband, but that where the income of the wife is derived from her personal exertions and is unconnected with any business of her husband, her income from her personal exertions up to a certain limit, say Rs. 500, should not be so included.....

(b)Income of minor children.-There is also a growing and serious tendency to avoid taxation by the admission of minor children to the benefits of partnership in the father's business. Moreover, the admission is, as a rule, merely nominal, but being supported by entries in the firm's books, the Income-tax Officer is rarely in a position to prove that the alleged participation in the benefits of partnership is unreal. ..... We suggest that the income of a minor should be deemed to be the income of the father (i) if it arises from the benefits of partnership in a business in which the father is a partner or (ii) if, being the income of a minor other than a married daughter, it

is derived from assets transferred directly or indirectly to the minor by his or her father or mother, (iii) if it is derived from assets apportioned to him in the partition of a Hindu Undivided Family."

It is clear, however, that the report is of very little help in the construction of the sub-section, because the Legislature did not accept in full the recommendations made in the Report. Two of the rules in Heydon's case lay down (1) that we must find what was the mischief or defect for which the earlier law did not provide and (2) what remedy the Parliament has resolved and appointed to cure the mischief or defect. In the case under our consideration, the interpretation which has been put by me on sub-s. (3) of s. 16 does not militate against any of the aforesaid rules of Heydon's case. The interpretation put by me undoubtedly remedies the mischief or defect for which the earlier law did not provide. The only serious criticism made by learned counsel for the assessees against that interpretation Is that the remedy not merely cures the mischief for which the earlier law did not provide, but it goes a little further and attacks the evil even when the evil is committed by a female individual, though the Income Tax Enquiry Report (except in one part) did not in specific terms refer to such an evil committed by a female individual. I can see nothing in the rules laid down in' Heydon's case which militates against the view taken by me. There is no presumption that, while remedying an evil, the Legislature may not cast its net very wide so as to remedy the evil in all its aspects. Let me again refer to sub-cls. (i) and (ii) of cl. (a) of sub-s. (3) of s. 16 of the Act. Those two sub-clauses are absolute and unqualified in terms and not subject to any exception. If the wife owns and manages a business and she takes her husband into partnership with her in the business, the result of the partnership would be that the wife's income from the business would be no longer taxable in her hands but would be included in the total income of her husband under the sub-section, even though the husband may be a dormant partner. This clearly shows that the Legislature was not confining itself to the recommendations made in the Income Tax Enquiry Report. What is to be included in the total income of an individual under cl. (a) is the income of a wife or minor child arising directly or indirectly "from the membership of the wife" in the firm or "from the admission of the minor to the benefits of partnership" in the firm of which the individual is a partner. The clause covers the share of the profits of the firm received by the wife in her capacity- as a partner or by the minor child in his or her capacity as one admitted to the benefits of partnership. But the income received from the firm by the wife or the minor child under any other contract with the firm or in any other capacity, does not fall within the clause and is not included in the husband's or parent's total income.

From what is stated above, it is clear that the Legislature did not confine itself strictly or solely to the recommendations made by the Income Tax Enquiry Committee but provided for all such aspects of the evil or mischief as it thought fit to remedy by the Indian Income-tax (Amendment) Act, 1937 (Act IV of 1937). In these circumstances, I do not think that the recommendations made by the Income-tax Enquiry Committee can be relied upon to restrict the meaning of the word "individual" used in sub-s. (3) of s. 16 of the Act. , As to the Statement of Objects and Reasons which led to the passing of Act IV of 1-937 and which has been set out in the judgment of the High Court of Madhya Pradesh, I do not think that the Statement can be referred to as an aid to construction for ascertaining the meaning of the word "individual" used in the sub-section. Even if it is referred to "for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to

remedy", the use of the word "Parent" in the Statement of Objects and Reasons shows that the evil was not confined to the male individual only, and the sponsor of the Bill was aware of it. The Statement reads: "Sec. 16(3) was thus designed to bring within the ambit of taxation incomes of wives and minor children as income of husband or parent, which otherwise would escape the whole burden of taxation." I emphasise the use of the word "parent" which would show that the evil contemplated was an evil which was not confined to the "father" only but included the mother as well. 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 s. 16 of the Act so as to confine it to a male individual alone. I now turn to such authorities as have been cited before us. There has been a difference of opinion in the High Courts with regard to the interpretation of sub-s. (3) of s. 16 of the Act. In Shrimati Chanda Devi v. Commissioner of Income- tax (1), the Allahabad High Court has taken the view that the minor's income which arises directly or indirectly from the admission of the minor to the benefits of partnership in a firm of which the, mother is a partner, can be included in the mother's assessable income under s. 16(3)(a)(ii) of the Act. The Allahabad High Court proceeded on the footing that the language of the sub-section. did not create any real difficulty and it was not open to it to take the help of the Income-tax Enquiry Report. I have considered this case from both the points of view, and have arrived at the same conclusion at which the Allahabad High Court arrived. It is not necessary to mention the other reasons given by the Allahabad High Court, because they have already been stated by me in an earlier part of this judgment. This decision of the Allahabad High Court was followed by the Punjab High Court in Commissioner of Income-tax, Delhi v. Shrimati Damayanti Sahni(2), which has given rise to one of the two appeals before us. The Punjab High Court gave no additional reason except to state that in cl. (a) of sub-s. (3) of s. 16, the word "wife" and the (1) (1950) 10 I.T.R. 944.

(2) (1953) 23 I.T.R. 41.

words "minor child" were used disjunctively. I have already stated that the use of the disjunctive "or" is not decisive; but there is no real difficulty in reading clauses (a) and

(b) distributively. The Madhya Pradesh High Court took a different view in Sahodradevi N. Daga v. Commissioner of Income-tax (1), which has given rise to the other appeal before us. In my view, the learned Judges in that case did not attach sufficient importance to sub-cls. (ii) and (iv) of cl. (a). If I may say so with great respect, they confined their attention primarily to sub-cls. (i) and (iii) of el. (a) and to cl. (b), and from those provisions they inferred that the intention was to confine the word "individual" to a male individual. I venture to think that all the three parts of the sub-section, including the four sub-clauses of cl. (a), must be read together in order to understand the true meaning and effect of the sub-section. The learned Judges further seemed to think that the use of the words "such individual" in sub-cl. (ii) of el. (a) was due to inadvertence. I am unable to agree. I have already pointed out that the phraseology in sub-cls. (i) and (iii) of cl. (a) is so strikingly different from the phraseology used in sub-cls. (ii) and (iv) that only one and one reasonable conclusion can be drawn, namely, that the word "individual" has been used in its accepted connotation, and when the Legislature wanted to confine the operation of a sub-clause to the male individual only, it used the word "wife" and "husband"; where, however, the Legislature wanted to

refer to either a male or a female, it used the word "individual" which, in its ordinary connotation, means either a male or a female.

For the reasons given above, I agree with the view expressed by the Allahabad and the Punjab High Courts and do not accept the interpretation given by the Madhya Pradesh High Court. In my opinion, the question should be answered in the way the Allahabad and the Punjab High Courts answered it; therefore, Civil Appeal No. 322 of 1955 should be allowed with costs and Civil Appeal No. 25 of 1955 should be dismissed with costs.

(1) (1955) 27 I.T.R. 9.

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.