A

COL. H. H. SIR HARINDER SINGH

v.

C.I.T. PUNJAB, HARYANA, J.&K. & HIMACHAL PRADESH

October 15, 1971

B [C. A. VAIDIALINGAM, P. JAGANMOHAN REDDY AND K. K. MATHEW, JJ.]

Income-tax Act, 1922, ss. 9(2) and 16(3)(b)—Whether allowance under s. 9(2) can be given in respect of more than one residential house—Applicability of s. 16(3)(b)—Whether applies only to cases when corpus of property is transferred or is ultimately to be transferred to wife or minor child—Whether income of trust or of minor child to be assessed in father's hands.

C

The appellant created a trust in 1955 by transferring certain securities held by him to a bank as trustee. One of the beneficiaries of the trust was the appellant's minor daughter M. The income accruing to M under the trust during the previous years relevant to the assessment years 1957-58, 1958-59, 1959-60 and 1960-61 was included in the assessments made on the appellant as an individual for those years by applying the provisions of s. 16(3)(b) of the Indian Income Tax Act 1922. In the assessment D for the year 1960-61 the Income-tax Officer had also to deal with the appellant's claim for the allowance under s. 9(2) of the said Act in respect of two separate houses owned by the appellant and maintained by him for residential purposes in New Delhi. The Income tax Officer allowed the claim only in respect of one of the houses. The appellant's appeals before the authorities under the Act failed. The High Court decided the questions referred to it against the appellant. In appeals before this Court E on certificate the contentions of the appellant which fell for consideration were : (i) (a) that s. 16(3)(b) must be strictly construed; (b) that the assets covered by the trust deed not having been transferred to the wife or minor daughter but to a bank as trustee, s. 16(3)(b) of the Act had no application; (c) even if s. 16(3)(b) of the Act applied, what was to be included in computing the total income of the appellant was not the income that had been received by the minor daughter under the trust deed but only so much of the income of the trustee as arose from the assets F transferred to the trustee for the benefit of the minor child; (ii) that a reading of the first and second provisos to s. 9(2) of the Act clearly showed that the allowance to an assessee is not confined only to one residential house

HELD : (i) (a) it is true that s. 16(3)(b) creates an artificial liability and must therefore be strictly construed. But in construing s. 16(3)(b) Courts cannot ignore the clear and unambiguous expressions contained G therein and all those expressions must receive a proper interpretation. [9 C—D]

C.I.T. Bombay v. *Manilal Dhanji*, [1962] 44 I.T.R. 876, *C.I.T., Gujarat* v. *Keshavlal Lallubhai Patel*, [1965] 55 I.T.R. 637 and; *C.I.T., West Bengal III* v. *Prem Bhai Parekh & Ors.* [1970] 77 I.T.R. 27, considered.

(b) The contention that s. 16(3)(b) applies only to those cases where H ultimately the corpus of the trust property is also transferred to the wife or the minor child, must be rejected. The provisions of s. 16(3)(b) are very clear and the only requirement so far as this aspect is concerned is that the assets must be transferred to any person or association of persons and that transfer of assets must be for the benefit of the wife or the

minor child or both. In this connection it is pertinent to note the wordings of s. 16(3)(a)(iii) and s. 16(3)(a)(iv). The former provision clearly refers to assets transferred directly or indirectly to the wife by the husband and the latter provision refers to assets transferred directly or indirectly to the minor child not being a married daughter. But in cl. (b) of s. 16(3) the transfer of assets is not to the wife or the minor child or both but to any person or association of persons. Therefore it is clear that when the legislature intended to provide for a direct transfer of assets either to the wife or to the minor child, it has used the expressions as are found in s. 16(3)(a)(iii) and s. 16(3)(a)(iv). The different phraseology used in cl. (b) of s. 16(3) makes it clear that the transfer of assets need not be to the wife or the minor child. Nor does the said clause require that the corpus of the property so transferred to any person or association of persons should ultimately vest in the wife or the minor child [9G—10B]

C.I.T. Bombay v. *Sir Mahomed Yusuf Ismail,* [1944] 12 I.T.R. 8 approved.

(c) From a plain reading of s. 16(3)(b) it is clear that what is to be included in computing the total income of the assessee is that part of the income of the trust which is received for the benefit in this case of the minor daughter. It is the share income which has accrued to or has been received by the minor daughter under the trust deed in the relevant accounting year, that has to be included in the total income of the father, the assessee. The expression "so much of the income" occurring in this clause also makes it clear that the said provision relates to the share income of the minor daughter, in this case, and not that of the trustee bank. [11B—C]

Tulsidas Kilachand and ors. v. *C.I.T. Bombay City I,* [1961] 42 I.T.R. 1 and *C.I.T. Bombay* v. *Manilal Dhanji,* [1962] 44 I.T.R. 876 applied.

(ii) A reading of the second proviso to sub-section (2) of s. 9 clearly indicates that the first proviso will take in more than one residential house, if the assessee is able to establish that all the houses are occupied by him for purposes of his own residence. [15A—B]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1488 to 1491 of 1969.

Appeals from the judgment and order dated August 1, 1968 of the Punjab and Haryana High Court in Income-tax reference No. 20 of 1964.

K. C. Puri, S. K. Mehta and K. L. Mehta, for the appellant (in all the appeals).

B. Sen, P. L. Juneja and *R. N. Sachthey,* for the respondent (in all the appeals).

The Judgment of the Court was delivered by

Vaidialingam, J. These four appeals, on certificate, are directed by the assessee against the judgment and order dated August 1, 1968 of the High Court of Punjab and Haryana at Chandigarh in Income-tax Reference No. 20 of 1964.

Two questions of law were referred by the Income-tax Appellate Tribunal, Delhi Bench 'C' to the High Court. Both

A the questions were answered in favour of the Revenue and against the assessee.

The appellant-assessee was the Ruler of Faridkot and he was assessed in the status of an individual for the assessment years 1957-58 to 1960-61, corresponding to the accounting years being
B the period ending 12-4-1957, 12-4-1958, 12-4-1959 and 12-4-1960 respectively. The assessee had executed a registered trust deed dated April 1, 1955 marked Annexure "A" whereunder he had transferred the United Kingdom Government's Securities of the face value of £ 1,80,000 to the Grindlays Bank, London, as trustee, to be held in trust in accordance with the terms and
C conditions set out therein. As there is no dispute that these Government securities were transferred to the Bank and also regarding the provisions contained therein for distribution of the income accruing from the securities, it is not necessary for us to set out the various clauses in the trust deed. By clause (2) the trustee was directed to divide the trust property into two equal parts. By clause (3) the trustee, after meeting all outstanding
D and contingent liabilities, was required to pay the balance income to all or any of the children of the Settlor other than his eldest son, living at the respective dates of payment in equal shares. Similarly, under clause (4) the trustee after meeting all outstanding and contingent liabilities, was directed to pay the balance income to the eldest son of the Settlor Tikka Harmohinder Singh
E of Faridkot, during his life. Clauses 3(b) and 4(c) provided that at the termination of the period of distribution, the Bank shall stand possessed of the capital and income of both parts upon trust for the person who, at the date of such termination, shall be the successor of the Settlor according to the Rule of Primogeniture applicable to the dynasty of the Settlor absolutely.
F Clause (5) defined the period of distribution to be the life of the Settlor and the children of the Settlor living at the date thereof and the lives and life of the survivors and survivor of them and the period of 21 years after the death of such survivor.

The assessee owned a house known as Faridkot House situated at Lytton Road, New Delhi, during the assessment year
G 1960-61. During the same period, the assessee also owned a second property known as Faridkot House, situated in Diplomatic Enclave, New Delhi.

Rajkumari Maheepinder Kaur, minor daughter of the assessee received from the trustee as per the provisions of the trust deed
H dated April 1, 1955, Rs. 15,570/-, Rs. 15,570/-, Rs. 12,446/- and Rs. 10,310/- during the relevant accounting years, corresponding to the assessment years 1957-58 to 1960-61. In the assessment of the assessee as an individual during the said

assessment years, the Income-tax Officer District 'A' Ward, Bhatinda, notwithstanding the objections raised by the assessee, included the amounts received by the minor daughter in the total assessable income of the appellant for each of the assessment years under s. 16(3)(b) of the Indian Income-tax Act, 1922 (hereinafter to be referred to as the Act). The order of assessment for the assessment year 1957-58 was passed on April 27, 1959 and for the other three assessment years on March 23, 1961.

On appeal by the assessee, the Appellate Assistant Commissioner of Income-tax, Rohtak Range, confirmed the orders of the Income-tax Officer. The order of the Appellate Assistant Commissioner for the assessment year 1957-58 is dated July 25, 1961 and for the remaining years, the orders were passed on November 4, 1961. The Appellate Assistant Commissioner accepted the contention of the appellant that s. 16(1)(c) of the Act has no application, but agreed with the view of the Income-tax Officer that the income received by the minor daughter is to be included in the total taxable income of the assessee under s. 16(3)(b).

The assessee carried the matter in further appeal before the Income-tax Appellate Tribunal, Delhi Bench 'C', in Income-tax Appeals Nos. 6075, and 8423-8425, all of 1961-62, regarding the assessment years 1957-58 to 1960-61 respectively. The Appellate Tribunal agreed with the view of the Income-tax Officer and the Appellate Assistant Commissioner that the inclusion of the minor daughter's income under s. 16(3)(b) was correct. The order of the Appellate Tribunal for all the assessment years is dated August 7, 1962, though a separate order has been passed in respect of the assessment year 1960-61.

From the narration of the above facts, it will be seen that the Income-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal have all held that the income received by the minor daughter of the assessee under the trust deed has to be included under s. 16(3)(b) of the Act in the total taxable income of the assessee for each of the assessment years.

We have earlier referred to the fact that the appellant owned two houses in New Delhi, both known as Faridkot House, one at Lytton Road and the other in Diplomatic Enclave, during the accounting year ending April 12, 1960. The assessee claimed reduction of the annual letting value in respect of both these houses on the ground that they were used as his residence. This claim regarding the houses arises only in the assessment year 1960-61. The Income-tax Officer allowed the reduction in the annual letting value only in respect of one house at Lytton Road.

A There is no discussion in the order as to why the claim for the second house at Diplomatic Enclave was rejected. The Appellate Assistant Commissioner held that as deduction has already been given by the Income-tax Officer in respect of the Faridkot House in Lytton Road, the assessee is not entitled to a further allowance in respect of the house at Diplomatic Enclave. It is B the further view of the Appellate Assistant Commissioner that under s. 9(2) of the Act, the assessee is not entitled to a further allowance in respect of the second house and that both the houses occupied for residential purposes have to be treated as one unit. On this ground he rejected the claim of the assessee regarding the allowance in respect of the Faridkot House in Diplomatic C Enclave. The Appellate Tribunal, when dealing with the appeal relating to the assessment year 1960-61 dealt with this claim of the assessee a little more elaborately. After a reference to the provisions of s. 9(2) of the Act, the Appellate Tribunal held that there is nothing in the said provision which entities the assessee to claim benefit in respect of more residential houses D than one. But the Appellate Tribunal was prepared to accept the position that the second proviso to s. 9(2) indicates that the property referred to in the first proviso may consist of more than one residential houses, but that by itself does not lead to the conclusion that the benefit under the first proviso can be claimed in respect of more than one property. In this view, the Appellate Tribunal also agreed with the rejection, by the two officers, of the E claim made by the appellant in respect of the house situated in Diplomatic Enclave.

The assessee filed four applications before the Appellate Tribunal praying to refer to the High Court, with a statement of case, two questions of law—one relating to the inclusion in the F four assessment years of the income received by the minor daughter in the total income of the assessee; and the other relating to the rejection by the Revenue, of the assessee's claim for allowance for the assessment year 1960-61 in respect of the Faridkot House in Diplomatic Enclave. The Income-tax Appellate Tribunal, accordingly, referred, for the opinion of the High Court the following two questions of law :

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> "(1) Whether on the facts and in the circumstances of the case, the amounts of Rs. 15,570, 15,570, 12,446 and 10,310 received by the assessee's minor daughter Rajkumari Maheepinder Kaur in the assessment years 1957-58, 1958-59, 1959-60 and 1960-61 H under the terms of the Trust Deed dated the 1st April, 1955 have been rightly included in the hands of the assessee under Section 16(3)(b) of the Indian Income-tax Act, 1922 ?

"(2) Whether on the facts and in the circumstances of the case the assessee is entitled to the reduction of the annual letting value of the Faridkot House in Diplomatic Enclave New Delhi, by Rs. 1,800/- under the first proviso to Section 9(2) of the Income-tax Act, 1922 notwithstanding the fact that the annual letting value of the Faridkot House situated at Lytton Road, New Delhi, is already reduced by Rs. 1,800/- ?"

The High Court, by its judgment and order under attack, has answered the first question in the affirmative and the second in the negative. The answers in respect of both the questions given by the High Court are against the assessee.

Before the High Court, the appellant appears to have urged that s. 16(1)(c) of the Act is the only provision that could apply in the present case of settlement and that, as such, the amounts received by the minor daughter of the assessee under the trust deed could not be added to the income of the assessee under s. 16(3)(b) of the Act. The High Court rejected this contention of the assessee. The assessee further contended before the High Court that s. 16(3)(b) will apply only if assets had been transferred for the benefit of the wife or minor child and that as the wife or minor child was not entitled to the corpus of the trust property, that provision does not apply. This contention was also rejected by the High Court. The further contention of the assessee was that to attract s. 16(3)(b) the transfer should be one exclusively for the benefit of the wife or minor child and that the said provision will have no application when the benefit that is sought to be conferred, takes in as in the case of the present trust deed other persons like the major children. This contention again was rejected by the High Court. The last contention on this aspect that was urged appears to have been that, in any event, under s. 16(3)(b) what could be included is only so much of the income of any person or association of persons to whom the property had been transferred for the benefit of the wife or the minor child and not the income received by the minor child. This contention again was not accepted by the High Court. The High Court ultimately held that the amounts received by the minor daughter of the assessee under the trust deed have been rightly included under s. 16(3)(b) of the Act in the total assessable income of the appellant in all the four assessment years.

Regarding the deduction claimed during the assessment year 1960-61 in respect of the house situated at Diplomatic Enclave, the High Court is of the view that the assessee can claim such a benefit by way of allowance under s. 9(2) only in respect of one house. Such allowance having been given by the Revenue in

A respect of the residential house at Lytton Road, New Delhi, it is the view of the High Court that the appellant's claim with regard to the house at Diplomatic Enclave has been rightly rejected by the Revenue.

Before we refer to the contentions of the counsel for the B assessee and the Revenue, it is necessary to refer to the relevant provisions of the Act in respect of the two points arising for consideration, one relating to the amounts received by the minor daughter and the other relating to an allowance in respect of a second residential house. Though the relevant provision in respect of the 1st aspect is only clause (b) of s. 16(3), it is desir- C able to quote all the provisions of s. 16(3) which run as follows :

> S. 16. (3) In computing the total income of any individual for the purpose of assessment, there shall be included—
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> (a) so much of the income of a wife or minor child of such individual as arises directly or indirectly
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> (i) from the membership of the wife in a firm of which her husband is a partner;
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> (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;
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> (iii) from assets transferred directly or in- F directly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or
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> (iv) from assets transferred directly or indirectly to the minor child, not being a married G daughter, by such individual otherwise than for adequate consideration; and
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> (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 H child or both."

The relevant provisions bearing on the claim in respect of the house in Diplomatic Enclave, are the two provisos in s. 9(2). Section 9(2) with the relevant two provisos is as follows :

> "9(2) For the purposes of this section, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year.
>
> Provided that, where the property is in the occupation of the owner for the purposes of his own residence, the annual value thereof shall first be determined in the same manner as if the property had been let to a tenant and the amount so determined shall be reduced by one-half of it or eighteen hundred rupees, whichever is less, so however that where the sum so reduced exceeds ten per cent of the total income of the owner the annual value of the property shall be deemed to be ten per cent of such total income.
>
> Provided further that where the property referred to in the preceding proviso consists of one residential house only and it cannot actually be occupied by the owner by reason of the fact that owing to his employment, business, profession or vocation carried on at any other place, he has to reside at that other place in a building not belonging to him and the residential house is not actually let and no other benefit therefrom is derived by the owner, the income of such property under this section shall, if the property was not occupied during the whole of the previous year be taken to be nil and if it was occupied for a part of the previous year be computed proportionately, so however that the income in respect of such property shall in no case be a loss."

We will first deal with the point covered by question No. 1 regarding the inclusion in the relevant assessment years in the taxable income of the appellant, the amounts received by his minor daughter under the trust deed dated April 1, 1955. Though several contentions have been raised before the High Court and the Appellate Tribunal, Mr. K. C. Puri, learned counsel for the appellant, has raised before us only two contentions, namely, (1) the assets of £ 1,80,000 covered by the trust deed not having been transferred to the wife or minor daughter in question, but to the Grindlays Bank, as trustee, s. 16(3)(b) of the Act has no application; and (2) even if section 16(3)(b) of the Act applies, what is to be included in computing the total income of the assessee is not the income that has been received by the minor

A daughter under the trust deed, but only so much of the income of any person or association of persons (in this case the trustee) to whom the assets have been transferred for the benefit of the wife or the minor child. The counsel referred to the decisions of this Court in *Commissioner of Income-tax, Bombay* v. *Manilal Dhanji*(1); *Commissioner of Income-tax, Gujarat* v. *Keshavlal* B *Lallubhai Patel*(2) and *Commissioner of Income-tax, West Bengal III* v. *Prem Bhai Parekh and others*(3) and urged that s. 16(3) of the Act created an artificial income and had to be construed strictly. That is, according to the learned counsel, the wordings of s. 16(3)(b) have to be construed strictly and literally. On the basis of such a strict and literal construction, the counsel C urged that the two propositions urged by him earlier are ample borne out by s. 16(3)(b). It is no doubt true that the above decisions lay down the proposition that s. 16(3) of the Act creates an artificial income and it must receive a strict construction. We may also point out that the first decision, referred to above dealt with a case under s. 16(3)(b) and has specifically laid down the proposition that the said provision creates an arti- D ficial liability to tax and must be strictly construed. But in construing s. 16(3)(b) the Courts cannot ignore the clear and unambiguous expressions contained therein and all those expressions must receive a proper interpretation.

Taking the first contention of Mr. Puri, according to him the E corpus of the property covered by the trust (in this case the Government Securities) should have been transferred for the benefit of the wife or the minor child. The minor daughter, in this case, was not entitled to the corpus of the trust property, namely, the securities. We understood Mr. Puri to urge that s. 16(3)(b) of the Act will apply only to those cases where F ultimately the corpus of the trust property is also transferred to the wife or the minor child, as the case may be. We have no hesitation in rejecting this contention of Mr. Puri. The provisions of s. 16(3)(b) are very clear and the only requirement, so far as this aspect is concerned, is that the assets must be transferred to any person or association of persons and that transfer of assets must be for the benefit of the wife or the minor G child or both. In this connection it is pertinent to note the wordings of s. 16(3)(b)(iii) and s. 16(3)(a)(iv). The former provision clearly refers to assets transferred directly or indirectly to the wife by the husband and the latter provision refers to assets transferred directly or indirectly to the minor child not being a married daughter. But in cl. (b) of s. 16(3) the trans- H fer of assets is not to the wife or the minor child or both but to

(1) [1962] 44 I.T.R. 876. (2) [1965] 55 I.T.R. 637.

(3) [1970] 77 I.T.R. 27

any person or association of persons. Therefore, it is clear that when the legislature intended to provide for a direct transfer of assets either to the wife or to the minor child, it has used the expressions as are found in s. 16(3)(a) (iii) and s. 16(3)(a) (iv). The different phraseology used in cl. (b) of s. 16(3) makes it clear that the transfer of assets need not be to the wife or the minor child. Nor does the said clause require that the corpus of the property, so transferred to any person or association of persons, should ultimately vest in the wife or the minor child. Mr. Puri quite frankly admitted that there is no decision to support his contention. On the other hand, we find that there is a decision of the Bombay High Court in *Commissioner of Income-tax, Bombay* v. *Sir Mahomed Yusuf Ismail*(1) which is against the contention advanced by Mr. Puri. In that decision one of the questions that arose for consideration was whether the income received by the wife of the assessee under a deed of wakf can be included in the assessment of the husband under s. 16(3)(b). The assessee therein had executed a deed of wakf. Under the terms of the said deed, the assessee's wife was to get 21% of the income accruing from the property which was the subject of the wakf deed. It was contended that as no part of the assets or the corpus had been transferred to the wife, the income received by the latter cannot be included in the taxable income of her husband, the assessee. A Division Bench of the Bombay High Court rejected this contention and held that as assets had been transferred, under the wakf deed, to the trustees and as the transfer was beneficial to the wife and that as she had got 21% of the income from the properties, section 16(3)(b) of the Act was properly applied by the Revenue. We are in agreement with this decision of the Bombay High Court and as such the first contention of Mr. Puri will have to be rejected.

Coming to the second contention, according to Mr. Puri under s. 16(3)(b) of the Act, only so much of the income of the person or association of persons to whom the property has been transferred for the benefit of the wife or the minor child and not the income received by the minor that can be included in the taxable income of the assessee. According to the counsel, what has been done by the Revenue is to include in the assessment of the appellant's the income received by the minor daughter in the relevant accounting years. That procedure is opposed to s. 16(3)(b) of the Act. Here again, the contention of the learned counsel cannot be accepted. If this contention is accepted, the position will be that the Revenue might have included the whole of the income arising from the assets transferred to the Grindlays Bank and not merely that portion of the income which has been received by the minor daughter. Such a construction

(1) [1944] 12 I.T.R. 8.

A in totally opposed to the clear provisions of the scheme of s. 16(3) and in particular the clear wording of cl. (b) of s. 16(3) of the Act.

From a plain reading of s. 16(3)(b) it is clear that what is to be included, in computing the total income of the assessee, is that part of the income of the trust which is received for the bene-
B fit in this case of the minor daughter. It is the share income which has accrued to or has been received by the minor daughter under the trust deed, in the relevant accounting year, that has to be included in the total income of her father, the assessee. The expression "so much of the income" occurring in this clause also makes it clear that the said provision relates to the share income
C of the minor daughter, in this case, and not that of the Grindlays Bank, the trustee.

Section 16 sub-s. (3) of the Act provides specifically for assets transferred to the wife or the minor child. The income from assets transferred to the wife is still to be included in the total income of the husband, if the assets have been transferred
D directly or indirectly to the wife by the husband otherwise than for adequate consideration [vide sub-section (3)(a) (iii)]. Again 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 the husband, for the benefit of his wife has to be included in the husband's taxable
E income. [vide sub-section(3)(b)]. The same sub-section (3) of s. 16 of the Act provides for the income, from the assets transferred by a father to his minor child, to be included in the total income of the father, if the assets have been transferred, directly or indirectly to the minor child, not being a married daughter, otherwise than for adequate consideration [vide sub-section (3)(a)(iv)]. Again, so much of the income of any person or
F association of persons, as arises from assets transferred, otherwise than for adequate consideration, to the person or association by the father, for the benefit of his minor child has to be included in the father's taxable income. [vide sub-section (3)(b)]. The above is the scheme of s. 16(3) of the Act. It must also be noted that under s. 16(3)(a) sub-clauses (iii) and (iv) and also clause
G (b) of sub-section 3, the transfer contemplated thereunder should have been "otherwise than for adequate consideration." The words "adequate consideration" denote consideration, other than mere love and affection. There is no controversy, in the case before us, that the transfer, by way of trust, is one "otherwise than for adequate consideration." It is true that when assets are trans-
H ferred to the trustees, as in the case before us, there was income in the hands of the trustees and the latter were liable to pay tax thereon. That, however, is not the question before us. The question before us is whether the income, representing the share

of the minor daughter, which has accrued in the hands of the trustee, or was received by the said minor could be included in the total income of the appellant under cl. (b) of sub-s. (3) of s. 16.

For a proper appreciation of cl. (b) of s. 16(3), in our opinion, that clause must be read in the context of the scheme of s. 16; and the two clauses (a) and (b) of sub-section (3) of s. 16, must be read together. So read, the reasonable interpretation to be placed on cl. (b) appears to be that the scheme of the section requires that an assessee can only be taxed, on the income, from a trust fund created for the benefit of his wife or minor child or both, provided that in the year of account, the wife or the minor child, or both, have derived some benefit under the trust deed. That is, the wife or the minor child, either has received the income or the income has accrued to them or they have a beneficial interest, in the income in the relevant year of account. From this it follows, that if no income accrues or benefit is derived and there is no income at all, so far as the minor child, in the case before us, is concerned, then it is not consistent with the scheme of section 16, that the income or the benefit which is non-existent, so far as the minor child is concerned, is to be included in the income of his or her father. In the case before us, there is no controversy that the minor daughter has received the income in all the relevant accounting years.

Mr. B. Sen, learned counsel for the Revenue, has drawn our attention to the two decisions of this Court, wherein it has been held that s. 16(3)(b) of the Act applies, to cases of trust, like the one before us, and that under such circumstances, what is to be included in the total income of the assessee is the share of the income that has accrued to or has been received by the assessee's wife or minor child, or both. The first decision is *Tulsidas Kilachand and others* v. *Commissioner of Income-tax, Bombay City I*(1). In this case A, the husband, had created a trust in respect of certain shares owned by him in two companies. Under the said trust, the wife of A was to receive the income. A sum of Rs. 30,404/- was received by the wife, as dividend income, in respect of the shares, regarding which a trust had been created. This amount was added to the taxable income of the husband under s. 16(3)(b). This Court held that as the transfer of the shares by way of trust, had been effected and as there was a provision for payment of the income accruing from the shares to the wife, and as the latter had received the dividend income, during the relevant accounting year, that amount had been rightly included by the Revenue in the taxable income of the husband.

(1) [1961] 42 I.T.R. 1.

A This Court further held that such a case falls squarely within the special rules concerning the wife and the minor child as laid down in s. 16(3)(b) of the Act.

The second decision referred to by Mr. Sen is *Commissioner of Income-tax, Bombay* v. *Manilal Dhanji*(1). In that decision B the assessee had created a trust in 1953 in respect of a sum of Rs. 25,000/- and the trustees had also been nominated for the purpose of administration of the trust. Under the trust deed, it was provided that the interest accruing on the trust amount of Rs. 25,000/- was to be accumulated and added to the corpus of the trust and that a minor daughter of the assessee was to receive the income from the corpus, increased by addition of interest, C every year, on her attaining the age of 18 years. It was further provided that after attaining the age of 18 years, the daughter was to receive the income during her life time and after her death the corpus was to go to certain other persons. The daughter, in that case, was to attain the age of 18 years only on February 1, 1959. In the accounting year 1953-54, a sum of Rs. 410/- D was received as interest income on the trust fund and it was added by the trustees, in accordance with the provisions of the trust deed, to the corpus. The Income-tax Authorities, however, included this interest income of Rs. 410/- in the total income of the father, the assessee under s. 16(3)(b) of the Act. The High Court held that on a true construction of cl. (b) of E s. 16(3) of the Act, as no benefit has accrued to the minor daughter in the year of account, the sum of Rs. 410/- could not be included in the total income of the assessee. This Court agreed with the view of the High Court.

It is clear from the above two decisions that when a trust is created, though the income is in the hands of the trustees, the F underlying principle of cl. (b) of s. 16(3) is that so much of the income as represents the shares of the wife or the minor child, as the case may be, is to be included in computing the total income of the husband or the father. This is consistent with the scheme of s. 16 and in particular, sub-section (3) thereof, which is intended to foil an individual's attempt to avoid or reduce the G extent of tax, by transferring his assets to his wife or minor child. From the above discussion it follows, that the second contention of Mr. Puri cannot also be accepted.

Now coming to the second question, referred to the High Court, which relates to the reduction claimed by the assessee of the annual letting value of Faridkot House in Diplomatic H Enclave, New Delhi, we have already pointed out that the said claim has been rejected by the Revenue, as well as by the High

(1) [1962] 44 I.T.R. 876.

Court. It is admitted by the Revenue as well as the assessee, that the claim of the appellant in this regard in respect of the residential house in Lytton Road, New Delhi, has been allowed by the Revenue. The question regarding the house in Diplomatic Enclave arises only for the assessment year 1960-61. The Income-tax Officer has not given any reason for rejecting the claim of the assessee. The Appellate Assistant Commissioner has held that as the appellant has been granted the usual allowance in respect of Faridkot House in Lytton Road, he is not entitled to any further allowance in respect of another house. In fact the officer has said that both the houses have to be treated as one unit for purposes of computing the annual letting value. But there is one finding, in the order of the Appellate Assistant Commissioner, which is to be noted, namely, that the houses in Lytton Road and Diplomatic Enclave are used and occupied by the assessee for residential purposes. The Income-tax Appellate Tribunal has not differed from the finding of the Appellate Assistant Commissioner that both the houses are used and occupied for residential purposes by the assessee. But the Appellate Tribunal has also taken the view that the assessee is entitled to the necessary allowance only in respect of one residential house, under the first proviso to s. 9(2) and that the second proviso thereto does not help the assessee. According to the Appellate Tribunal, the second proviso to s. 9(2) of the Act will take in cases where the property, in the occupation of an assessee for purposes of residence, consists of more than one residential house, but so situated as to form one property. The Appellate Tribunal has given an illustration of a palace or a bungalow with various out houses. In such a case, according to the Appellate Tribunal, all the buildings situated in one compound are to be treated collectively, as one property, for the purpose of the first proviso. In this view, the Appellate Tribunal also rejected the claim of the assessee in respect of the house in Diplomatic Enclave.

The High Court has very summarily rejected the claim of the appellant in this regard. After referring to the contention of the assessee that the second proviso to s. 9(2) clearly indicates that the first proviso contemplates an assessee having more than one residential houses, it has held that the said contention cannot be accepted.

Mr. K. C. Puri, learned counsel for the appellant has urged that the finding of the Appellate Assistant Commissioner that the two houses in Lytton Road and Diplomatic Enclave are used for residential purposes by the assessee, has not been departed from by either the Appellate Tribunal or the High Court. On this basis, Mr. Puri urged that a reading of the first and second provisos

A to section 9(2) of the Act clearly shows that the allowance, to an assessee, is not confined only to one residential house, as held by the Revenue and the High Court. A reading of the second proviso to sub-section (2) clearly, in our opinion, indicates that the first proviso will take in more than one residential houses, if the assessee is able to establish that all the houses are B occupied by him for purposes of his own residence. So far as this is concerned, we have already pointed out that the finding is in favour of the assessee.

Mr. B. Sen, learned counsel for the Revenue, found considerable difficulty in supporting the order of the High Court, answering question No. 2 in the negative and against the appellant. C But he attempted to argue that the question, whether the assessee is actually occupying the house in Diplomatic Enclave also for purposes of his own residence, has not been investigated. We are not inclined to accept this contention of Mr. Sen. We have already referred to the finding of the Appellate Assistant Commissioner to the effect that both the houses—one in Lytton Road D and the other in Diplomatic Enclave are used and occupied by the appellant for purposes of his own residence. This finding has not been disturbed either by the Appellate Tribunal or by the High Court. If so, on a proper construction of the first proviso to sub-section (2) read with its second proviso clearly supports the contention of Mr. Puri that the view of the Revenue and the E High Court that the assessee can claim allowance only for one residential house, is erroneous.

To conclude, we are in agreement with the view of the High Court when it answered the question No. 1 in the affirmative and against the assessee. But we answer the question No. 2 in the affirmative in favour of the assessee. Our answer to question F No. 2 will be substituted, in the place of that given by the High Court. The judgment and order of the High Court are modified to the extent indicated above, and the appeals are allowed in part. The parties will bear their own costs.

G.C. *Appeals partly allowed.*