PETITIONER:
THE COMMISSIONER OF INCOME TAX, BANGALORE

Vs.

RESPONDENT:
SRI J.H. GOTLA, YADAGIRI

DATE OF JUDGMENT29/08/1985

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
TULZAPURKAR, V.D.
MISRA RANGNATH

CITATION:
1985 AIR 1698 1985 SCR Supl. (2) 711
1985 SCC (4) 343 1985 SCALE (2)723
CITATOR INFO :
D 1990 SC 270 (8)
RF 1991 SC1806 (11)

ACT:
Income Tax Act, 1922 Sections 16(3) and 24(2) (ii).
Income Tax Act, 1961 Section 64.
Assessee an Individual - Running oil mill and carrying on purchase and sale of groundnut oil - Oil mill and machinery gifted away to wife and minor children - Firm constituted by wife and another person - Assessee entering into agreement to render services to this firm - Losses incurred by assessee in his individual business in previous years - Whether set off can be cld med against profits in his business and share income of minor children.
Statutory Interpretation.
Taxing Statutes - Interpretation of - Strict literal construction leading to absurd result - Duty of court - Construction resulting in equity whether to be preferred.

HEADNOTE:
The respondent-assessee was an individual, carrying on business in purchase and sale of groundnut oil and he was also running an oil mill, besides being an abkari contractor. On Ist June, 1957 he had gifted away a part of the oil mill machinery, to his wife and three minor children. A firm was constituted by the assessee's wife and another person to the profits of which the three minor sons of the assessee were also admitted. The mill premises as well as the machinery of the assessee were learned out to this firm which carried on the business of manufacture and sale of groundnut oil. The assessee also entered into an agreement with the firm under which certain services were rendered to the firm by way of management. The assessee was entitled to get commission at the stipulated rates on the purchase of oil cake ant sale of decoiled cake made by the firm. The assessee himself continued to carry on business in purchase and sale or ground-nut cake and oil on a small scale, and also as an akbari contractor.
The assessee had incurred huge losses in his individual business in the earlier years which were being carried forward

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from year to year upto the assessment year 1958-59, and the loss carried forward from the assessment year 1958-59 was over Rs.. 7 lakhs. The assesee's profits from his own business from 1959-60 were about Rs.. 14,000. The share Income of the assessee's wife aud minor children from the firm for the assessment year 1959-60 was over Rs. 24,000. This income was include in the occupation of the total income of the assessee under section 16 (3) of the Income Tax Act, 1922 for the assessment year 1959-60. The assessee claimed set-off of the loss carried forward from the assessment year 1958-59 against the profit of his own business as also the share income of his wife and minor children.

The income Tax Officer rejected the claim for set off insofar as lt related to the share Income of his wife and minor children Similar claims for set off were made in the assessment years 1960-61 and 1961-62 but were rejected.

On the appeals preferred by the assessee, the Appellate Assistant Commissioner allowed the set off claimed on the ground that the assessee him self is deemed to be carrying on the business from which the share income was derived by his wife and nor children.

The revenue appealed to the Income Tax Appellate Tribunal, which held that although the assessee was not carrying on the business of manufacture and sale of oil during the years under appeal, he was continuing to carry on the business of oil in general, that the firm. and carry on the same business as was hitherto belong carried out by the assessee but there was no connection between the assessee and the business carried on by the firm and they were too different entities and, as much, the assessee could not be said to be carrying on the business out of which the share income of the wife and minor children arose. It accordingly held that the assessee was not entitled under section 24 (2a) of the Income Tax Act 1922 to claim set off of his losses against the income of his wife and minor children.

The High Court on a reference by the Tribunal held that for an assessee to be entitled to carry forward the loss to the following year ant to claim a set off under section 24 (2) (ii) of the Act the following conditions should be fulfilled: (i) the 1088 must be In a business; (ii) the business, profession or location in which the loss was originally must continued to be carried on by the assessee in the year In which the carried forward loss is bought to be set of; and (iii) the
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business, profession or vocation against the profits of which set off 18 claimed not be carried on by the assessee In that year, and relying on the decision of the Karnataka High Court In Dr. P. Kapadia v. Commissioner of Income Tax, 87 I.T.R. 511, held that the share Income of the assessee total Income under section 16(3) of the Act should be regarded as business Income derived from business carried on by the assessee, and the assessee was entitled to set off his loss carried forward from the previous year.

In the appeals by the Revenue to this Court, it WAS contended relying on the decision of the Gujrat High Court in Dayalbhai Madhavji Vadera v. Commissioner of Income Tax. Gujrat 60 I.T.R. 551 that the loss could not be Included In the total income of the assessee while on behalf of the assessee was contended that in the first year when the assets are transferred to the wife or the minor children the loss has to be taken into account 18 computing the profit and gains arising out of the under of assets 80 transferred

in order to compute the result, ant that the object of section 16 (3) (a) was to foil an Individual's attempt to reduce the incidence of tax by transferring his assets to his wife or minor child or by admitting his wife as 8 partner or his minor child to the benefits of partnership In a firm In which he 18 a partner by transferring the assets directly or indirectly to them otherwise than for adequate consideration.

Dismissing the Appeals,

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HELD: 1. The share income of the wife ant minor children included in the assesses total income under section 16(3) of the Act should be regarded as business- income derived from business carried on by the assesses, ant the assesses is entitled to set off his 1088 carried forward from the previous years. [734 C]

2. where section 16(3) of the Act operates, the profits or loss from a business of the wife or minor child included In the total income of the assesses should be treated as the profit or loss from a 'business carried on by him' for the purpose of carrying forward ant set off under section 24(2) of the Act. [733 H-734 A]

3. (i) Where the plain literal interpretation of a statutory provision produces a manifesty unjust result which could never have been intended by the legislature, the court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational

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construction. The task of interpretation of a statutory provision A is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention- [732 G-733 A]

(ii) Statutes always have some purpose of object to accomplish ant sympathetic ant imaginative discovery of that purpose in the surest guide to their meaning. [733 B]

4. The Income Tax Act, 1922 was replaced by the Income Tax Act, 1961. Section 64 of the Income Tax Act, 1961, deals with inclusion of income of the assessee arising out of the assets transferred directly or indirectly to the spouse or the minor child. The provisions on significant aspects are similar to the Act except that in section 64 of 1961 Act, the expression 'spouse' has been used unlike 'wife' used in section 16(3) of the Act. Sections 70 to 72 of 1961 Act contain provisions similar to section 24 of 1922 Act. Subsection (1) of section 24, provides that there any asessee substains a loss of profits or gains In any year under any of the heads mentioned In section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head In that year. [723 D-E]

5. Section 4 of the Wealth Tax Act, 1957 which also makes assets transferred to the wife or the minor child includible In the net wealth of the asssessee were the expression " in computing the net wealth of an individual, there shall be included, as belonging to that individual Then the different items including the items of assets transferred have been mentioned. The Income Tax Act only takes these as includible as such while the Wealth Tax Act makes includible as belonging to the assessee. [724 E]

6. To set off the carried forward loss of the assessee, two conditions were required to be fulfilled under section 24(2) of 1922 Act, firstly, business, profession or vocation must be carried on by him in that year and

secondly, that the business profession or vocation in which loss was originally sustained must continue to be carried on by the assessee in the year in question. [724 A-B]

7. The principle underlying section 24(2)(11) of the Act was to restrict the set off only to the business lncome of the year to which lt was carried forward 80 that the 1088 sustained by the assessee in any other business, profession or vocation could be set off against the lncome from any business, professional or vocation carried on by him in that year. [725 D]

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8. The object of section 16(3) has to be read in conjunction with section 24(2)- If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counter-act, the effect of the transfer of assets so far as computation of income of the assessee is concerned, then bearing that purpose in mind, the intention should be found out from the language used by the legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation, then if other construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain so always, and if a construction results in equity rather than in in-justice then such construction should be preferred to the literal construction. [733 C-D]

9. It can be accepted without doubt that income would include 1088. If it were a question of inclusion of the income of the wife or minor child to whom assets have been transferred by the assessee and with which business was carried on or by which income was derived by the wife or the minor child, then in including that income either of the wife or minor child such income should be computed in accordance with section 10 and other provisions of the Act including section 24(1) and section 24 (2) of the Act. But the question that arises here is whether against the inclusion of such income, loss suffered by the assessee in a previous year which was carried forward under section 24 (1) of the Act 8 child be allowed to be set off or not. [731 E-F]

Commissioner of Income Tax Madras-I v. A.L. Srinivsan 108 I.T.R. 667 distinguished.

Commissioner of Income was, Bombay v. Manilal Dhanji 44 I.T.R. 876, Commissioner of Income Tax, Kerala II v. Smt. Mary Ignatius 141 I.T.R. 954, Commossioner of Income Tax, Kerala v. P.K. Kochammi Amma Peroke 125 I.T.R. 624, Commissioner of Income Tax v. S.A.S. Marimuthu Ndar 44 I.T.R. 1, Desh Bandhu Gupta and Co. and others v.Delhi Stock Exchange Association Ltd. [1979] 4 S.C.C. 565 and Manickam and Co. v. The State of Tamil Nadu 39 S.T.C. 12 at 18 referred.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1596-1598 (NT) of 1973.

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Appeals under section 66A (2) of the Indian Income Tax Act, 1922 from the Judgment and Order dated 21st March, 1973 of the Mysore High Court at Bangalore in I.T.R.C. Nos. 33, 34 and 35 of 1970

S.C. Manchanda, B.B. Ahuja and Miss A. Subhashini for the appellant.

J. Ramachandran and Mrs. J. Ramachandra for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These appeals arise out of the orders of the High Court of Karnataka dated 10th August, 1973 for the assessment] year 1959-60, 1960-61 and 1961-52 by certificate granted by the High Court under Section 66A(2) of the Indian Income Tax Act, 1922, hereinafter referred to as the 'Act'.

The assessee is an individual. He was carrying on business in the relevant assessment years in purchase and sale of ground-nut oil and was also running an oil mill. He was also an abkari contractor. On 1st June, 1957, he had gifted away a part of the oil mill machinery, viz., a solvent extraction plant, to his wife and three minor children. A firm was constituted by the assessee's wife and another person to the profits of which the three minor sons of the assessee were also admitted. The mill premises as well as the remaining machinery cf the assesses were leased out to this firm which carried on the business of the manufacture and sale of ground-nut oil. The assessee had also entered into an agreement with the firm under which certain services were rendered to the firm by way of management. The assessee was entitled to get commission at the stipulated rates

on the purchase of oil cake and sale of decoiled cake made by the firm. The assessee himself continued to carry on business in purchase and sale of ground-nut cake and oil on a small scale. The assessee also continued his business as abkari contractor.

The assessee had incurred huge losses in his individual business in the earlier years which were being carried forward from year to year upto the assessment year 1958-59. The 1088 carried forward from the assessment year 1958-59 was Rs. 7,88,734. The assessee's profit from his own business for 1959-60 were Rs 14,324. The share income of the assessee's wife and minor children from the firm for the assessment year 1959-60 was Rs. 24,592. The said income was included in the computation

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of the total income of the assessee under Section 16(3) of the Act for the assessment year 1959-60. The assessee claimed set off of the loss carried forward from the assessment year 1958-59 against the profits of his own business as also the share income of his wife and minor children. The Income tax Officer rejected the claim for set off in so far as it related to the share income of his wife and minor children. Similar claims for set off were made in the assessment years 1960-61 and 1961-62 but were rejected.

On the appeals preferred by the assessee, the Appellate Assistant Commissioner allowed the set off claimed on the ground that the assessee himself is deemed to be carrying on the business from which the share income was derived by his wife and minor children. The revenue appealed to the Income Tax Appellate Tribunal, Hyderabad Bench. The Tribunal held that although the assessee was not carrying on the business of manufacture and sale of oil during the years under appeal, he was continuing to carry on the business of oil in general; that the firm did carry on the same business as has hitherto carried on by the assessee but there was no connection between the assessee and the business carried on by the firm and they were two different entities and, as such, the assessee could not be said to be carrying on the

business out of which the share income of the wife and minor children arose. Accordingly it held that the assessee was not entitled under Section 24 (2) of the Act to claim set off of his losses against the income of his wife and minor children.

The following question of law was referred to the High Court:

> "Whether, on the facts and in the circumstances of the case, an assessee would be entitled to carry forward and set off the losses against the share income of the assessee's wife and minor children in respect of the assessment year 1959-60 under Section 24(2) of the Income Tax Act, 1922?

The same consequences followed for the assessment years 1960-61 and 1961-62. For all these years, the references under section 66(1) of the Act were made to the High Court.

The High Court after setting out the facts mentioned hereinbefore referred to Section 24(2)(ii) of the Act as it stood in the relevant year.

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It appears from the section, as the High Court has held, that for an assessee to be entitled to carry forward the loss to the following year and to claim set off, the following conditions had to be fulfilled:

> (1) The loss must be in a business;
> (2) the business, profession or vocation in which the loss was originally sustained must be continued to be carried on by the assessee in the year in which the carried forward loss is sought to be set off; and
> (3) the business, profession or vocation against the profit of which set off is claimed must be carried on by the assessee in that year.

There is no dispute that the loss was from business in this case. The business in which the loss was originally sustained was continued to be carried forward by the assessee in the year in which the carried forward loss was sought to be set off and this aspect was found in favour of the assessee by the Tribunal. The only ground on which the Tribunal has denied the right to set off was that the assessee could not be said to be carrying on the business out of which the share income of his wife and minor children was derived.

The High Court noted that the Tribunal had based its decision on the Gujarat High Court decision in Dayalbhai Madhavji Wadera v. Commissioner of Income-Tax, Gujarat 60. I.T.R. 551, but a different view was taken by the Karnataka High Court in the case of Dr. T.P. Kapadia v. Commissioner of Income Tax, Mysore 87 I.T.R. 511. F

Relying on the said decision in Kapadia's case and on a consideration of the scheme of the Act and the provisions there in referred to, the High Court was of the opinion that the share income of the assessee 6 wife and minor children included in the assessee's total income under Section 16(3) of the said Act should be regarded as business income derived from business carried on by the assessee and in that view of the matter the assessee was entitled to set off his loss carried forward from the previous year. Accordingly, the question referred to in respect of these years was answered in the affirmative and in favour of the assessee by the High Court.

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The revenue has come up in these appeals.

Before the several contentions are dealt with, it is

necessary to bear in mind that here what was sought to be set off was the loss suffered by the assessee in his business carried forward from the previous year against the income which was included in view of the provisions of Section 16 (3) of the Act, the relevant provisions of which are as follows:-

> "16. Exemptions and exclusions ill determining the total income-
> (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;
> (iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration."

Section 10 of the Act provides for the computation of income and states, inter-alia, that the tax shall be payable by an assessee under the head "profits and gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him and sub-section (2) indicates what are the allowances that are allowable in making such computation. It is not necessary for the present purposes to set out in detail the said provision.

The relevant provision of sub-section (1) of Section 24 so far as Is material for the purpose of the present case, was as follows:

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> "Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year.

It is not necessary to refer to the provisions which deal with speculative losses and the exceptions indicating the speculative losses.

The relevant provisions of sub-section (2) of Section 24 which are material for the present purpose are:

> "Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no other head of income shall be carried forward to the following year, and
> (i)where the loss was sustained by him in a business consisting of speculative transactions, it shall be set off only against the profits and gains, if any, of any business in speculative

transactions carried on by him in that year:
(ii) Where the loss was sustained by him in any other business, profession or vocation, it shall be set off against the profits and gains, if any, of any business, profession or vocation carried on by him in that year: provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year; and
(iii) if the loss in either case cannot' be wholly so set off, the amount of loss not so set off shall be carried forward to the following year and so on but no loss shall be so carried forward for more than eight years:"

Reliance was placed on behalf of the revenue on the decision of the Gujarat High Court in the case of Dayalbhai Kadhavji Vadbra v. Commissioner of Income-Tax, Gujarat (supra). In that
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in decision, the division bench of the Gujarat High Court observed that where the share of the wife or minor child in a firm in which the assessee was a partner was a loss, such loss could not be included in the total income of the assessee. The term 'income' the Gujarat High Court noted, had not been defined in Section 16 (3) of the said Act. Though 'income' might in certain cases include negative income namely, loss, but such a construction was not favoured according to the Gujarat High Court, by Section 16 (3) of the Act. The Gujarat High Court was of the view that the section created an artificial liability. The expression 'includes' in clause (a) of sub-clause (iii) prima facie, carried the concept of adding rather than subtracting, deducting or setting off. Section 16 (3) provided, according to the Gujarat High Court, only for inclusions in the total income of an individual and did not create any legal fiction whereby the income of another was deemed to be the income of the individual. Therefore 1086 arising under any one of the sub-clause of Section 16 (3) (a) could not be set off against income falling under the other or the rest of the sub-clauses. If such a set-off were to be made, it would result in a benefit to the father or the husband of the individual. Such a construction would be contrary to the provisions of Section 24 of the Act under which it would be the person to whose share the loss fell, who alone was entitled to a set-off.

In that case two contentions were urged for the assessee before the High Court: (1) that the term income as used in Section 16 (3) (a) would also include negative income i.e., loss, and (2) that while ascertaining what is to be included in the total income of an assessee under Section 16 (3) (a), the Income-Tax Officer had to take the totality of all the income under the four sub-clauses of clause (a) of Section 16 (3) and arrive at the net result and it was such net result that had to be included in the total income of the assessee. His contention, therefore, was that if there was income under one head but loss under another, covered by any of the four sub-clauses of clause (a) of Section 16 (3) such 1088 had to be set off against the Income or the profits or gains acruing or arising under another head and it would be the resulting balance which had to be added to the total income of the assessee. He argued that, while computing the total income of the assessee, when the Income-Tax Officer sought to include therein the income of the assessee's wife or the minor child arising from membership of the wife in the firm in which the assessee was

a partner or from the admission of the minor son to the benefits of partnership in that
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firm and the income arising from the assets transferred to the wife and the minor son, the Income-tax Officer must, in computing such income of the wife and the son, take into consideration the 1088, if any, that had come to their share in the business of that firm or from the transferred assets, and then add only the balance, if any. The question that fell for consideration before the Gujarat High Court as whether this could be accepted as a true and proper construction of Section 16(3) of the act. The High Court noted that the section obviously aimed at preventing an attempt on the part of the assessee to avoid or reduce the incidence of tax either by transferring his assets to his wife or minor child or by admitting his wife or minor child to the benefits of partnership in which he is a partner.

The scheme of clause (a) in sub-section (3) was not to set off 1088, according to the High Court, arising under any one of the sub-clauses against income arising from the other or the rest of the sub-clauses Such a thing perhaps might have been possible if, instead of providing for the inclusion of income of wife or minor child in the total income of an assessee, such income had, by a legal fiction, been made the income or the share of the assessee himself. The High Court noted that had not been done. The High Court was of the opinion that while enacting sub-section (3), the legislature had before it the deeming fiction in Section 16(1)(c). Sub-section 1 (c) of Section 16 of the Arbitration dealt with the income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected.before or after the commencement of the Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or disponer, would be teemed to be income of the settlor or disponer, and all income arising to any person by virtue of a revocable tran8fer of assets shoult be deemed to be income of the transferor. Here this unlike clause (c) of sub-section (1) and sub-section (3) of Section 16, provides for inclusion of certain income for the purpose of assessment in deeming such income to be the income of the assessee. The High Court referred to the decision of the Privy Council in the case of Lawless v. Sullivan 1881 6 App. Cas.373.

On behalf of the revenue, stress was laid on the decision of the Gujarat High Court, but as would be evident from the facts narrated before, the facts of the instant case are materially different. The present case is not a case where the wife or the child to whom the assets had been transferred had suffered any 1088 in a Year subsequent to the year of transfer. Here is a case
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where the husband has suffered loss in a year subsequent to the transfer of certain assets, income arising out of which is sought to be included in the assessee’s income. The question here is in including such an income whether the loss suffered by the assessee in his own business could be set off. Learned counsel for the revenue stressed that the Legislature has not, in Section 16(3) of the Act, used the expression ’deemed to be the income’ in contradistinction to the same expression used in Section 16(1) (c) of the Act. But in judging the controversy of the present case, whether the income is deemed to be or actually included would not, perhaps, in the facts and circumstances of the case, make any material difference. What has to be found out is what is

is be included.

Income-tax Act, 1922 was replaced by Income-tax Act, 1961. Section 64 of the Income-tax Act, 1961, (hereinafter referred to as '1961 Act') deals with inclusion of income of the assessee arising out of the assets transferred directly or indirecty to the spouse or the minor child. The provisions of significant aspects are similar to the provisions of Section 16(3) of the Act except that in Section 64 of 1961 Act, the expression 'spouse' has been used unlike 'wife' used in Section 16(3) of the Act.

Section 70 to 72 of 1961 Act contain provisions similar to Section 24 of the Act. Sub-section (1) of Section 24, as noticed, provides that where any assessee sustains a loss of earns profits or gains in any year under any of the heads mentioned in Section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year.

Counsel for the assessee contended, and in our opinion rightly, that in the first year when the assets are transferred to the wife or the minor child then the loss has to be taken into account in computing the profits and gains arising out of the user of assets so transferred in order to compute the result. This, in our opinion, is the plain meaning of the section. The difficulty, however, arises in a case where loss is sustained by an assessee in any other business, profession or vocation in a succeeding year. In such a case loss so sustained by him in any other business, profession or vocation can be carried forward and set off against the profits or gains, if any, of any business, profession or vocation carried on by him in that year (emphasis suppled); provided the business, profession or vocation in which the loss was originally sustained continued to be carried on by

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him in that year. Therefore, to set off the carried forward loss of the assessee, two conditions were required to be fulfilled under Section 24(2) of the Act, firstly, the business, profession or vocation must be carried on by him in that year and secondly, that the business, profession or vocation in which loss was originally sustained must continue to be carried on (emphasis added) by the assessee in the year in question. The High Court has noted that there are three conditions: (1) the loss must be loss in a business; (2) the business, profession or vocation in which the loss was originally sustained must be continued to be carried on by the assesses in the year in which the carried forward loss is sought to be set off; and (3) the business, profession or vocation against the profits of which set off is claimed must have been carried on by the assesses in that year. That the loss is from business is not disputed in this case. From the facts noted before, it is also evident that the business in which the loss was originally sustained was continued to be carried on by the assesses in the year in which the carried forward loss is sought to be set off. But the question is was the assesses carrying on the business from which the share income of his wife and minor children was derived? This is also a condition which is required to be fulfilled.

In Section 4 of Wealth Tax Act, 1957, which also makes assets transferred to the wife or the minor child includible in the net wealth of the assesses uses the expression in computing the net wealth of an individual, there shall be included, as belonging to that individual (emphasis supplied). Then the different items including the items of assets transferred have been mentioned. The Income-tax Act

only makes these as includible as such while the Wealth-Tax Act makes these includible as belonging to the assessee. It is not necessary to examine whether in view of Section 2(m) of the Wealth-Tax Act read with Section 3 of the said Act which is the charging section, such a provision was necessary unlike Section 10 and Section 2(6C) read with Section 3 of the said Act.

Reliance was placed on behalf of the revenue on the decision of the Madras High Court in the case of Commissioner of Income-tax, Madras-I v. A.A.. Srinivasan 108 I.T.R. 667. The assessee in that case had claimed set off of the losses carried forward by him from prior years in his individual assessment against the share income of his wife from a partnership firm in which he was also a partner and which was included in his assessment by reason of Section 16(3)(a). The Tribunal held that the
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business carried on by the firm could be treated as a business carried on by the husband though the wife was a partner in the said firm and hence the carried forward loss was allowable against her share income from the firm included in the husband's income. In those circumstances, it was held that in the context of Section 24(Z)(ii) of the Act, it was difficult to hold that the business in that case was wholly carried on by the husband assessee or that the income wholly belonged to him and, hence, on the language of Section 16S3) read with Section 24, the Tribunal's view was not justified.

There the Division Bench of the Madras High Court held that the language of Section 16(3)(a) of the Act showed that the income earned by the wife retained its character as her income and was not converted into the income of the husband for all purposes. The inclusion of the income of the wife was only for the purpose of taxing it in the hands of the husband. But the identity of the income of the wife was not lost. The principle underlying Section 24(2)(ii) of the Act was to restrict the set-off only to the business income of the year to which it was carried forward so that the loss sustained by the assessee in any other business, profession or vocation could be set off against the income from any business, profession or vocation carried on by him in that year. Though, for certain purposes, the business carried on by the firm is treated as the business carried on by the partner, still for applying section 24(1) the statute required that the income against which the set off was claimed should belong to the assessee and this requirement was not excluded by Section 24(2). Facts of the case were also different 'in as much as the husband was not a partner in the firm in the present case.

Several propositions were canvassed before us on behalf of the assessee the main one being that the court should consider the purpose of the section for the proper construction of the relevant provisions of the Act. It is manifest, as contended for on behalf of the assessee, that the object of Section 16(3)(a) was to foil an individual's attempt to reduce the incidence of tax by transferring his assets to his wife or minor child or by admitting his wife as a partner or his minor child to the benefits or partnership in a firm in which he was a partner by transferring the assets directly or indirectly to them otherwise than for adequate consideration.

This Court in the case of Commissioner of incom-tax, Bombay V- Manilal Dhanji 44 I.T.R. 876, dealing with Section 16 of the Act observed at page 881 of the report thus:
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"The object of the legislation is clearly designed to overtake and circumvent a tendency on the part of the taxpayers to endeavour to avoid or reduce tax liability by means of settlements. Sub-section (2) deals with grossing up of dividend etc. Then we come to sub-section (3). This sub-section aims at foiling an individual's attempt to avoid or reduce the incidence of tax by transferring his assets to his wife or minor child or admitting his wife as a partner or admitting his minor child or admitting his wife as a partner or admitting his minor child to the benefits of a partnership in a firm in which such individual is a partner. The sub-section creates an artificial liability to tax and must be strictly construed."

Attention was drawn in this connection to a circular of the Board of Revenue - C.B.R. Circular No. 20 of 1944, which reads thus:

"C.B.R. Circular No.20 of 1944. C.No.4(13)-I.T./44, dated the 15th July, 1944.

Subject: Section 16(3)(a) - Loss incurred by wife of minor child - Right of set off under section 24(1) and (2).

Attention is invited to the Board's Circular No.-35 of 1941, on the above subject. It was laid down therein what where the wife or minor child of an individual incurs a loss which if it were income would Le includible in the income of that individual under section 16(3), such loss should be set off only against the income, if any, of the wife or minor child and if not wholly set off should be carried forward, subject to the provisions of section 24(2). The Board has reconsidered the question and has decided that, although this view may be tenable in law, the other and Â¯ re-equitable view is at least equally tenable that such loss should be treated as if it were a loss sustained by that individual. Thus if the wife or minor child has a personal income of Rs. 5,000 wich is not includible in the individual's income and sustains a loss of Rs.10,000 from a source the lncome of which would be includible in the income of the individual, the loss should be set off against the

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income of the individual under section 24(1), and if not wholly set off should be carried forward under section 24(2). The wife or the minor child would, therefore, be assessable on the personal income of Rs.5,000. If in any case the wife or minor child claims a set-off of the loss against the persona1 income, lt should be brought to the notice of the Board. Board's Circular No. 35 of 1941 is hereby cancelled.

It was further submitted that the circular of the Board of Revenue would be binding on all the officers. Reliance was placed on the observations of this Court in Navnitlal Javeri v. K.K. Sen, Appellate Assistant Commissioner of Income Tax Bombay 56 I.T.R. 198 at page 203. It was urged that though the circular was not binding on the assessee, it was binding on the revenue. In our opinion, it was not necessary for the purpose of disposing of these appeals to refer to this aspect at all. These appeals do not involve the question of set off of 1088 sustained by the wife or the minor children of the assessee and brought forward by the

wife or minor children to be set off from the income included from the partnership firm carried with assets transferred by an assessee to his wife or minor children subsequent to the year of transfer. Therefore, the question whether computation of lncome involves deduction of 106s from gross profits, is not relevant. The question 1nvolved in this case is, whether the income of the wife and/or minor children of the assessee from a partnership firm in which the wife is a partner and/or minor children have been admitted to the benefits of partnership carried on with the assets transferred by the assessee in any year subsequent to the year of transfer could be set off against any loss brought forward by the assessee in respect of a business carried on by the assessee. In the instant case, the business of the firm in which assessee wife and to the benefits of which his m nor children had been admitted was a firm in which the assessee himself was not a partner and as such that business was not being carried on by the assessee. Counsel for the assessee contended that the real object of Section 16(3) of the said Act was to restore the position which obtained before the transfer, qua income. In other words, he urged that it was as if the transfer had not taken place. It was his submission that if the transfer had not taken place, the income of the wife and the minor children from the assets transferred viz., machinery in this case, would be the income of the assessee. In other words, it would be income from his business if the transfer was lgnored. In
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that case loss from business could be carried forward for six to eight years as the case may be, to be set off against the business income of the assessee. Counsel urged that the object of the said section was not to punish the assessee for having trans ferred his assets to his wife or minor children by denying any allowance, concession, deduction, etc. to which he or others would otherwise be entitled to. There is substance in this contention. In order, however, to obtain set off of carried for ward loss, two conditions had to be fulfilled. When the circular dated 15th July, 1944 as mentioned before, was issued, the present problem involved in these appeals was not dealt with. When 1961 Act was enacted, this was also not clarified. The requirement of Section 72 which replaced Section 24(2) of the Act proceeds substantially on previous basis.

In view of the facts and circumstances of the present case, it is also not necessary to deal in detail with the Kerala High Court decision in the case of Commissioner of Income- Tax, Kerala II v. Smt Mary Ignatius 141 I.T.R. 954. Though the inclusion of the income of one in the income of another arose in that case under Section 16 of the Act and Section 64(1)(ii) of 1961 Act, the question that falls for consideration in the present case did not fall for consideration in that case.

Dealing with the Madras High Court judgment in Commissioner of Income-Tax, Madras-I v. A.L. Srinivasan (supra), Poti, Acting CJ observed at page 960 thus:

> "Section 24(2)(ii) allowed a set-off of the loss sustained by a person in any business against the gains of any business carried on by him during that year. For the purpose of the section, it cannot be said that the income that he derived as a partner from the firm, which was doing business, was not income rim business carried on by him in that year. The question that the court had really to deal with was whether the wife’s income was

part of the husband's income. If it was part of his income it could be set off against the loss of that year whatever be the head under which the losses are incurred.

It would be necessary, however, to examine whether in view of the facts of this case and in the light of the requirement of Section 24(2) of the Act, whether the losses suffered by the husband in the previous year can be carried forward and set off

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against the income of the wife and the minor children included in the income of the assessee - income which is earned from a firm in which the assessee was not a partner.

The Madhya Pradesh High Court in the case of Comnissioner of Income-Tax, M.P-I v. Badri Prasad Agarwal 142 I.T.R. 353 held that the addition of Explanation 2 to Section 64 of 1961 Act with effect from 1980 was a parliamentary exposition of the true position in law that was obtaining earlier to the effect that income in Section 16(3) would include loss. The Court further reiterated the position that if two views are possible, then the one which is favourable to the assessee should be adopted. 'Income' in Section 64 of the Act of 1961 includes loss. Furthermore Explanation 2 added by Finance Act, 1979 to Section 64 in specific terms says that 'income' would include loss. But that Explanation even on the assumption that this is a parliamentary exposition of the existing position would not solve the present problem.

The Bombay High Court in the case of R.M. Goculdas V. Commissioner of Income-Tax, Bombay 151 I.T.R. 67, had to consider this aspect. CBR's Circular No. 20 in which the Board had taken the view that where the wife or the minor child of an individual incurred a loss which if it were income would be includible in the income of that individual under Section 16(3) of the Income-tax Act, 1922, such loss should be set off against the income of the individual, was withdrawn on 6th April, 1972. Subsequently, Section 64 of the 1961 Act was amended by the Finance Act, 1979 with effect from 1st April, 1980 by insertion of Explanation 2 after sub-section (2), whereby for the purpose of this section, income would include loss. The Explanation must be regarded, according to the Bombay High Court, as being clari- ficatory in nature as reflecting the correct legal position both under Section 16 of the Act as also under Section 64 of the 1961 Act and the proper approach to the specified provisions for aggregation or clubbing. The Explanation added to Section 64(2) must be regarded as a parliamentary exposition, according to the Bombay High Court, of the meaning of the word 'income-' as used in the unamended section. Even without the said Explanation, for the purpose of clubbing, income or profits would include negative income or negative profits, that is, loss also. Therefore, even during the period between the withdrawal of the Circular in 1972 and the amendment of Section 64 with effect from 1st April, 1980, the loss incurred by the wife or minor child was includible in the income of the individual. Hence, the loss apportioned to the

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wife in a firm in which her husband was also a partner in includible in determining the husband's total income or total loss.

On behalf of the assessee, it was contended that the only purpose of the loss incurred by the wife or minor child being included in the total income of the assessee was to enable the assessee to have a set off under Section 24(1)

and Section 24(2). There is good deal of substance in the view. Looked at from one point of view it is possible to accept the position that would be the effect, i.e. to enable the assessee to have a set off under Section 24(2) of the Act. This inclusion of the loss sustained by the wife or minor children in the total income of the assessee is to a certain extent as effective as deeming the income of the wife or minor child to be the assessee's Income. In view of the definition of 'total income', argued counsel, in Section 2 (15) the income has to be processed under the relevant section (e.g. Section 10 in the case of business) and deductions, allowances and exemptions are to be granted as if that income was also part of the total income of the assessee etc. i.e. to be treated in the same way.

This Court in the case of C.I.T. Kerala v. P.K. Kochammu Amma Peroke 125 I.T.R. 624, in the context of the obligation of submission of the return and Penalty for failure to include the income of the wife or the minor child in the return, has held that the words "his income" in Section 139 of the 1961 Act and Section 271 (1) (c) of 1961 Act would include such income to be included in the assessee's total income.

This Court has also held that the assessee was entitled to earned income relief in relation to such income - see Commissioner of Income Tax v. S.A.S. Marimuthu Nadar 44 I.T.R. 1. In other words, the income was in no way different from assessee's income for the purpose of this Act. Therefore, the provisions of Section 16(3) of the Act have the same effect as the words 'deemed to be' used in Section 16(1)(c). Since both income as well as loss of the wife or minor child, argued counsel for tlle assessee, has to be included in the assessee's total income and are to be treated as the assessee's income or loss ior the purpose of the Act, the effect was that there was comp1ete identity between the assessee and the minor child as regards assessee's income and such income to be included in his total income.

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Counsel stressed on the inequitable result of strict literal interpretation of treating the business of the wife or minor child as being one not carried on by the assessee. He posed before us by way of illustration where the assessee's income in one year is small - say Rs. 10,000 the business 108s of the wife or minor child to be lncluded in his income ln that year is large - say Ks. 1 lakh, there results a loss for Rs. 90,000 which can- not be dealt with in the assessment of the wife or minor child. If in the next year, the business of the wife or minor child yields a large profit - say Rs. 1 lakh, the entire profit of Rs.1 lakh would become assessable in the hands of the assessee, but the unabsorbed loss of the earlier year (Rs.90,000) would not be allowed to be set off, if on a strict literal interpretation, the business of the wife or minor child is treated as one not carried on by the assessee. The wife or minor child also would he denied the set off as the income has to be included in the assessee's income. This results in an inequitable position which could not have been intended by the Parliament, i.e. to counteract the object of transfer only and not to punish the assesses or to deny him any allowance or deduction which the assessee would have otherwise been entitled to.

The question in the instant case is within a short compass. It can be accepted without much doubt that income would include loss. If it were a question of inclusion of the income of the wife or minor child to whom assets have

been transferred by the assessee and with which the business was carried on or by which income was derived by the wife or he minor child, then in including that income either of the wife or nor child. such income should be computed in accordance with Section 10 and other provisions of the Act i.e. including Section 24(1) and Section 24(2) of the Act. But the question that arises here is whether against the inclusion of such income, loss suffered by the assessee in a previous year which was carried forward under Section 24(1) of the Act should be allowed to be set off or not. The revenue contends that it cannot be. It lays emphasis on the fact that set off for the carried forward loss is permitted only by Section 24(1) of the Act and there should be strict literal construction of Section 24(2) and as such in view of the provisions of Section 24(2)(ii) which stipulates that loss to be carried forward must be 'loss sustained by him in any other business, profession or vocation, it shall be set off against the profits and gains, if any, of any business, profession or vocation carried on by him in that year; provided that the business, profession or vocation in which the loss was originally
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sustained continued to be carried on by him in that year'. Therefore, it is required that the business, profession or vocation against profits of which the set off is claimed must be carried on by the assessee in that year. But the problem here is that the business out of whose share income of the wife or minor child is derived is no longer carried on by the assessee himself in the subsequent year in which set off is being claimed. On behalf of the revenue it was emphasised that this requirement is to be strictly followed. Revenue emphasised that the requirement continues irrespective of the clarification of the Board of Revenue by Circular in 1944 and in spite of the addition of Explanation 2 to Section 64(2) by Amending Act of 1979 with effect from 1980. Therefore, it was urged that legislative intent was clear and it was not possible to hold otherwise.

On the other hand on behalf of the assessee it was contended that it would often result in extreme anomaly and hardship, for instance in the example noticed before. It was further stressed on behalf of the revenue that equity has no place in interpreting fiscal legislation.

We need not, for the purpose of the instant case, express any opinion whether circulars in the instant case should be construed as contemporaneous exposition of the Legislative intent. The question was discussed exhaustively in the case of Desh Bandhu Gupta and Co. and Others. v. Delhi Stock Exchange Association Ltd. [1979] 4 S.C.C. 565.

Our attention was also drawn to the decision in the case of Manickam and Co. v. The State of Tamil Nadu 39 S.T.C. 12 at page 18 as well as Craies on Statute Law (Sixth Ed.) page 147.

In the case of K.P. Verghese v. Income-Tax Officer, Ernakulam and Another 131 I.T.R. 597, this Court emphasised that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided.

Where the plain literal interpretation of a statutory Provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might Â¯ modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect

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instrument for the expression of human intention. It is well to A remember the warning administered by judge Learned Hand that one should not make fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

We have noted the object of Section 16(3) of the Act which has to be read in conjunction with Section 24(2) in this case for the present purpose. In the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract, the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found out in the manner indicated before, and if another construction is possible apart from strict literal construction then that consturction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in in-justice, then such construction should be preferred to the literal construction. Furthermore, in the instant case we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer. It has also been noted how for various pruposes the business from which profit is included or loss is set off is treated in various situations as assessee's income. The scheme of the Act as worked out has been noted before.

In view of the aforesaid and in view of the attitude of the law-makers in dealing with this problem as evidenced by the amendment and in the circular originally issued prior thereto and bearing in mind that under the scheme of the Act where the wife or minor child carries on a running business, the right to carry forward the 109s in the running business would be available to the wife or minor child if they themselves were assessed but the right would be completely lost if the individual in whose total income the loss is to be included is not permitted to carry forward the loss under Section 24(2j since that would be the result of the strict literal construction it is apparent that that could not have been the intent of the Parliament. Therefore, where Section 16(3) of the Act operates, the profits or 1oss from
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a business of the wife or minor child included in the total income of the assessee should be treated as the profit or loss from a 'business carried on by him' for the purpose of carrying forward and set off such loss under Section 24(2) of the Act.

On a consideration of the scheme of the Act and the provisions therein as noted before, the share income of the wife and minor children included in the assessee's total income under Section 16(3) of the Act should be regarded as business income derived from business carried on by the assessee and in that view of the matter,, the assessee is entitled to set off his loss carried forward from the previous years.

In the premises the question must be answered in the affirmative and in favour of the assessee. The appeals accordingly fail and are dismissed. In the facts and circumstances of the case, we make the parties pay and bear

their respective costs of these appeals. C.M.P. No. 97 of 1973 for condonation of delay is allowed.

N.V.K. Appeals dismissed.

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