PETITIONER:
SEVANTILAL MANEKLAL SHETH

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX (CENTRAL),BOMBAY

DATE OF JUDGMENT:
22/11/1967

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.

CITATION:
1968 AIR 697 1968 SCR (2) 360

ACT:
Income Tax Act. 1922, ss. 12B, 16(3)(a)(iii)--Appellant transferring shares to wife--profit made on sale of shares by way of capital gains--if liable to be included as appellants 'income'.

HEADNOTE:
The appellant made a gift in 1951 of certain ordinary and preference shares in a company to. his wife and on the date of transfer the value of the shares was Rs. 69,730. After the company had converted the preference shares into ordinary shares the appellant's wife sold most of the shares held by her for Pa. 1,54,800, resulting in a capital gain of Rs. 70,860 as computed under s. 12B of the Income Tax Act. 1922. She deposited the entire amount realised from the sale of shares with a firm and thereby earned an interest of Rs. 9,288 per year. In the appellant's assessment for 1957-58, the Income Tax Officer included the amount of Rs. 70,860 on the view that the gain resulting from the sale of the shares was the income of the appellant's wife which arose directly or indirectly from assets transferred by him within the meaning of s. 16 (3)(a)(iii) of the Income Tax Act, 1922. Similarly, in the appellant's assessment for the year 1958-59' and 19591-60, the interest amount of Rs. 9,288 was also included as income within the meaning of s. 16 (3) (a) (iii). In appeals made against the three assessment orders, while the Appellate Assistant Commissioner dismissed the appeal in respect of the assessment year 1957-58 be partly allowed the other two appeals taking the view that only that part of the interest which was attributable to the monetary value of the shares at the time of the gift was liable to be included in the appellant's total income under s. 16 (3)(a)(iii); since the monetary value of the shares gifted to the wife at the time when the gift was made was. only Rs. 69,730. the interest attributable to it worked, out at Rs. 4,138 and only this amount could be included in the appellant's income. The Appellate. Tribunal dismissed the appellant's further appeal and also allowed cross appeals filed by the Department. The High Court. upon a reference. held that the sum of Rs. 70,860 was properly included in the appellant's income, in 1957-58 but that the interest amount in excess of

Rs. 4.138 was not liable to be included in his income for 1958-59 and 1959-60.
In the appeal to this Court the only question for consideration was whether the amount of Rs. 70.860 was the appellant's income under s. 16 (3)(a)(iii). It was contended on his behalf (i) that what comes within the ambit of s. 16(3.)(a)(iii) is the income from the transferred assets.which is different from the profits or gains arising from the sale of the transferred assets. or in other words "the capital gains" from the transferred assets; and (ii) that s. 16(3)(a)(iii) was enacted in 1937 when the word 'income' did not include 'capital gains' and income from the property was understood to be income falling under that head in s. 6 of Act.
HELD: The High Court had rightly decided that the amount. of Rs. 70,860 was properly included in the assessees income under s. 16 (3) (a) (iii).
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(i) There is no logical distinction between income arising from the asset transferred to the wife and arising from the sale of the assets so transferred. The profits or gains which arise from the sale of the asset would arise or spring from the asset, although the operation by which the profits or gain is made to arise out of the asset is the operation of sale. [364 G--H]
(ii) Although at the time when s. 16(3)(a)(iii) was enacted the definition of 'income' did not include 'capital gains', capital gains having been brought within the meaning of 'income' in s. 2(6C), the expression 'income' as used in s. 16(3)(a)(iii) must be construed according to the amended definition of the word and would, therefore, include capital gains. There is nothing in the context or language of s. 16(3)(a)(iii) of the Act to suggest that capital gains are excluded from its scope and there is no reason why a restricted interpretation should be given to the provisions of s. 16(3) (a) (iii). [365 C--E]

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2454 of 1966.
Appeal from the Judgment and order dated February 19/22, 1965 of the Bombay High Court in Income-tax Reference No. 2 of 1962.
Sanat P. Mehta, and J.B. Dadachanji, for the appellant.
Niren De, Solicitor-General, B.R.L. lyengar, and R.N. Sachthey, for the respondent.
The Judgment of the Court was delivered by
Ramaswami, J. This appeal is brought by certificate from the, judgment of the Bombay High Court dated the 22nd February, 1965 in Income-tax Reference No. 2 of 1962.
In the year 1951 the assessee Maneklal Ujamshi (hereinafter referred to as the assessee) made a gift of 1,184 ordinary and 155 preference shares in Changdeo Sugar Mills Ltd. to his wife Bai Laxmibai. The total value of these transferred shares on the date of the transfer was Rs. 68,730/-. Subsequent to the transfer the company converted the preference shares into ordinary shares giving the shareholders 8 ordinary shares for each preference share with the result that on December 31, 1954, Bai Laxmibai held in all 2,424 ordinary shares of the mills. Out, of these 2,424 shares. Bai Laxmibai sold 2,400 shares on August 1. 1956, for the sum of Rs. 1,54,800/- resulting in a capital gain of Rs. 70,860/- as computed under s. 12B of the Income-tax Act. The whole amount realised by the sale of

the shares was deposited' by Bai Laxmibai with M/s. A.H. BhivandiwaIla & Co., in which Maneklal as well as his son, Sevantilal, happened to be partners. The amount deposited by Bai Laxmibai fetched a yearly interest of Rs. 9,288/-. In the assessment of Maneklal for the assessment year 1957-58 the Income Tax Officer included the amount of Rs. 70,860/- which was the profit made by Bai Laxmibai on the
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sale of the shares, as income of Maneklal under s. 16(3)(a)(iii) of the Indian Income Tax Act. Similarly, in the assessment of Maneklal for the assessment years 1958-59 and 1959-60, the Income Tax Officer included in each year the amount of Rs. 9,288 which was the interest earned by Bai Laxmibai on the deposit of the sale proceeds with M/s. Bhivandiwalla and Co. as the income of Maneklal under s. 16(3)(a)(iii). According to the Income Tax Officer the gain which had resulted from the sale of the shares was the income of the wife of the assessee which arose directly or indirectly from the assets transferred by the assessee to his wife otherwise than for adequate consideration and therefore was required to be included in the computation of the total income of Maneklal. The Income Tax Officer also took the view that the amount of interest which Bai Laxmibai had received from the sale proceeds deposited by her with M/s. Bhivandiwalla & Co. was also income of the wife of Maneklal which arose directly or indirectly from the assets transferred by Maneklal to her. Accordingly, in the assessment order for the first year, the Income Tax Officer included the amount of Rs. 70,860/- and in the assessment orders for the next two years, he included the amount of Rs. 9,288/- in the total taxable income of Maneklal. Appeals against all these three assessment orders were filed before the Appellate Assistant Commissioner. In the appeal against the first assessment order for the assessment year 1957-58 the Appellate Assistant Commissioner agreed with the view taken by the Income Tax Officer and dismissed the appeal. In the other two appeals, he partly allowed the appeals taking the view that only that part of the interest which was attributable to the monetary value of the shares covered by the shares at the time of the gift was liable to be included in the total income of Maneklal in accordance with the provisions o.f s. 16(3)(a)(iii) and the
balance could not be included under the said provision. Since the monetary value of the shares gifted to Bai Laxmibai at the time when the gift was made was only Rs. 69,730/-, the interest attributable to it worked out at Rs. 4,l 38/-. Out of the total interest of Rs. 9,288/- which was received by Bai Laxmibai in each of those years, he directed that only an amount of Rs. 4,183/- should be included in the total income of Maneklal in each of those two years and the balance of Rs. 5,105/- should be deleted. Against the orders of the Appellate Assistant Commissioner on these appeals the assessee appealed to the Appellate Tribunal. The Department, on the other hand, appealed against the orders of the Appellate Assistant Commissioner for the years 1958-59 and 1959-60 insofar as they allowed exemption in respect of Rs. 4,183/- out of the total amount of Rs. 9,288/- for each year. The Appellate Tribunal dismissed the appeal of the assessee with regard to the assessment year 1957-58. For the assessment years
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1958-59 and/959-60, the Appellate Tribunal allowed the appeals of the Department and dismissed the appeal of the assessee for the assessment. year 1959-60. According to

these decisions of the Appellate Tribunal the result was that for the assessment year 1957-58 the order of the Income Tax Officer that the amount of Rs, 70,860/- which was the profit or gain on the sale of the shares by Bai Laxmibai was liable to be included in the total income of Maneklal was upheld and for the later two, years the entire amount of interest viz., Rs. 9,288/- was held to be liable to be included in the total income of Maneklal in each of those two years. Thereafter, at the instance of the assessee, the Appellate Tribunal stated a case to the High Court on the following questions of law:

> "1. Whether in computing the total income of Maneklal for the assessment year 1957-58, the sum of Rs. 70,860/- has been properly included therein in accordance with the provisions of s. 16(3)(a)(iii) of the Income-tax Act, 1922 ?
>
> 2. Whether in computing the total income of Maneklal for the assessment year 1958-59 the sum of Rs. 5,104/- has been properly included therein in accordance with provisions of s. 16(3)(a)(iii) of the Income-tax Act, 1922?
>
> 3. Whether in computing the total income of Maneklal for the assessment year 1959-60, the sum of Rs. 4,183/- has been properly included therein in accordance with the provisions of s. 16(3)(a)(iii) of the Income-tax Act, 1922 ?
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> 4. Whether in computing the total income of Maneklal for the assessment year 1959-60, the sum of Rs. 5,105/- has been properly included therein in accordance with the provisions of s. 16(3)(a)(iii) of the Income-tax Act,1922 ?"

By its judgment dated February 19, 1965 the High Court answered the first question in the affirmative and against the assessee. It answered questions Nos. 2 & 4 in favour of the assessee and against the Department. As regards question No. 3, the High Court answered it in the affirmative and in favour of the Department. The reason was that Counsel for the assessee did not press it or challenge the correctness of the view taken by the Appellate Tribunal and accepted as correct the conclusion of the Tribunal with regard to the point involved in that question.

Section 16(3)(a)(iii) of the Income Tax Act, 1922 provides as follows:

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"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 of such individual as arises directly or indirectly .....

(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".

Section 2(6C) of the Income-tax Act, 1922 states:

"Income' includes .....

(vi) 'any capital gain chargeable under section 12B;

Section 12B of the Income Tax Act enacts:

(1) The tax shah be payable by an assesee under the head 'capital gains' in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and such profits and gains shall be deemed to be income of

the previous year in which the sale. exchange, relinquishment or transfer took place;....."

With regard to the first question Mr. Mehta put forward the argument that what comes within the ambit of s. 16(3)(a)(iii) is the income from the transferred assets, which is different from the profit or gain arising from the sale of the transferred assets, or in other words, "the capital gains" from the transferred assets. It was argued in the first place that what comes within the ambit of s. 16 (3) (a) (iii) was 'the income from the assets' i.e., the income which the asset produces while it continues to remain in the hands of the assessee and does not include the gain which the assessee makes by selling the asset and parting with possession of it. We see no justification for this argument. In our opinion there is no logical distinction between income arising from the asset transferred to the wife and income arising from the sale of the assets so transferred. The profits or gains which arise from the sale of the asset would arise or spring from the asset, although the operation by which the profits or gains is made to arise out of the asset is the operation of the sale. If the asset employed, say by way of investment and produces income, the income arises or springs from the asset; the operation, which causes the income to spring from the asset, is the operation of the investment. In the operation of the investment, income is produced,

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while the asset continues to belong to the assessee, while in the operation of a sale, gain is produced, which is still income but in the process the title to the asset is parted with. Although the processes involved in the two cases are different, the gain which has resulted to the owner of the asset, in each case, is the gain, which has sprung up. or arisen from the asset. There is hence no warrant for the argument. that the capital gain is not income arising from the assets but it is income which arises from a source which is different from the asset itself. It was argued in the second place that s. 16(3)(a)(iii) was enacted in 1937 when the word 'income' did not include 'capital gains' and income from property was understood to be income falling under that head in s. 6 of the Act. The inclusion of 'capital gains' in the definition of 'income' was for the first time enacted in 1947. It is true that at the time when s. 16(3)(a)(iii) was enacted, the definition of' 'income' did not include 'capital gains' but capital gains having been brought within the meaning of 'income' in s. 2(6C) the expression 'income' as used in s. 16(3) (a) (iii) must be construed according to the amended definition of the word and would, therefore, include capital gains. There is nothing in the context or language of s. 16(3) (a) (iii) of the Act to suggest that capital gains are excluded from its scope. We see no reason why a restricted interpretation should be given to the provisions of s. 16(3)(a)(iii) as contended for the appellant. On the contrary, the object of the enactment of the section is to prevent avoidance of tax or reducing the incidence of tax on the part of the assessee by transfer of his assets to. his wife or minor child. It is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the makers of the statute. We are, therefore, unable to accept Mr. Mehta's argument on this aspect of the case.

For the reasons given we hold that the High Court has rightly answered the first question against the assessee and

this appeal is accordingly dismissed with costs.
R.K.P.S. Appeal dismissed.
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