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**(1996) 05 P&H CK 0077**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Income-tax Reference No. 93 of 1981

Smt. Ved Ahuja

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 08-05-1996

**Acts Referred:**

Income Tax Act, 1961 — Section 64(1)

**Citation :** (1996) 222 ITR 53

**Hon'ble Judges :** N.K. Sodhi, J; Ashok Bhan, J

**Bench :** Division Bench

**Advocate :** A.K. Mittal, for the Appellant; R.P. Sawhney, Senior Advocate and Sanjay Goel, for the Respondent

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## **Judgement**

N.K. Sodhi, J.—This reference u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), pertaining to the assessment year 1976-77 has been made at the instance of Smt. Ved Ahuja (hereinafter called the assessee) and the following question of law has been referred to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the interest of Rs. 11,494 earned by Master Assim Kumar, minor son of the assessee, in his account in the firm, Ashoka Cotton Company, in which he was admitted to the benefits of the partnership was includible in the total income of the assessee u/s 64(1)(iii) of the Income Tax Act, 1961 ?"

The only grievance of the assessee relates to the clubbing of interest income of Rs. 11,494 earned by her minor son, Assim Ahuja, who was admitted to the benefits of partnership in the firm, Ashoka Cotton Company, Abohar, by invoking the provisions of Section 64(1)(iii) of the Act. This amount represents part of interest received by the minor from the aforesaid firm and there, is no dispute about the inclusion of the share of profit of the minor in the assessee's hands. The minor had an interest income of Rs. 12,544, but the Income Tax Officer included the interest income of Rs. 11,494 only after giving the benefit of interest amounting to Rs. 1,050 on initial capital invested by the minor.

2. We may now briefly refer to the relevant facts.

3. The minor was admitted to the benefits of partnership in the firm Ashoka Cotton Company, by a partnership deed dated September 14, 1970, and he was given 15 per cent. share in the profits. There was later a change in the constitution of the firm on account of death of one of the partners and a fresh partnership deed dated February 5, 1972, was drawn up and in that the minor's share was increased to 1/6th. There was a third partnership deed dated September 1, 1974, as the parties had agreed to make a change in the profit-sharing ratio. The share of the minor remained unchanged. It is common ground between the parties that there was an initial contribution of Rs. 7,500 by the minor on the first day of the partnership, i.e., on September 14, 1970, and thereafter in all the subsequent years the credits in the account of the minor are only on account of interest and share of profit. The interest accruing on the initial capital as also the share of profit of the minor and the interest thereon were being credited to the account of the minor and after certain withdrawals the closing balance in the account of the minor with the firm was a credit balance of Rs. 1,10,442. The assessee filed her return of income on June 29, 1976, showing an income of Rs. 94,200 which included a sum of Rs. 14,055, as interest income that accrued to her minor son, Assim Ahuja. Thereafter, she filed a revised return on September 23, 1976, declaring an income of Rs. 80,143 and in this return the amount of Rs. 14,055 representing interest income of the minor had been excluded. It may be mentioned that a sum of Rs. 12,544 was the interest that accrued to the minor from Ashoka Cotton Company and another sum of Rs. 1,511 came as interest from another firm, Tek Chand Daulat Rai. We are not concerned in this reference with the interest that accrued to the minor from Tek Chand Daulat Rai. The question of law referred by the Tribunal relates only to the interest income which accrued to the minor from Ashoka Cotton Company. Out of the sum of Rs. 12,544 a sum of Rs. 1,050 was interest on the initial capital invested by the minor when he was admitted to the benefits of the partnership. After giving the benefit of this amount, the Income Tax Officer included the sum of Rs. 11,494 in the income of the assessee by resorting to the provisions of Section 64(1)(iii) of the Act and rejected her contention that the said amount could not be clubbed with her income as the same had not been earned directly or indirectly on account of admission of the minor to the benefits of partnership in the firm. Feeling aggrieved by the order of assessment, the assessee filed an appeal before the Appellate Assistant Commissioner, Jalandhar, who dismissed the same and the order of the Income Tax Officer was upheld. Still not satisfied, she filed a second appeal before the Income Tax Appellate Tribunal and the latter too did not agree with her contention that the interest income which accrued to the minor could not be included in her income. The appeal was consequently dismissed and the addition of Rs. 11,494 in the hands of the assessee was confirmed. Hence, the present reference to this court at the instance of the assessee.

4. At this stage, we may notice the provisions of Section 64(1)(iii) of the Act and

the relevant clauses of the partnership deed dated September 1, 1974. They read as under ;

(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly--....

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm ; . . ."

"Clause 6 of the partnership deed.--That interest at the rate of 14 per cent. shall be paid to each partner on the capital, if any, for the time being standing to his credit. The rate of interest may be varied by mutual agreement in accordance with the market conditions.

Clause 7.--That any deposits made by the minors shall form a debt due by the firm and shall carry interest at the same rate as allowed on the capital contributed by the partners."

There were similar provisions in the earlier partnership deeds as well and it is not necessary to refer to them for the purpose of answering the question posed hereinabove.

5. It was strenuously urged before us by learned counsel for the assessee that the interest income that accrued to the minor on the accumulated share of his profit did not arise from his admission to the benefits of the partnership but it represented interest income earned by him on his deposits with the firm. It is argued that instead of allowing the amount to accumulate in the account of the firm the minor could have deposited the same with some other concern in which he was not a partner and could have earned the same interest thereon and in that event the interest income could not have been included in the income of the assessee u/s 64(1)(iii) of the Act. On the same analogy, it is argued that the amount of interest that is accruing from the firm to the minor should not be included in the hands of the assessee. The argument no doubt looks attractive but on deeper scrutiny we are unable to accept the same in the light of Clause 7 of the partnership deed which has been quoted above. The share of his profits which the minor did not draw and allowed to accumulate with the firm cannot be said to be a deposit made by him to the firm as there was no arrangement or agreement with the firm to keep the accumulated profits as deposits. Undoubtedly, the minor earned profits because he was admitted to the benefits of the partnership and having earned those profits in that capacity he allowed the amount to be used by the firm without any specific arrangement or agreement. He allowed the firm to use the funds as he had interest in the profits of the firm. In our opinion, the interest earned by the minor definitely arose indirectly, if not directly, from his admission to the benefits of partnership in the firm and there is a connection between that income and his admission to the benefits of partnership which is squarely covered by Section 64(1)(iii) of the Act and the Income Tax authorities were thus justified in assessing the same in the hands of the assessee. It is not a deposit made by the minor within the meaning

of Clause 7 of the partnership deed executed between the partners. The view that we have taken finds support from the decision of the Supreme Court in *S. Srinivasan Vs. Commissioner of Income Tax, Madras*, and also from a Division Bench judgment of this court in *Commissioner of Income Tax Vs. Gian Chand*, .

6. Mr. Ajay Mittal, the advocate appearing for the assessee, referred to a Division Bench judgment of the Bombay High Court in *Commissioner of Income Tax, Bombay City-II Vs. Chandanmal Kasturchand*, to contend that interest credited on the share of profits which were allowed to accumulate with the firm were not liable to be included in the total income of the assessee. In our view, the ratio of this decision does not help the assessee. In *Commissioner of Income Tax, Bombay City-II Vs. Chandanmal Kasturchand*, Clause 3(a) of the partnership deed reads as under (page 314) :

"Interest at the rate of nine per cent. per annum shall be paid to each partner on the capital for the time being standing to his credit. It is expressly agreed that if any money belonging to a minor admitted to the benefits of the partnership are brought into partnership or retained in the partnership, the same shall be treated as a deposit and interest shall be paid on it at nine per cent. per annum."

This clause specifically provided for an arrangement with the firm to keep the accumulated profits as deposits and, therefore, the learned judges rightly distinguished the judgment of the Supreme Court in *S. Srinivasan Vs. Commissioner of Income Tax, Madras*, where there was no such clause and held that interest on accumulated profits which had not been drawn by the minor and were allowed to accumulate with the firm could not be included in the total income of the assessee. In the case before us, there is no clause in the partnership deed providing for accumulated profits to be treated as deposits. In the absence of such a clause, such amount cannot be held to be deposits and interest accrued thereon is covered by the provisions of Section 64(1)(iii) of the Act.

7. In the result, the aforesaid question referred to us is answered in the affirmative, that is, in favour of the Revenue and against the assessee.