Sarita Vij & Co. v. Commissioner of Income Tax and another

ITA 1/1999 with ITA 2/1999

No neutral citation stated in source | 2008-05-23

Separately assessed co-owners with ascertainable property shares could not be reassessed as AOP or BOI on these facts.

2(31)(v) | 26 | 260A

High Court of Himachal Pradesh | Division Bench | R.B. Misra | Sanjay Karol

Assessment years: 1986-87, 1987-88

01 FACTS OF THE CASE

Six persons held stated one-sixth interests in Sudershan Kothi, Dalhousie, and collectively let the property to the Chamera project and others. Their property income had been individually assessed. For assessment years 1986-87 and 1987-88 Revenue nevertheless assessed Sarita Vij & Co. as a body of individuals; the first appeal and Tribunal upheld that status. The two appeals challenged it, notice/status issues, section 26 applicability and upkeep salary disallowance.

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02 DISCUSSION BY THE HON'BLE COURT

The Court considered Meera and Company on joint profit-making enterprises and the definition of person in section 2(31)(v). It then applied section 26: where property shares are definite and ascertainable, each share of property income is included in the respective person's total income. On the undisputed separate assessments here, the co-owners could not again be assessed collectively as AOP or BOI.

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03 JUDICIAL DECISION

Both appeals were disposed of holding section 26 applicable and the appellants and other named co-owners not reassessable as AOP or BOI on these facts. The remaining questions were dealt with consequentially in the same analysis.

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04 OUTCOME / IN WHOSE FAVOUR

The co-owners succeeded on the disputed collective assessment status. The judgment did not separately quantify salary deductions, order a refund, or provide an independent notice-validity test. Both ITA 1/1999 and ITA 2/1999 remain covered by the common disposition.

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05 EXPERT COMMENTS

AKHB EXPERT COMMENTS — editorial analysis, distinct from the Court's findings.

Ascertainable shares make the section 26 analysis concrete — The claim rested on specified individual interests and property income already assessed separately. A shared letting agreement or one person collecting rent did not alone justify the collective assessment here. Comparable reliance should link each share, the rental arrangements and the earlier assessment record; the decision does not eliminate the statutory conditions for separate treatment.

A joint enterprise remains a different factual question — The Court reproduced Meera and Company's explanation that an organised profit-yielding joint venture may be assessed as a single unit. Its conclusion in this property dispute should not be enlarged into a rule that prior individual assessments always prevent AOP or BOI taxation of a distinct joint business. The nature of the activity and section 26 conditions remain central.

Consequential disposal is not a separate deduction precedent — Salary expenses and notice/status concerns were framed questions, but paragraph 11 resolves them through the section 26 conclusion. It supplies no standalone salary allowance or notice ruling. The narrative also describes acquisition on lease while using co-owner terminology; this note follows the Court's treatment without deciding title or extending the result to every subletting arrangement.

Source: PDF p.2

SOURCE & VERIFICATION

20080523_HPHC010019671999.pdf

Complete source PDF reviewed: 10 physical pages.

All 10 original pages read and visually inspected; all five panels audited.

Open cited source rendition

All ten source pages read and visually inspected. Narrative describes leasehold acquisition but calls the parties co-owners; no independent title determination is supplied. Page 10 paragraph 10 contains awkward reassessment wording, resolved by the express prohibition in paragraph 11.

STATUTORY SCOPE

Sections 2(31)(v), 26 and 260A; common judgment for two assessment years and both appeals.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment has not been independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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