

Smt. Saroj Aggarwal v. Commissioner of Income Tax, U.P.

Civil Appeal No. 542 (NT) of 1974

[1985] Supp. (3) SCR 209 | 1985-09-30

Whether, on this family partnership's facts, the widow succeeded by inheritance to her deceased husband in his capacity as partner so that section 78(2) permitted the claimed earlier speculation losses to be set off against her AY 1962-63 speculation profits.

78(2) | 256(2)

Two-judge bench | V.D. Tulzapurkar, J. | Sabyasachi Mukharji, J.

Assessment years: 1962-63

Fact-bound inherited succession; no general partnership or registration entitlement

Relief rests on the Court's inference of inherited succession under section 78(2) in this particular family partnership. Mere heirship or a new partnership agreement is not enough by itself. The report contains an unresolved deed-date/four-day chronology discrepancy and no final quantified set-off. No registration benefit, universal heir-admission rule or independent minor/clubbing entitlement is decided. Comprehensive later treatment, current loss rules and 2025 mapping are not verified.

01 FACTS OF THE CASE

Prem Shankar was a partner in three concerns with family members and died on or about 24 July 1959. His widow, the assessee, joined the partnerships; she adopted a son on 27 July 1959. The Court recited the earlier 30 July 1957 partnership deed and a later deed dated 12 August 1959 which adjusted shares from 27 July 1959, admitted two minors to benefits and expressly provided for continuation on a partner's death and substitution of a legal representative. The later closing reasoning refers to a 27 July deed and a four-day interval without a formal deed. Those source descriptions are retained without treating the 12 August execution date as silently corrected (SCR 213 D-215 C and 223 A-H).

For AY 1962-63 the Income-tax Officer included the adopted minor's share income and interest under section 64. The widow claimed set-off of her late husband's earlier speculation losses against the current speculation profits, including an alternative argument concerning the minor's included profits. The statement of the case corrected an earlier account that attributed a Rs.25,914 loss to one firm: the section 35 orders under the 1922 Act for AYs 1958-59 to 1960-61 referred to losses from two firms. No independently verified final set-off quantum is given by this judgment (SCR 215 D-216 F).

The officer and first appellate authority rejected the claim, reasoning that heirs could inherit capital but could join a partnership only by the other partners' agreement. The Tribunal found succession by inheritance on the deeds, relationship and actual continuation. Revenue obtained a section 256(2) reference, and the High Court answered against the assessee. The Supreme Court appeal concerned the single referred entitlement question (SCR 216 F-218 D).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court first identified the controlling distinction. The normal carry-forward right belongs to the person who incurred the loss. Section 78(2), however, addresses another person succeeding to the business or profession and preserves the inheritance situation; mere succession is insufficient. Section 78(1), although quoted, was expressly not material. The sole issue was whether the widow's succession to her husband in his partner capacity occurred by inheritance rather than solely through a fresh voluntary bargain (SCR 218 E-219 A).

Bai Maniben supported examining capital, family relationships and conduct to decide inherited succession to a partner's capacity. Under Partnership Act section 42 death dissolves a firm subject to contract; a contrary agreement need not invariably be express in writing and could be inferred from conduct where the facts supported continuation. The Court considered the succession and reconstitution authorities, but did not replace the inheritance requirement with a general rule that every business continuation transfers another person's losses. The comparison with Shamsunder Juthalal illustrated why absence of an express old-deed clause was not necessarily decisive. Madhukant M. Mehta involved a different question (SCR 219 B-222 E).

The result depended on the family concern: the deceased's brothers were the other partners, they lived at the same address, the widow and adopted son entered the continued arrangement with share adjustments, and the Court's account found no business activity during the brief mourning interval. It inferred in this particular setting an obligation to accept the widow/heirs and a corresponding right to participate. The absence of an express term in the older arrangement did not prevent that inference from the conduct and constitution of the firm (SCR 222 F-223 D).

The Court favoured a natural and equitable inference where two were possible and no improper motive was shown, but expressly made that approach subject to statutory language and compelling contrary circumstances. It reaffirmed that succession must be by inheritance. It concluded that there had been no vacuum in succession and that this widow had both the obligation and right to share in the partnership; the other partners could not deny that right on these facts (SCR 223 E-224 A).

No income-tax registration application or entitlement was adjudicated. The judgment also supplies no independent decision on the validity of section 64 clubbing, no separate quantified award to the minor, and no general rule that minors become full partners. The source describes their admission to benefits under section 30 (SCR 214 D-F, 216 E-F and 224 B).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

On the particular facts, the assessee succeeded by inheritance to her deceased husband in his capacity as partner. The referred question about setting off earlier speculation losses against AY 1962-63 speculation profits was answered affirmatively and in her favour. Civil Appeal 542 (NT) of 1974 was allowed. Parties were directed to pay and bear their own costs. The Court did not quantify the final set-off or order an independent registration benefit (SCR 223 H-224 B).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Appeal allowed; single referred question answered affirmatively for the assessee; parties bear their own costs

Fact-supported inherited succession under section 78(2) and consequent disputed set-off entitlement decided

No automatic right of every heir to become partner or carry forward losses, no firm-registration ruling, no independent minor/clubbing entitlement and no quantified final set-off.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

An inheritance-loss claim needs proof of succession in the relevant business capacity, not only heirship, continued use of capital or a later deed. Review the old and new partnership terms, continuation of business, conduct, capital and share adjustments, and evidence of any independent bargain. This judgment permits a fact-based inference of inherited succession; it does not dispense with the statutory inheritance condition or other applicable loss restrictions.

Keep the historical periods separate: the losses arose in years recorded under the 1922 Act, but the disputed AY 1962-63 set-off and the section 256(2) reference were expressly under the 1961 Act. Do not infer a universal registration entitlement, full partnership status for minors, or an additional clubbing ruling from the favourable answer. Before applying the case elsewhere, resolve the underlying deed chronology from that case's own documents; this report's inconsistent dates should be disclosed rather than silently harmonised. Current loss regimes, subsequent treatment and 2025 mapping remain unverified.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench, exact appeal and High Court origin

Source url: [Open cited source](#)

Pdf pages: 1; 5

Paragraphs: SCR 209 A-B; 213 A-C

Source role: reported metadata and judicial text

2.

Topic: Partnership history and death

Source url: [Open cited source](#)

Pdf pages: 5

Paragraphs: SCR 213 D-H

Source role: judicial text

3.

Topic: Later deed date, adoption and benefits for minors

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: SCR 214 B-215 C

Source role: judicial text

4.

Topic: Historical loss years, source qualification and section 64 background

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: SCR 215 D-216 F

Source role: judicial text

5.

Topic: Section 78 text and rejected first appeal theory

Source url: [Open cited source](#)

Pdf pages: 8; 9

Paragraphs: SCR 216 A-217 B

Source role: judicial text

6.

Topic: Tribunal finding and exact section 256(2) question

Source url: [Open cited source](#)

Pdf pages: 9; 10

Paragraphs: SCR 217 C-218 D

Source role: judicial text

7.

Topic: Controlling inheritance test; subsection (1) expressly immaterial

Source url: [Open cited source](#)

Pdf pages: 10; 11

Paragraphs: SCR 218 E-219 A

Source role: judicial text

8.

Topic: Bai Maniben, section 42 and comparative authorities

Source url: [Open cited source](#)

Pdf pages: 11; 12; 13; 14

Paragraphs: SCR 219 B-222 E

Source role: judicial text

9.

Topic: Family facts, conduct, express limits and date discrepancy

Source url: [Open cited source](#)

Pdf pages: 14; 15

Paragraphs: SCR 222 F-223 H

Source role: judicial text

10.

Topic: Fact-specific succession, answer, appeal and own-costs order

Source url: [Open cited source](#)

Pdf pages: 15; 16

Paragraphs: SCR 223 H-224 B

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

64 (minor's income included in assessee's assessment; background, not independently decided); 70-80 (carry-forward/set-off scheme); 78(1) (quoted but expressly not material to the issue); 72, 73 and 74 (editorial synopsis and scheme context, not separately construed)

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Sabyasachi Mukharji, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922, section 35 (orders establishing earlier loss background); Indian Income-tax Act, 1922, section 24(2) (Bai Maniben analogy) and sections 25(4)/26(2) (cited-case background); Indian Partnership Act, 1932, sections 30 (minors admitted to benefits) and 42 (death subject to contract between partners)

INDIVIDUAL APPEAL GROUPS AND THEIR DISPOSITION

1.

Case numbers: Civil Appeal No. 542 (NT) of 1974

Route: Special leave appeal from Allahabad High Court judgment dated 21 May 1971, Income Tax Reference No. 44 of 1965 under section 256(2)

Disposition: Appeal allowed; referred question answered in affirmative and for assessee

Costs: Parties to pay and bear their own costs

HISTORICAL YEARS IN WHICH LOSSES AROSE

1958-59; 1959-60; 1960-61

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 16 PDF pages; SHA-256

267dbbb74287f25f3d67786fe319c6c89edaddea650681226b14c7eb2b87b07b. Original bytes preserved.

Complete unnumbered judicial text begins physical page 5/SCR 213 C (Sabyasachi Mukharji J) and ends physical page 16/SCR 224 B with question answered for assessee, appeal allowed and parties bearing own costs. Headnote and report metadata occupy pages 1-5 before the judicial opening. No separate opinion or adjacent judgment.

Open cited source rendition

SCR 214 dates the new deed 12 August 1959 and makes sharing effective from 27 July; SCR 223 refers to a deed dated 27 July and execution within four days of death. Both readings are visible in the PDF. The note does not invent a reconciliation or silently replace the deed date.; The express continuation/heir clause appears in the later 12 August deed at SCR 215 A; the Court's key inquiry concerned inferred succession after death despite absence of an express provision in the older arrangement. Those instruments are not conflated.; The Tribunal's statement qualifies the first appellate authority's attribution of Rs.25,914 to one firm, explaining that earlier orders involved two firms. The judgment does not supply a definitive quantified set-off award.; The minor's income and alternative set-off submissions are background; the single referred question and final answer do not give a separately reasoned clubbing/registration ruling or establish all minors as partners.; The family and social circumstances supported the inference in this case. The equitable approach is expressly limited by statutory language and contrary circumstances.

The actual appealed year is 1962-63. Earlier speculation losses for AYs 1958-59, 1959-60 and 1960-61 are expressly traced to orders under 1922 Act section 35; those are historical loss years, not separate present appeals.

STATUTORY SCOPE

No automatic current-law application or Income-tax Act, 2025 mapping. Identify the governing period and operative statutory text independently.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, reviews, stays, reversals and judicial treatment have not been comprehensively checked. Any bounded later statutory check is separately identified; this is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 16](#)

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