ANDHRA PRADESH HIGH COURT

Addepally Nageswara Rao

Vs

Commissioner of Income-Tax

(Gopal Rao Ekbote and R Raju, JJ.)

16.08.1969

JUDGMENT

Gopal Rao Ekbote, J.

1. This is a reference made to this court under Section 66(1) of the Indian Income-tax Act, 1922 (XI of 1922), hereinafter called the " Act ", and raises the following three questions :

" (1) Whether, in the facts and circumstances of the case, the assessee is entitled to renewal of registration for the assessment year 1961-62 ?

(2) Whether the Commissioner had jurisdiction under Section 33B of the Act to set aside the order granting registration in the facts and circumstances of the case ?

(3) Whether the assessee was afforded a reasonable opportunity by the Commissioner to present his defence ? "

2. The facts out of which these questions arise may briefly be mentioned.

3. The assessee is a firm known as Messrs. Addepalli Nageswara Rao & Brothers, Palakole, which consists of three major partners and one minor ; Nageswara Rao and his two brothers, Kasiviswanadham and Mareswara Rao, are the major partners; and Kamaraju, son of Nageswara Rao, is a minor. The firm was constituted under an instrument of partnership dated December 4, 1959. It was registered under Section 26A of the Act for the year 1960-61. For the assessment year 1961-62, the assessee filed an application under Section 26A of the Act for renewal of registration. The Income-tax Officer having found that the firm is continuing in the same form and that the profits and losses were apportioned properly by his order dated September 12, 1961, granted the renewal of registration of the firm.

4. The firm registered itself with the Registrar of Firms by an application dated November 9, 1959. It was also registered under Section 12 of the Andhra Pradesh General Sales Tax Act with effect from September 7, 1959. The firm also opened a current account with the Indian Bank Ltd., Palakole, for the purpose of its business.

5. It appears that, in the course of the proceedings for the assessment year 1962-63, the Income-tax Officer had some information which led him to believe that one of the partners, A. Mareswara Rao, was not in fact a partner. An inspector of income-tax seems to have visited the premises of the firm somewhere in December, 1962, and obtained a statement from Mareswara Rao. The statement indicated that Mareswara Rao was unable to explain the source of the capital which is claimed to have been contributed by him and in lieu of which he was given a six annas share in the firm. It also states that the said partner had very vague ideas about the capital contributions and in regard to the shares of the other partners. Mareswara Rao was stated to be the managing partner of the firm which factor highlighted the suspicion which had arisen on account of this statement in the mind of the Income-tax Officer. Although, thereafter, in January, 1963, and May, 1963, Mareswara Rao made some attempts to explain and clarify the doubts, no final decision was taken on that matter and it was pending before the Income-tax Officer.

6. While the matter stood thus, the. Commissioner of Income-tax found, on a scrutiny of, the partnership deed, that one of the parties thereto, that is to say, Kamaraju Gupta, was a minor and that the partnership deed was signed on his behalf by his father, Nageswara Rao, who himself was one of the partners. The Commissioner was of the opinion that the minor had been sought to be made a partner in the firm which violated Section 30 of the Partnership Act. He, therefore, held the opinion that the partnership was invalid. The Commissioner, for this reason and also for the reasons that Mareswara Rao might not be a genuine partner, thought that the order of the Income-tax Officer dated September 12, 1961, be revised.

7. He, therefore, issued a notice on August 10, 1963, to the assessee under Section 33B of the Act calling upon it to show cause why the abovesaid order of the Income-tax Officer should not be set aside. The applicant received the notice and sought an adjournment. The Commissioner refused to give adjournment, but on the representation of the assessee, he posted the case for final hearing to August 30, 1963. According tq this order, the Commissioner held that there was a doubt regarding not only the genuineness of the partnership but also in regard to its validity. He reached the conclusion that the partnership was vitiated as it purported to make the minor a fall-fledged partner of the firm. He was of the opinion that the Income-tax Officer had provided a reasonable opportunity to the assessee to submit his explanations. He was also inclined to the conclusion that Mareswara Rao was not a genuine partner. Rejecting the contention that he has mo jurisdiction to set aside the order of the Income-tax Officer dated September 12, 1961, he revisld the said order of the Income-tax Officer with the result that the renewal of the registration of the firm was considered as rejected.

8. The assessee, dissatisfied with that order of the Commissioner, preferred an appeal to the Income-tax Appellate Tribunal. The Tribunal considered the contentions raised before it and held on a construction of the document and the preamble to the deed read with Clauses (3)(a) and 3(c) that the minor would be deemed to have been admitted as a partner. The Tribunal, therefore, held that the deed was not a valid one. It also found that the deed could not be a valid deed even on the basis that the guardian had entered into the partnership on behalf of the minor and gave two reasons for reaching that conclusion: firstly, that the guardian of the minor had no capacity to enter into a contract; and, secondly, the guardian would then be partner in two capacities which was not possible. It was further held that, since the partnership specifies the shares of the partners in reference to the profits only and not in the losses, in the event there are any, it disentitles the firm from being accorded registration. The Tribunal rejected the contention that the assessee was

not afforded a reasonable opportunity of being heard. So far as the contention relating to Mareswara Rao being a partner was concerned, the Tribunal reached the conclusion that the Commissioner had not recorded any final conclusion on that aspect of the case. The contention regarding the competence of the Commissioner also was rejected.

9. On an application of the assessee, this reference has been made to us.

10. Taking the first question for consideration, the contention of Sri P. Rama Rao, the learned counsel for the department, was that on a construction of the document, it would be evident that the minor was in fact a full-fledged partner of the firm and was not admitted only to the benefits of the partnership.

11. In order to appreciate the implications of the contentions it is necessary to refer to some of the clauses on which reliance was placed by the parties before us. The English translation of the partnership agreement, in so far as it is relevant, reads as follows :

" Partnership deed jointly executed by (1) Addepalli Nageswararao, aged 30 years, eldest son of late Kamaraju, native of Jinnur, (2) Addepalli Nageswararao on behalf of his minor son (aged 4 years), Kamaraju Gupta, as guardian and father, of the same village, (3) Addepalli Kasiviswanadham, second son of late Kamaraju Garu, of the same village, and (4) Addepalli Mareswararao, son of late Kamaraju Garu, of the same village on 4th December, 1959.

(1) .....

(2)

(2) The capital required for this business can be brought by three of us at convenience excepting the minor. There is no condition that the capital is, to be brought equally or in proportion to shares. There is no connection of these investments to the moneys of the Hindu undivided family represented by Addepalli Nageswararao. The credits coming from the joint family are to be treated as loans and the stipulated rate of interest is to be paid. The interest is to be accounted for at Rs. 0-12-0 percent. per month in relation to the withdrawals or investments of the partners.

(3)(a) It is decided to share the profits and losses in proportion to the undermentioned shares.

Re.
1. Addepalli Nageswararao 0-3-0 in the rupee
2. Addepalli Kamaraju Gupta (being minor (by) guardian Nageswararao) 0-1-0 do.
3. Addepalli Kasiviswanadham 0-6-0 do.
4. Addepalli Mareswararao 0-6-0 do.
Re.
1-0-0

(b) It is decided that because Addepalli Kamaraju Gupta being minor, the guardian should be his father and the minor is admitted to the benefits of the partnership.
(c) At the end of the (accounting) year the profits and losses of the business'are to be apportioned among the partners in the above shares in the business books.
(d) Partners 3 and 4 are to conduct the routine management of the firm's business and are to be treated as managing partners.
(4) .....

(5) The moneys required for the purpose of the business can be borrowed by partners 1. 3 and 4 either individually or collectively and after duly registering the credits in the accounts, the said moneys are ;o be paid back with the stipulated rate of interest.

(6) Before ascertaining profits or losses at the end of the year, the general mercantile principles in vogue are applicable: the interest, establishment, lighting expenses, rents, bad debts and other losses, kottu, saddar, etc., all the expenses should be considered. The profits or losses thus ascertained are to be accounted for in the business books in the share of the partners.

(7) There is no time limit for this partnership. This comes under partnership at will (and) this firm will be dissolved by the issue of notice by the dissident partner declaring his dissent to be partner.

(8) .....

(9) For the conduct of the affairs of the firm (and) for defining the rights and liabilities of the partnership as well as for dissolution, the current provisions of the Indian Partnership Act, 1932, will apply.

1. (Signed) Addepalli Nageswararao.
2. (Signed) Addepalli Nageswararao.
3. (Signed) Addepalli kasiviswanadham.
4. (Signed) Addepalli Mareswararao."

12. On a consideration of Clauses (3)(b), (3)(c), (6) and (7) of this document, the Tribunal came to the conclusion that the, minor in fact was a partner and was not merely admitted to its benefits.

13. In order to construe a partnership deed, it is now well settled that the entire document must be read as a whole and a reasonable construction should be placed on it. In a document where several clauses appear, what clause dominates the document should also be found out with a view to ascertain the real intention of the parties. In order, therefore, to find out whether Addepalli Kamaraju Gupta, the minor, was admitted as a partner, the dominant clause to which one must immediately pay attention is Clause 3(b). The said clause, in unequivocal and unambiguous language, states that " the minor is admitted only to the benefits of the partnership ". When the intention of the executants of this document thus becomes abundantly clear and leaves no one in doubt, then the other clauses of the document should be so read as to reconcile them with this manifestly brought out intention of the parties to the document. Sub-clauses (a) and (c) of Clause (3) no doubt speak as if the profits and losses would be shared by all the partners and would be apportioned according to their shares mentioned in Sub-clause (a). But if the said two sub-clauses are read in conjunction with Sub-clause (b), which is a dominant sub-clause, then it would be very clear that what the Sub-clauses (a) and (c) mean is that, since the minor is admitted only to the benefits of the partnership, he would share the profits in proportion to the shares mentioned in Sub-clause (a). But, in so far as the losses are concerned, it would be borne ultimately, as stated hereinafter, only by the three major partners (i.e., partners 1, 3 and 4) in proportion to the shares which are mentioned against their names in sub- Clause (a). How these two sub-clauses negative the idea which is patently clear in Sub-clause (b) is difficult to understand. Clause (3) of the document must be read as a whole; and if so read, it would be clear

that the partnership consists of only three major partners while the fourth person, namely, the minor, is admitted by those three major partners with their consent only to the benefits of the partnership. Partners 3 and 4, who would be the managing partners, would conduct the routine management of the firm's business. The profits would be distributed according to the shares mentioned in Sub-clause (a) and the losses also would be borne by the partners in the proportion mentioned against their names. We, therefore, fail to see how Sub-clause (a) or Sub-clause (c) would bring about any change in the explicit intention brought out in Sub-clauses (b) or even dilute its force.

14. Clause (6) is merely a projection of Sub-clauses (a) and (c) of Clause (3). It merely lays down the mode of ascertaining the profits or losses at the end of the year, and directs that " the profits or losses thus ascertained are to be accounted for in the business books in the shares of the partners". If it is remembered that the minor is admitted to the benefits of the partnership, then he is not a partner : and the word " partners " appearing in Clause (6) would only refer to the three major partners who have admitted the minor to the benefits of the partnership. We do not, therefore, think that Clause (6) in any manner militates against the express intention declared in Clause 3(b) of the deed.

15. Clause (7) likewise does not revolt against the dominant idea found in the document that the minor is admitted to the benefits of the partnership. The mere fact that the partnership is at will would hardly bring about any change in this real position of the minor. Similarly, the fact that the said clause authorises all the partners to bring about a dissolution of the partnership by the iss.ue of a notice declaring his dissent to be a partner, would not affect the position of the minor in an) way. First of all, the word " partner " appearing in the said clause would only refer to the major partners and not to the minor, because he is not a partner. It is true that while construing the document neither we can assume the minor to be a partner, nor assume that he is admitted to the benefits of the partnership. But taking the clause as it is and assuming that it also empowers the minor to bring about dissolution of the partnership at will, we do not think it is in any manner inconsistent with any provision of the law. In this connection, Section 30(4) of the Indian Partnership Act is relevant. According to that provision, a minor who is admitted to the benefits of the partnership may not sue the partners for an account of payment of his share of the property or profits of the firm during the subsistence of the partnership ; but, if he wants to sever his connections with the firm, he can take necessary steps to do so and, in such a case, the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in Section 48 of the Partnership Act. After all, the minor is not tied down to the partnership, be it a partnership at will or otherwise, for ever. If he can get in through his guardian, he can also get out of it whenever he desires to do so and that is what has been exactly provided in subsection (4).

16. It is also pertinent to note that under the proviso to that sub-section, all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm. The suit referred to in this proviso relates to the step which the minor can take under Sub-section (4) in order to sever his connections with the partnership concern. In that case, such a suit would be proceeded with as if it was a suit for dissolution and for settlement of accounts between the partners and the amount of the share of the minor shall be determined along with the shares of the partners. It is thus clear from this provision that, since the minor is not tied down to the partnership, he can when he liked sever his connection. But as long

as he continues as a partner drawing the benefits of the partnership, he cannot sue the partners for an account or payment of his share of the property or profits of the firm. He can ask for these reliefs only at the time when he wants to sever his connection with the partnership firm.

17. Section 32 of the Partnership Act which relates to the retirement of a partner refers only to a case of a partner. Likewise under Section 39 the dissolution of a firm can be brought about only by the partners. It is, therefore, only in the light of Sub-section (4) of Section 30 of the Partnership Act that Clause (7) of the agreement has to be understood ; and, in such a case, the minor can sever his connection with the firm by filing a suit for the reliefs of accounts and division of shares and if the other partners intended or desire to convert the character of the suit, they may do so under the proviso to Section 30(4) making it a suit for dissolution oi partnership and in that case the connection of the minor will also get automatically severed, and he will be entitled to the other reliefs referred to in that sub-section. We are, therefore, clear that Clause (7) of the deed, firstly, does not refer to the minor at all, but refers only to the partners; and, secondly, assuming that it does so refer, the remedy which the minor has, to sever his connection with the partnership, is that which is provided in Section 30(4) and it is to that remedy that the substance of Clause (7) refers to. We do not, there* fore think that because of the existence of Clause (7), it can be said that the minor has become a partner. That would amount to flying in the face of an express clause like Clause 3(b) which is not, in our view, permissible.

18. The last clause to which our attention was drawn is Clause (9) of the deed, That clause merely states that the current provisions of the Indian Partnership Act of 1932 will apply for the conduct of the affairs of the company and for defining the rights and liabilities of the partnership as well as for its dissolution. We fail to see how this clause makes the minor a partner of the firm. The result of this clause is to apply all the provisions of the Partnership Act to the conduct of the business of the said firm. Even if this clause were not to be there, it cannot be doubted that the provisions of the Partnership Act subject to the contract would have been attracted 'to the business of the said firm. The provisions applicable include the provisions of Section 30 oi the Partnership Act according to which a minor may not be a partner in a firm, but he can certainly be admitted to the benefits of the partnership. Merely because these provisions are made applicable, we fail to see how it can at all be contended that the minor thereby becomes a full-iledged partner in the firm.

19. It will thus be plain that whether we read the said clauses separately or read them cumulatively or read the document as a whole, there" is no room for contending that the minor has not been admitted merely to the benefits of the partnership but is made or is intended to be made a full-fledged partner.

20. In this connection, it must be remembered that even if the word " losses " appearing in Clauses (3)(a), (3Xc) and (6) is to be attributed to the minor, even then Section 30 permits the losses incurred by the firm to be shared by the minor in so far as the profits to which he would be entitled to from the said firm are concerned. Section 30(3) enjoins that a minor's share in a firm is liable for the acts of the firm. This share of the minor may be in the form of capital or may be in the form of profits which the firm makes. But in view of the subsequent portion of the said subsection that a minor is not irAuiy case personally liable for any such act, no one can be left in doubt that what is affected by Sub-section (3) of Section 30 is not the person of the minor or his other property not brought in in the assets of the firm but only the share of the minor in the firm. From that point of view also, Clauses 3(a) and 3(c) and Clause (6) do not militate in any manner

against the concept of admitting the minor only to the benefits of the partnership.

21. In this connection, the word "only" appearing in Clause 3(b) assumes importance and being a significant word, it stresses the importance of that clause and makes it dominant over the other "two sub-clauses; and it is only subject to this dominant idea that the whole document has to be read ; and if read thus, it becomes patently clear that there is no whisper anywhere in the document which would compel us to disregard the dominant clause or outweigh it by conveying an idea of making a minor a full-fledged partner in the firm. We are, therefore, satisfied that the minor has not been admitted as a partner, but is. admitted only to the benefits of the partnership and, consequently, the partnership deed is not violative of Section 30 or any other provision of the Partnership Act, The contract is valid and binding upon the partners of the firm.

22. Although decisions construing certain instruments cannot form precedents, since the following decisions provide a close parallel to the case under our consideration, we derive strength from them for our conclusion. They are*; Jeewanram Gangaram v. Commissioner of Income-tax*[1]*, Krishna & Bros, v. Commissioner of Income-tax*[2]*, . Commissioner of Income-tax v. Shah Mohandas Sadhuram, . andCommissioner of Income-tax v. Shah Jethaji Phulchand*[3]*,*

23. The decision in Commissioner of Income-tax v. Dwarkadas Khetan & Co., . can be distinguished on its own facts. Their Lordships of the Supreme Court had found that the minor was admitted to the full membership of the partnership. The decision, therefore, proceeded upon that finding. The ratio in that case was in relation to the conflict which existed between different High Courts as to whether the income-tax authorities, for the purpose of registration, can ignore the membership of the minor and register the partnership. The Supreme Court held that the income-tax authorities cannot make out a new contract. If the partnership is void because of the minor entering into the contract then the partnership deed cannot be registered. In the present case, the Tribunal relied upon the decision in *Commissioner of Income-tax v. Khetan & Co*[4]*.,* but that decision has been dissented to by the Calcutta High Court in *National Trading Company v. Commissioner of Income-tax*[5]*,* It is not, therefore, necessary ftr us to consider the decision relied upon by the Tribunal. We have, therefore, no hesitation in answering the first question that, since the partnership is not void and as the minor is not admitted to the membership of the firm, the registration of the firm cannot be denied on that account.

24. It was then contended that the partnership deed is void because the father, Addepalli Nageswara Rao, who himself is a partner, could not have entered into a partnership with others on his own behalf and on behalf of his minor son, Kamaraju Gupta, representing him as the guardian. It was contended that the father cannot act in two capacities and bring about the constitution of a firm. In support of this contention, reliance was placed *upon the following decisions: Hoosen Kasam Dada v. Commissioner of Income-tax*[6]*, Mohan Lal Shyam Lal. In re*[8]*, . Commissioner of Income-tax v. Dwarkadas Khetan, . and Meenakshi Achi v. P.S.M. Subramanian Chettiar;*[9]*.* It was further contended in this connection on the basis of the observations of the Tribunal that a guardianjaas no capacity to bring into existence any partnership as the minor himself could not have done that and that the guardian cannot play a dual role in the constitution of the firm.

25. We do not find any substance in this contention, We have already made reference to the fact that the partnership consists of three partners, all of whom are majors and it is they, by their consent, have admitted the minor to the benefits of the firm.

26. In determining whether an agreement is enforceable, that is, whether it is a contract, Section 10 of the Indian Contract Act requires that the following four conditions must be considered : (1) competency of the parties to the contract; (2) freedom of consent of the parties ; (3) lawfulness of the consideration ; and (4) the lawfulness of the object.

27. An agreement which satisfies these requirements is enforceable because it becomes a contract, unless, of course, such a contract is declared void.Even if the consent of one of the parties is not given freely, the contract is still enforceable but at his option.

28. Competency of the parties is the subject-matter of Sections 11 and 12 of the Indian Contract Act. Consent as effected by various circumstances is dealt with in Sections 13 to 22. Likewise, lawfulness of the object and consideration is dealt with in Sections 23 to 25. While we are not concerned in this case with the lawfulness of consideration or the object, we are concerned in this case with the competence of the parties and not concerned even with the freedom of consent of one of the parties to the contract.

29. It is now well-settled that under Section 11 of the Contract Act, when a minor purports to contract, the alleged contract is void and not merely voidable, he being a person who cannot contract. Thus Section 11 puts a complete embargo' upon a minor to enter into a contract. The decision in *Mohori Bibee v. Dharmodas Ghose*[9], can be cited in support of that proposition. It is thus clear that the Contract Act makes it essential that all contracting parties should be competent to contract and specially provides that a person who, by reason of his infancy, is incompetent to contract cannot make a contract within the meaning of the Contract Act. What must follow is that a contract with a minor does not create a legal contractual relationship between the parties.

30. In this case it is nobody's case that the minor himself entered into a contract. It is common ground that on his behalf his father, who is his natural' guardian, has entered into an agreement. Though the minors themselves are incompetent to contract, there is nothing to prevent their guardians from contracting on their behalf. It is of course true that the minor may avoid such a contract on his attaining majority if he has reasonable and sufficient grounds for getting the contract avoided. But it would not be correct, as the Tribunal has said, that the guardian cannot enter into a contract on behalf of a minor. It would make the minor's position worse in the eye of law if minors are even precluded from entering into contracts through their guardians. We do not know from where the Tribunal has got this idea that a minor cannot enter into a contract even through his guardian. We are, therefore, satisfied that the guardian can enter into a contract on behalf of the minor.

31. In this connection, it is relevant to note the language of Section 4 of the Indian Partnership Act. It says that, " Partnership " is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Only persons recognised by law as such, as has already been observed, can enter into an agreement of partnership. The persons may all be natural or all persons may be artificial or even some natural and others artificial, subject, of course, to the rule the artificial persons cannot enter into an agreement of partnership unless they are empowered by their constitution to do so. It is also plain that the persons in any case should be competent to enter into an agreement of partnership.

32. In this connection, it must be remembered that like every agreement, a partnership agreement is a bilateral or multi-lateral transaction and contemplates two or more parties ,to it. The word " parties " signifies persons, whether natural or artificial, but in any case persons recognised in the eye of law. It is inescapable from a reading of Section 4 that a single human being cannot constitute a partnership. Nevertheless, such a single person may have dual personality, in other words, a double capacity.

33. Capacity to com ract must always be distinguished from authority to contract. " Capacity " means power to appoint oneself while " authority " means power to appoint another. While capacity is part of the law of status, authority is part of the law of principal and agent. What must follow from these propositions is that while capacity is usually a question of law, authority is usually a question of fact. It is only under this category that contracts are entered into on behalf of others by agents, representatives or guardians. If they have enough authority to represent others who have no capacity to contract even then a contract entered into on behalf of the persons authorised will nevertheless be a valid contract.

34. It is in this background that one has to understand the relationship between the major partners and a minor who is admitted to the benefits of the partnership under Section 30 of the Indian Partnership Act. Although a minor cannot enter into an agreement of partnership so as to acquire the rights of the partnership and be subject to the obligations of a partuer still he can draw the benefits from such a firm. That is why Section 30 of the Partnership Act, in categorical terms, states that while a minor may not be a partner in a firm, he may be admitted to the benefits of the partnership. Thus, the section confers a statutory privilege upon the minor. That privilege does not make a minor a partner, but only enables him to obtain a certain position in the firm, the exact scope of which is mentioned in detail in the said section. The minor thus is placed in a favoured position and, although entitled in almost all respects to the rights of a partner, he is not made subject to all the liabilities of a partner. It is unnecessary for our purpose to analyse Section 30 or deal with it elaborately. It is sufficient to mention that the words which appear in Sub-section (1) of that section, namely, "all partners " and " partnership " suggest, firstly, that there must be two partners at least in the partnership to which a minor can be admitted. Secondly, the minor cannot be one of these partners and, finally, by his admission to the benefits of the partnership, he does not become a partner and that the partnership becomes dissolved as soon as the number of partners is reduced to one.

35. What is clear is that a minor cannot himself enter into a contract and become a partner of the firm; nor a guardian on his behalf can enter into an agreement so as to make the minor a full-fledged partner of the firm. There cannot thus be any partnership between an individual and a minor represented even by a person as guardian. The minor, with the consent of other persons who constitute the firm, can, however, be admitted to the benefits of the partnership. It is also clear from the language of Section 30 that the minor can contribute his share of capitaljn the firm; but in spite of such contribution, the minor would be entitled only to the share of the profits and will not personally be liable for any loss. He can enter into an agreement through his guardian whereby he can get only the benefits of the partnership without even contributing capital. In case he contributes capital or is entitled to get benefit in the profits of the firm, it is to that extent that the liability can be fastened on the minor. But in no case the person of the minor or his other property which has not been brought into the assets of the partnership can be held liable. That is the purport and scope of Section 30(3) of the Partnership Act.

36. It is in this background that we have to consider whether the father, who has represented the minor in bringing out the execution of the partnership deed, can be said to have validly represented him without affecting the validity of the partnership deed. It will be clear from what is stated that it is not a case where the father is one partner and he, representing as guardian, his minor son, constituted the firm. In that case there will be no partnership to which the minor can be said to have been admitted. In such a case it can be held that no partnership in fact had come into existence and since no partnership has come into existence, the minor could not have been admitted to the benefits of any such partnership. But, here is a case where there are three major partners out of whom the father happens to be one. AH these three major partners are, in law, entitled to constitute a partnership and admit the minor to the benefits of such a firm. That is what has been done in this case. The father reprefilnting the minor and in his capacity as his guardian gave consent to the admission of this minor to the benefits of the partnership firm.
37. That the guardian is entitled to so give consent on behalf of a minor and be a party in his own capacity to the document of partnership is clear from the following decisions of the Supreme Court. In Commissioner of Income-tax v. Shah Jethaji Phulchand, after observing that a partnership deed must be construed reasonably, it was held that:

> "The guardian of a minor is entitled to do all things necessary lot effectuating the conferment of the benefits of partnership to the minor. A guardian can agree on behalf of the minor to contribute capital for the business of the firm in which the minor is admitted to the benefits of partnership.There is no bar in law to the guardian of a minor agreeing to the starting of a business and the constitution of a firm on the condition that the minor shall not be a full partner but shall only be entitled to the benefits of partnership, for he is only securing thereby the conferment of the benefits of partnership on the minor."

38. In that case, the father was himself a partner, nevertheless in the position of a guardian represented the minor and consented to his being admitted to the benefits of the partnership firm. It is also seen from that case that a clause which provided that the partnership would be terminated at the will of the partners was taken to mean, in the context, in so far as the minor was concerned, that the guardian would be entitled to exercise his right of severance given to him under Section 30 of the Partnership Act. The same view is held in Commissioner of Income-tax v. Shah Mohandas Sadhuram, .

39. Let us then examine the cases relied upon by the learned advocate for the department. Hoosen Kasam Dada v. Commissioner of Income-tax is a case relating to the constitution of a partnership firm in which a wakf was also involved. It was, in the context of the facts of that case, held that:

> " Under the Mohammedan law, the moment a wakf is created all rights of property pass out of the wakf and vest in the Almighty, and, as a non-personal being such as the Almighty is, cannot enter into a partnership with material persons, a partnership which purports to exist with a wakf represented by the mutawalli as a partner, is no partnership in law and cannot be registered as a firm under Section 26A of the Indian Income-tax Act."

40. After having reached that conclusion that Hoosen Kasam Dada, as a mutawalli of the two

wakfs, was a partner with himself and other persons in partnership, their Lordships of the Calcutta High Court made the following observation at page 199 :

> " I Entirely fail to see how it could be argued that a man can be at one and the same time a partner in his individual capacity and a partner in a representative Capacity."

41. This observation has to be understood in the context of the facts of that particular case and has very little relevance in so far as the present case- before us is concerned.

42. It is also relevant to note that this case was considered in *Lachhman Das v. Commissioner of Income-tax*[10], and has been explained. Mohan Lal Shyam Lal, In re, was a case where A and B constituted a partnership. A who was the major and representing B who was a minor was alleged to have constituted a firm. It is in the context of these facts, their Lordships said:

> " There can be no partnership between A on the one hand and minors represented by A as guardian on the other. "

43. We have already seen that a minor either by himself or through a guardian cannot be made partner in the firm because any such contract would be inconsistent with the provisions of Section 30 of the Partnership Act. It is i-n that sense it can be said that what the minor himself cannot do, even a guardian cannot be permitted to do, because in either case, it would be contrary to Section 30 of the Partnership Act. But that is far from saying that even in proper cases the guardian cannot act on behalf of the minor. In the said case, since there were only two partners, one the major and the other a minor, the minor could not have become a partner even when he was represented by his guardian who happened to be the other partner. The minor, as stated earlier, can be admitted only to the benefits of a partnership and that can be possible only when, apart from the minor, there are two or more persons who constitute the partnership firm, and it is only such persons acting in concert that can admit the minor to the benefits of the partnership. It is in the context of the peculiar facts that their Lordships observed at page 226 :

> " There is, therefore, no document from which any agreement by an authorised person could be spelt out on behalf of the minor sons of Shyam Lal, and it is impossible to hold that there was a firm constituted under an instrument of partnership which made the application for registration before the Income-tax Officer. "

44. We do not, therefore, think that this decision decides anything which can be said to be contrary to our view. Commissioner of Income-tax v.Dwarkadas Khetan & Co. has already been considered jn another context.In that case a distinct cleavage of opinion among the High Courts was noticed. While the Bombay, Madras and Patna High Courts had held that where a minor is admitted as a full partner by adult partners, the document of partnership can be registered after interpreting it to mean that the minor had been admitted to the benefits and not as a full partner, the Calcutta, Allahabad and Punjab High Courts had taken a contrary view.It is in that context that their Lordships of the Supreme Court thought that the view expressed by the Calcutta High Court in Hoosen Kasam Dada v. Commissioner of Income-tax was preferable to the view taken by the Madras High Court and held at page 533 :

> " Section 30 of the Indian Partnership Act clearly lays down that a minor cannot become a

partner, though with the consent of the adult partners he may be admitted to the benefits of partnership. Any document which goes beyond this section cannot be regarded as valid for the purpose of registration. Registration can only be granted of a document between persons who are parties to it and on the covenants set out in it. If the income-tax authorities register the partnership as between the adults only, contrary to the terms of the document, in substance a new contract is made out. It is not open to the income-tax authorities to register a document which is different from the one actually executed and asked to be registered."

45. This case, therefore, has very little to do with the point under our consideration. The last case to be considered in this behalf is Meenakshi Achi v. P.S.M. Subramanian Chettiar. The following observation appears at page 12 :

" There can be no partnership between the same individual acting on the one hand as the guardian of the minor and on the other as a partner in his or her individual capacity."

46. It is in support of this observation that reference is made to Mohan Lal Shyam Lal, In re. We have already considered the said decision. There can be very little quarrel with this proposition of law. But from this proposition how the authority of the guardian to act for the minor can be attacked, surpasses our comprehension. This decision does not say that even in proper cases the guardian cannot represent the minor. We have already said that in order to admit a minor to the benefits of the partnership, there must be a partnership consisting of more than two or three persons. In the case to which a reference is made, Meenakshi Achi v. P.S.M. Subramanian Cheliiar, since there was no partnership at all, no question of admitting the minor to its benefits could arise and as a minor cannot be a partner either purporting to act by himself or through his guardian acting for him. In either case it will be invalid in view of Section 30 of the Partnership Act. It is, however, pertinent to note that the reference made to Lachhman Das v. Commissioner of Income-tax 3n that case is somewhat misleading. In fact, the said decision of the Privy Council does not decide anything t'hich can be said to be contrary to our view. On the other hand, it explains Hoosen Kasam Dada's case.

47. We are, therefore, satisfied that a guardian who himself is a partner can, along with other major partners/give consent in regard to the admission of a minor to the benefits of the partnership and as guardian on behalf of the minor can agree that the minor be admitted to the benefits of the partnership with or without certain conditions. In that view of the matter, the partnership contract cannot be said to be invalid or void and registration of the firm cannot be rejected on that ground.

48. What remains to be considered is whether an application for registration of the firm could be rejected on the ground that the partnership deed does not specify the shares of the partners in the losses in case the arm suffers the same. The question, in our view, does not arise from the facts of the present case. We have already extracted all the relevant clauses of the partnership deed and it will be clear from them that not only Clause (3), Sub-clauses (a) and (c) but also Clause (6) refer to the losses. Clause (3)(a) itself says : " It is decided to share the profits and losses in proportion of the undermentioned shares." It will not, therefore, be correct to urge that the partnership deed does not make any reference as to how the losses would be shared by the partners. Mr. P. Rama Rao, the learned advocate for the department, however, contended before us that, although it is

true that the partnership deed mentions the proportion of the losses to be borne by the respective partners and since it also mentions that the minor is admitted only to the benefits of the partnership, the deed is silent as to who would bear the loss which otherwise would have fallen to the share of the minor and in what proportion. Since the document does not mention that, the application to register the firm can be rejected under Section 26A of the Act.

49. Before we consider the implications of this contention we must mention that this is not the ground upon which the Tribunal approved of the rejection of the registration. In the reference which the Tribunal has made or in its order there is no mention about this aspect of the case which is now sought to be argued by the learned advocate for the department. In the view which we are taking, we are, however, not inclined to refuse permission to the advocate to argue that point. More so because the question framed is wide enough to take that within the contention now urged before us for the first time.

50. Section 26A of the Act reads as follows:

" (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act ana of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed ; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed."

51. Rule 3 of the rules framed under the Act enjoins that the application referred to in Rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof. According to the form of application for registration of a firm prescribed in that rule, it is necessary to fill in all the seven columns mentioned in the Schedule. We are here concerned only with column 6, which reads as follows:

" Share in the balance of profits (or loss) (annas and pies in the rupee). "
52. Note 2, which is relevant, reads as follows :

" If any partner is entitled to share in profits but is not liable to bear a similar proportion of any losses, this fact should be indicated by putting against his share in column 6 the letter ' P '. "

53. On a reading of Section 26A together with the above said rules and column 6 of the prescribed application form, it will be clear that the partners seeking registration of the firm have to mention in column 6 the share in the balance of profits or losses. It is true that Section 26A merely uses the word " share ", but there can be no difficulty in understanding the said word to mean a share not only in profits but also in losses. That is why column 6 of the Schedule requires the information regarding the balance of profits or losses. It becomes, therefore, necessary for the partners seeking registration of the firm to disclose in the application in column 6 their respective shares in the balance of profits or losses. The column also expects that such a share would be denoted in terms of annas and pies in the rupee. If the terms of the partnership, however, denote

that a partne'r although entitled to a share in profits is not made liable to bear a similar proportion of any losses then note 2 requires the partners filing the application to indicate the same by putting against his share in column 6 the letter " P ". We may take it that even if a partner is not made liable for any loss at all, even then note 2 would require the word " P " to be written against his share. Since the language of the section and of column 6 of the application form is clear and unambiguous, it may not be necessary to go into the reasons which prompted the legislature or the rule-making authority to demand such details, nor in the reasons as to why the omission of giving such details should entail refusal of the application for registration of the firm. The result, however, should not be confused with the validity or otherwise of the partnership contract itself. It may be that the partnership deed does not incorporate any terra from which it is possible to deduce as to in what proportion the losses the partners will bear. Nevertheless, the partnership deed, it is admitted, will be valid in law; and in any case no such contract can be said to be void as no provision declares it to be void. Nor can it be said to be inconsistent with any provision of the partnership Act. It is altogether a different thing to say that if the application "is not filed in the proper or prescribed form, it may entail its rejection. But such a rejection also would come only after an opportunity is provided, for it is necessary and incumbent on the applicant to comply with the requirements. The two things, therefore, should not be confused with each other. The Tribunal obviously went wrong in holding that since the proportion of loss to which the partners are made liable is not mentioned in the document, the document is invalid. Firstly, factually it is not correct; and, secondly, even if it were to be true, the document does not become thereby void or invalid. In this case it was nobody's case that while filing the application form for registration, column 6 of the application was not properly filled. In any case, the Tribunal or the lower income-tax authorities have not declined the registration or its renewal upon that ground. We have, therefore, to consider what is the effect of the omission in the partnership deed regarding the loss which may be attributable to the share of the minor, who is not supposed to bear it, would be shared by the other partners.

54. It must, however, be made clear at the outset that the assumption that the document omits to mention it is not correct. Clause (3)(a) of the deed brings out the shares of the major partners in the profits and losses representing of course 15 annas in a rupee as the one anna share in profits allotted to the minor. In so far as sharing the loss, if it occurs, between the major partners is concerned, Clause (3)(a) is explicit and clear. The question is only in regard to a loss which may at some time in future occur and if the minor cannot share his proportion of one anna share in that loss, how that share of loss is to be divided amongst the three major partners. We think the answer to it is provided in Clause (3)(a) itself. While the three major partners would in proportion' to their shares bear the loss as if the unit of loss was 15 annas, the same thing can be arithmetically worked out treating 16 annas as a unit. In other words, they would, in proportion to their respective shares, bear the entire loss taking 16 annas as a" unit, that is to say, the loss will be borne by them in the proportion of 1 : 2 : 2. That being implicit in Clause (3)(a) of the document, it would not be correct to say that such a contingency is not met by the document. It must at the same time be remembered that it is only a contingency which may or may not take place. But if it happens even then we are clear that the loss can be shared by the three major partners in the same proportion as is indicated in Clause (3)(a); and there can be no difficulty in that behalf. It cannot, therefore, be validly contended that the document is silent in that behalf and does not mention the share in such losses.

55. In the view which we have taken, it is not necessary to consider whether it is essential to

indicate such a thing in the document of partnership in order to get it accepted by the income-tax authorities for the purpose of Section 26A of the Act. In deference to the arguments however which were advanced before us, we will briefly state the position in that behalf.

56. It is not in doubt that the Act (Indian Income-tax Act) is a self-contained code exhaustive of the matters dealt with therein, and its provisions show an intention to depart from the common rule, qui facit per alium facit per se. Its intention again is that a firm should be given the benefit of Section 23(5)(a) only if it is registered under Section 26A. Its registration is possible only when the conditions laid down in that section and the rules framed thereunder are satisfied.

57. It cannot also be in doubt that under Section 26A read with column 6 of the prescribed application form, partners seeking registration of the firm have to denote the shares in profit or loss in the application. If that is required to be given in the application by a necessary corollary, it must find place in the partnership deed. It may be that absence of any such provision may not make the partnership contract invalid. But since there is a possibility of its being rejected in so far as the Act is concerned, the firms which wish to take advantage of Section 23(5)(a) would naturally be inclined to mention the share of profits or losses in the partnership deed itselt so that it may facilitate the mention of the same in column 6 of the prescribed application form. Column 6, in our view, should not be read too rigidly. The letter of that column should not be allowed to kill the spirit of Section 26A read with the rules. If the partnership deed and the application reasonably give the share of profit or loss of the partners in substance, that should be enough to satisfy the requirements of Section 26A and the rules made thereunder. It would be reasonable to insist upon the compliance of the form to its last letter. The share of profit or loss may, therefore, be given treating one rupee as the unit and then denoting the shares in annas and pies ; or hundred may be taken as a unit and the shares of profit or loss may be denoted by a fraction of the same. It is also possible that instead of 16 annas, 15 annas or any other fraction of it can be taken as a unit. The idea behind Section 26A and column 6 is that the department should know as to what are the shares of the partners in the partnership firm so that it may work out the income of the individual partners, Objected to taxes. If that purpose is served by the terms of the partnership deed and if the terms are properly reflected in the various columns of the application, then there should be no difficulty; and in fact, it would be improper if the application even then is rejected. This is the most rational view which one can take of Section 26A read with Rule 3 and the prescribed form of application under it.

58. There seems to be, however, divergence in the opinion of different High Courts in this respect. In N.T. Patel & Co. v. Commissioner of Income-tax, the partnership deed did not specify the shares of the partners at all and that is why perhaps the application also could not specify the same. It is only because of that, it was held by the Supreme Court that :
"Although an instrument of partnership was in existence in the account year it did not specify the shares which was one of the requirements for registration and that condition was fulfilled only by the deed of rectification dated September 17, 1955. Therefore, it could not be said that there was the requisite instrument of partnership specifying the individual shares of the partners during the year of account and the High Court was right in holding that the firm was not entitled to registration. "

59. The decision in C.T. Palu & Sons v. Commissioner of Income-tax, . takes, with due respect, a somewhat extreme view. The assessee-firm consisting of three partners, Chinnamma and her two

sons, Thomas and Joseph, of whom Joseph was a minor represented by his mother as guardian, was reconstituted by the deed dated December 1, 1960, which provided that the profit and loss of the business would be divided among the three partners in the ratio of 50 : 25 : 25. A deed of clarification was executed between Chinnamma and Thomas on March 26, 1963, which stated that the minor was only a beneficiary entitled to 25 per cent. of the profits but not liable for the loss and liabilities of the firm and that the deed of clarification should be deemed to have come into effect on December 1, 1960, and treated as part of the deed of December 1, 1960. The assessee filed a declaration under Section 184(7) of the Income-tax Act, 1961, for renewal of registration for the assessment year 1963-64. The Tribunal refused registration on the ground that the clarification deed did not provide who should bear 25 per cent. of the loss, and that, as the clarification deed brought about a change in the shares of the profit and loss of the firm, there was a change in the constitution of the firm and, therefore, an application for registration of the firm was necessary. On a reference, the High Court held that:

> " The firm was not entitled to renewal of registration as the clarification deed did not provide for sharing of 25 per cent. of the loss and, as the firm had been refused registration for the earlier year, an application for registration was necessary. "

60. While we arc not concerned with the second ground on which the High Court upheld the rejection of renewal, with due respect to the learned judges of the Kerala High Court, we find ourselves unable to agree with the view on the first point. From the facts as they are narrated in the judgment, it appears as if the clarification deed had merely altered the position of the minor partner who was made thereby only a beneficiary in the partnership firm. Consequently, modifications in the ratio of loss to be borne by the parties was not brought about. That is why the judges, at one stage, categorically stated at page 644 that:

> " As the Appellate Tribunal has pointed out in this case, the partnership deed as amended by the deed of clarification provides that the profit is to be shared among the two major partners and the minor admitted to the benefits of the firm in the proportion of 50 : 25 : 25 and that the minor is not liable for the loss ; but no provision is made regarding the sharing of the loss."

61. It was also held that if the result of the modification was that there was no mention as to how the loss would be borne by the major partners, then it was a good ground to reject the registration of the firm. But the following observation gives altogether a different picture :

> " The liability of the major partners is, therefore, only to bear the loss in the proportion in which they are entitled to share the profit. This means that they are liable to bear 50% and 25% each of the loss and the deed of partnership is blank regarding the sharing of the balance 25% of the loss. In our view, this is sufficient to disentitle the firm for registration. "

62. The attention of the learned judges was not drawn that it is arithmetically possible to work out the entire loss and the liability fastened to the remaining partners in the ratio of 50% and 25%, respectively, which in other words would be 2 : 1 and in that case it would not be correct to say that the document is blank in that behalf.

63. In *Thacker & Co. v. Commissioner of Income-tax*[11], the question was whether the words " the individual shares of the partners " in Section 26A(1) of the Act must necessarily mean shares in profits and losses and, therefore, both have to be specifically stated in the instrument in order to comply with the conditions laid down by the legislature in that section to obtain registration.

64. The following cases, however, take the view that even if loss is not mentioned in the partnership deed, even then registration of the firm cannot be refused on that ground. In *Laxmi Trading Co. v. Commissioner of Income-tax*[12], it was observed that:

> " Even though in the case of a firm in which some minors are admitted to the benefits of the partnership without any liability to share the losses, the shares of the partners in the profits would not be the same as their shares in the loss, an application for registration of such a firm cannot be refused merely because shares in profits of all the partners including those admitted merely to the benefits of the partnership are specified and there is no separate specification of shares of the major partners in the losses."

65. This observation, however, was made while considering the question of the validity of the partnership deed in which such a clause relating to losses is not found. That is why it is observed that:

> " No deed of partnership has been held to be invalid, merely because shares in profits are specified of all the partners including those admitted merely to the benefits of the partnership, and there is no separate specification of shares of the remaining partners who are to share the losses indicating their separate shares in the losses. "

66. A similar view is held by the Mysore High Court in *R.B. Angadi & Sons v. Commissioner of Income-tax*[13], The decision follows the earlier decision of that High Court in *R. Sannappa and Sons v. Commissioner of Income-tax*[14], *Hiralal Jagannath Prasad v. Commissioner of Income-tax*[15], is another decision of the Allahabad High Court which takes the same view, following its earlier decision in Laxmi Trading Co. v. Commissioner of Income-tax, to which a reference has already been made.

67. In our view, it is not necessary to take any extreme view in this respect. As stated earlier, if substantial compliance with Section 26A read with Rule 3 is made, then registration of the firm should not be refused. Whether the partnership deed substantially complies with the said requirements or not depends naturally upon the terms of the deed and the facts and circumstances of each case. That, in our view, is the most reasonable view which should be adopted avoiding the extremities in this respect.

68. We have already held that Clause (3) gives the shares of the three major partners in case the firm suffers a loss--not only with respect to the original loss but also the loss which is calculated on the share of the minor but which has to be borne by the other major partners. In that view of the matter, we do not think that the partnership deed or title application filed by the partners for registration or renewal of the firm suffers from any such infirmity. The registration of the firm cannot therefore be refused on that ground.

69. We must make it clear that in so far as the second and third questions were concerned, no

arguments were advanced before us. We would, therefore, take it that the decision of the Tribunal in those respects stands good and does not call for any interference.

70. Our Answer to the first question therefore is in the affirmative and in favor of the assessee and against the department. In regard to the second question, our answer is in the affirmative; and in regard to the third also in the affirmative, The assessee will be entitled to get his costs. Advocate's fee Rs. 250 (rupees two hundred and fifty only).

Cases Referred.

1[1957] 64 I.T.R. 483 (Cal)
2[1968] 69 I.T.R. [35] (Ker)
3[1955] 57 I.T.R. 588 (S.C)
4[1962] 45 I.T.R. 170 (Cal)
5[1969] 71 I.T.R. 513, 520 (Cal)
6[1937] 5 I.T.R. 182 (Cal)
7[1942] 10 I.T.R. 219 (All)
8 A.I.R 1957 Mad. 8
9[1903] L.R. 30 I.A, 114; I.L.R. 30 Cal. 539 (P.C)
10 [1948] 16 I.T.R. 35, 40 (P.C)
11[1966] 61 I.T.R. 540 (Guj)
12[1966] 62 I.T.R. 770, 772 (All)
13 [1969] 73 I.T.R. 93 (Mys)
14[1967] 66 I.T.R. 27 (Mys)
15[1967] 66 I.T.R. 293 (All)