

# ANDHRA PRADESH HIGH COURT

Choudry Brothers

Vs

Commissioner of Income Tax

(P.A.Choudary, J.)

17.01.1984

## JUDGEMENT

**P.A.Choudary, J.**

( 1. ) THE following three questions are referred by the Income-tax Appellate Tribunal for obtaining the opinion of this court : "(1) Whether, on the facts and in the circumstances of the case, the assessment in the status of association of persons is valid ? (2) Whether, on the facts and in the circumstances of the case, the Tribunal can direct the assessee to file Form No. 11 and comply with conditions under section 184 and directing the Income-tax Officer to pass orders thereon ? (3) Whether, on the facts and in the circumstances of the case, the assessee is entitled to benefits of registration ?"

( 2. ) IN order to be able to answer these questions, a few facts as they appear from the statement of case are stated. The assessee is a partnership firm constituted under a deed of partnership dated 5/07/1962, consisting of four partners of which Sushilchand Choudary was a minor represented by his mother. For the assessment year 1966-67, the assessee filed an application for registration of the firm before the Income-tax Officer. But the Income-tax Officer rejected the application and refused to register the firm under the Income-tax Act on the ground that the partnership deed dated 5/07/1962, was an invalid instrument. Under section 30 of the Partnership Act, a minor can only be admitted to the benefits of a partnership and cannot be made a partner. The partnership deed on the basis of which registration was sought had one minor by name Sushilchand Choudary as a full partner. The Income-tax Officer, therefore, sought to make an assessment as association of persons. The assessee carried the matter in appeal before the Appellate Assistant Commissioner who confirmed the order of the Income-tax Officer. The assessee made a further appeal to the Income-tax Appellate Tribunal.

( 3. ) BEFORE the Income-tax Appellate Tribunal, it was urged that the above mentioned Sushilchand Choudary had on attaining majority elected to continue as a partner and had intimated that fact to the Registrar of Firms on 25/03/1964, and that for the assessment year 1966-67, the assessee had filed on that basis an application in Form No.12 for continuation of registration. However, the Income-tax Officer refused to register the firm in view of his order for the earlier year. The Tribunal considered the question whether in the matter of continuation of

registration, a fresh partnership deed is necessary after Sushilchand Choudary attained majority. The Tribunal held that since Sushilchand Choudary became major and had elected to continue to be a partner of the firm constituted by the partnership deed dated 5/07/1962, the partnership was perfectly valid. The Tribunal held that the said Sushilchand Choudary signed the application in Form No. 11 for the assessment year 1965-66 and also Form No. 12 for 1966-67 clearly undertaking that he agreed to be a partner of the firm. The Tribunal opined that this conduct of the said Sushilchand Choudary cured the invalidity attached to the partnership deed. Accordingly, the Tribunal concluded that the invalidity hitherto attached to the partnership deed was removed and that the assessee was entitled to registration under section 184 of the Income-tax Act. Accordingly, the Tribunal directed the assessee to file an application in Form No. 11 complying with the conditions under section 184 of the Income-tax Act and also directed the Income-tax Officer to pass orders thereon. ;