

(1985) 11 PAT CK 0011
In the Patna High Court
Case No : Taxation Case No. 236 of 1976

Commissioner of Income Tax

APPELLANT

Vs

J.B. Coal Traders

RESPONDENT

Date of Decision : 19-11-1985

Acts Referred:

Income Tax Act, 1961 — Section 185

Citation : (1986) 51 CTR 369 : (1987) 164 ITR 450 : (1986) 27 TAXMAN 172

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; Rameshwar Prasad No. 2 and B.B. Sinha, for the Respondent

Judgement

Nazir Ahmad, J.—A statement of the case has been submitted by the Income Tax Appellate Tribunal, Patna Bench "B", Patna (hereinafter referred to as "the Tribunal"), u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the 1961 Act"), referring the following questions of law for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that registration could not be refused on the ground that the application for registration was not signed by a partner and in directing the Income Tax Officer to give an opportunity to the assessee to correct the application by putting the relevant signature ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the partnership was valid in spite of the fact that the deed had not been signed by a partner who was a minor at the time of coming into existence of the firm but was a major at the time of execution of the deed ?"

2. The relevant facts of the case can be culled from the statement of the case and several relevant orders available on the records of the case. An application

for registration in Form No. 31 was filed by the assessee-firm for the assessment year 1968-69 on December 4, 1967. As the application was not available on the record, the assessee filed a duplicate application on March 24, 1971. The original application was subsequently traced out and was placed on the record by the Income Tax Officer. The accounting year of the assessee ended on March 31, 1968, for the assessment year 1968-69. This goes to show that the accounting year of the assessee-firm was the financial year 1967-68. The Income Tax Officer held that the application for registration was filed in time and was in order. Partners of the firm were Banarsi Das, Tilak Raj, Mahendra Kumar, Jaswant Rai and one minor, Prem Lal, was admitted to the benefits of the partnership. The firm was evidenced by a deed of partnership which was executed on September 25, 1967. The shares of the partners were specified in the deed of partnership and share of profit had been credited as per stipulation in the deed of partnership. The firm was registered with the Registrar of Firms also. The Income Tax Officer, therefore, held that the firm was genuine. He, therefore, granted registration to the firm for the assessment year 1968-69, vide his order dated January 31, 1972. This order of the Income Tax Officer has been annexed and marked as annexure A forming part of the statement of the case.

3. The Commissioner of Income Tax, Bihar, Patna, on a perusal of the records of the assessee-firm for the assessment year 1968-69 came to the conclusion that the order u/s 185(1) of the 1961 Act granting registration to the assessee-firm passed by the Income Tax Officer, Arrah, on January 31, 1972, was erroneous and prejudicial to the interests of the Revenue. He found that the firm came into existence on March 28, 1967, but the partnership deed was executed on September 25, 1967. In the partnership deed, the date of birth of Prem Lal was mentioned as May 31, 1949, and thus Prem Lal became a major on May 31, 1967, i.e., four months before the date on which the partnership deed was executed. The application for registration in Form No. 11 was filed on December 4, 1967. The Commissioner of Income Tax found that after attaining majority, Prem Lal should have signed the partnership deed and also the application for registration as he was a major on May 31, 1967.

4. The Commissioner of Income Tax issued a notice u/s 263(1) of the 1961 Act. It was contended on behalf of the assessee that the partnership commenced on March 28, 1967, vide Clause 1 of the deed, on which date Prem Lal was a minor. It was further submitted that the fact that he attained majority on May 31, 1967, was not in the knowledge of other partners till March, 1968, and it was only in April, 1968, that Prem Lal informed the other partners that he had attained majority and so another partnership deed was executed on April 25, 1968.

5. The learned advocate for the assessee relied on Section 30(5) of the Indian Partnership Act, 1932 (hereinafter referred to as "the 1932 Act"), and contended that although Prem Lal had attained majority on May 31, 1967, he could not have signed the deed dated September 25, 1967, as he had failed to give any notice to the effect that he had become a major. The Commissioner of Income

Tax came to a finding that it is not a fact that the other partners of the firm had no knowledge about Prem Lal having attained majority on June 31, 1967, because his date of birth being May 31, 1949, had been clearly mentioned in the deed itself, and so on September 26, 1967, when the deed was drawn up, the other partners knew that Prem Lal had attained majority and so Prem Lal should have been made a full-fledged partner instead of being admitted to the benefits of the partnership only.

6. The Commissioner of Income Tax also took the view that Prem Lal should have elected in terms of Section 30(5) of the 1932 Act to become a partner in the firm by November 30, 1967, i. e., within six months from May 31, 1967. Consequent upon his failing to do so, he was deemed to have become a full-fledged partner at the expiry of the six-month period ending on November 30, 1967. The Commissioner of Income Tax also held that as a full-fledged partner, Prem Lal should have signed the application for registration which was filed in this case on December 4, 1967.

7. The Commissioner of Income Tax has also held that u/s 184(1) of the 1961 Act, an application for registration of a firm may be made to the Income Tax Officer on behalf of any firm, if (i) the partnership is evidenced by an instrument, and (ii) the individual shares of the partners are specified in that instrument, and u/s 184(3) of the 1961 Act, the application for registration has to be signed by all the partners (not being minors) personally. The Commissioner of Income Tax held that both the conditions were not satisfied. He has also held that the partnership is not evidenced by an instrument, inasmuch as there is no operative partnership deed for the relevant period and that the partnership deed dated September 25, 1967, is invalid because as per this deed, Prem Lal remained a minor for the whole period, while the fact is that on May 31, 1967, he had become a major and, accordingly, he should be a full-fledged partner sharing not only the profit but should also have been made responsible for loss. He has also held that the operative partnership deed was executed only on April 25, 1968, i. e., after the end of the relevant accounting period on March 31, 1968. He also held that the application for registration filed on December 4, 1967, after the date when Prem Lal attained majority as also after the date by which he should have elected to become a partner in the firm, was not signed by him. The Commissioner, therefore, came to a finding that the two substantive requirements of the 1961 Act did not stand fulfilled in this case which rendered the application for registration fit to be rejected. The Commissioner, relying on the decision in Kishore Chand Ramji Dass Vs. Commissioner of Income Tax, held that the Income Tax Officer was not justified in allowing registration to the assessee-firm. He, therefore, cancelled the order of the Income Tax Officer, Arrah, passed u/s 185(1) of the 1961 Act on January 31, 1972, and directed the Income Tax Officer to treat the assessee-firm as an unregistered firm. This order of the Commissioner of Income Tax has been annexed and marked as annexureB forming part of the statement of the case.

8. The assessee-firm filed an appeal before the Tribunal against the aforesaid order of the Commissioner of Income Tax passed u/s 263(1) of the 1961 Act. The Tribunal held that this was not a fit case for cancellation of the registration by the Commissioner of Income Tax. The Tribunal held that the first objection of the Commissioner of Income Tax was that on the date of executing the partnership deed, Prem Lal had become major but he was shown as a minor in the deed and the date of birth had also been mentioned. As regards the first objection of the Commissioner, the Tribunal held that this was an objection of a technical nature as there does not appear to be any intention on the part of the assessee to misstate the fact, and that Prem Lal's date of birth was mentioned in the partnership deed and, therefore, the fact that he had become a major had been missed and in that there was no misrepresentation. The Tribunal held that Prem Lal was a minor when he was admitted to the benefits of the partnership at its inception. There was no requirement that if a minor is admitted to the benefits of the partnership and he attains majority, another deed should be written and the Board in their circular have also clarified the position that where there is no doubt about the genuineness of the partnership, registration should not be refused simply because a minor, previously admitted to the benefits of the partnership, became a full-fledged partner on attaining majority and no new partnership deed is drawn up to give effect to this change. The Tribunal took the view that when on September 25, 1967, the deed was executed, the minor had not become a full-fledged partner and still there was two months' time in which he could have chosen to become a full-fledged partner. There was, therefore, nothing wrong except the fact that the partners missed to realise the majority of Prem Lal on the date of execution. It is not a case where a minor, who is not competent to enter into a partnership, enters into partnership. The Tribunal also held that it is a case where a minor had been admitted to the benefits of the partnership and on the date of the execution of the deed, Prem Lal had attained majority but this fact was not reflected in the deed. The Tribunal also took the view that this error could have been set right if Prem Lal had signed the application for registration on December 4, 1967, which would have clarified the position that he had become a partner and was applying for registration. The Tribunal took the view that the only defect in this case was that the application for registration had not been signed by all the partners and that four of the partners had entered into the partnership and the fifth had become a partner as a result of the expiry of six months' period from the date of his attaining majority and that if this defect had been noticed by the Income Tax Officer, he could have called upon the assessee to rectify the mistake but this had not been done.

9. The Tribunal also took the view that there was no basic defect in allowing the registration and the application for registration should have been rectified. It has also been held by the Tribunal that it was a fit case where the Commissioner should have directed the Income Tax Officer to call upon the assessee to file a correct application for registration condoning the delay and then proceed to

consider the claim of the assessee and so the order of the Commissioner cancelling the registration could not be upheld by the Tribunal. The Tribunal directed the Income Tax Officer to get the application rectified and pass order on such application after considering the fact that the genuineness of the firm was never doubted. The Tribunal, therefore, set aside the above order of the Commissioner and directed the Income Tax Officer to get the application rectified. The order of the Tribunal has been annexed and marked as annexure C forming part of the statement of the case.

10. On the aforesaid facts, the aforesaid questions have been referred for the opinion of this court. I shall first take up question No. 1. The Tribunal has taken the view that registration could not be refused on the ground that the application for registration was not signed by one of the partners and was justified in directing the Income Tax Officer to give an opportunity to the assessee to correct the application by putting the signature. I have already pointed out above that the accounting year of the assessee is the financial year 1967-68 from April 1, 1967, to March 31, 1968. This will be evident from the order of the Income Tax Officer contained in annexure A where he has clearly mentioned that the accounting year of the assessee-firm ended on March 31, 1968, and the application in Form No. 11 was filed on December 4, 1967. It cannot be doubted that Prem Lal became a major on May 31, 1967, and even after six months" period is taken from May 31, 1967, then this period will expire on November 30, 1967. The application for registration of the firm was filed on December 4, 1967, and so it cannot be doubted that Prem Lal was bound to sign this application on December 4, 1967. Admittedly, Prem Lal had not signed the application in Form No. 11 which was filed on December 4, 1967. The Tribunal has taken the view that the defect in the application could have been removed u/s 185(2) of the 1961 Act. The assessment year involved is 1968-69 in the present case. Sub-sections (2) and (3) of Section 185 of the 1961 Act as they existed in the assessment year 1968-69 were as follows :

"(2) The Income Tax Officer shall not reject an application for registration merely on the ground that the application is not in order, but shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation.

(3) If the defect is not rectified within such time, the Income Tax Officer may reject the application. "

11. Thus, Sub-sections (2) and (3) of Section 185 of the 1961 Act, as they existed in the assessment year 1968-69, clearly lay down that if there is defect in the application, then the Income Tax Officer should give an opportunity to the assessee-firm to remove the defect within one month and if the defect is not removed, then he is entitled to reject the application. This view is supported by various decisions.

12. In the case of Pratapmal Luxmichand Vs. Commissioner of Income Tax,

Madhya Pradesh, , although this is a decision u/s 26A of the Indian Income Tax Act, 1922 (hereinafter referred to as "the 1922 Act"), and Rule 2(c) of the Indian Income Tax Rules, 1922, the principles have been laid down clearly. In this case, an application for registration of a firm consisting of seven members u/s 26A of the 1922 Act was personally signed by six partners and was accompanied by the deed of partnership which also had been signed by those six partners. The Special Income Tax Officer rejected the application on the ground that the deed and the application were not signed by all the members or the partners. On appeal, the Appellate Assistant Commissioner (hereinafter referred to as "the Appellate Assistant Commissioner") cancelled the order of the Special Income Tax Officer and directed him to register the firm after obtaining the signature of the seventh partner both in the application for registration and in the deed of partnership and in those circumstances, it was held by their Lordships of the Supreme Court that the only power which the Appellate Assistant Commissioner had under Rule 2(c) was to accord permission to the appellants to make the application in proper form to the Income Tax Officer signed by all the partners personally including the 7th partner before the assessment was confirmed, reduced, enhanced or annulled, but the Appellate Assistant Commissioner had no power to direct the Income Tax Officer to register the firm after obtaining the signature of the 7th partner in the deed of partnership. Thus, from this decision, it is evident that the defect in the application form can be removed but the defect in the deed of partnership cannot be removed.

13. There are other decisions also supporting the view that the Income Tax Officer is bound to give an opportunity to the assessee u/s 185(2) of the 1961 Act to remove the defect in the application form.

14. It has been held in the case of *Singh Brothers and Co. Vs. Commissioner of Income Tax*, , that the power and jurisdiction of the Income Tax Officer u/s 185(2) is limited to allow the assessee to rectify the defect in the application for registration but the rectification cannot be in respect of the deed of partnership. In this case, it was held that the original instrument of partnership was invalid as a minor had been made a full partner and there was no rectification of the deed in the accounting year and so the firm was not entitled to registration for the assessment year 1967-68. Thus this decision also held that there can be rectification of defects in the application but not in the deed.

15. In the case of *Ganga Motor Service Vs. Commissioner of Income Tax and Others*, , it was held by a Division Bench of the Patna High Court, to which one of us, namely, Uday Sinha J. was a party, that Section 185(2) of the 1961 Act provides that if an application for registration was defective, the Income Tax Officer shall intimate the defect to the firm and give it an opportunity to rectify the defect and that the submission for the Department that this opportunity was meant to remove the defect in the application itself, and that too only a defect of a clerical nature, was without substance and that the enabling provision for allowing an opportunity to the assessee for rectifying the "defect" and making

the application "in order" does not admit of any narrower construction, and it will include rectifying the defect in the copy of the deed of partnership accompanying the application for registration. A similar view was again taken by the Patna High Court in the case of Alankar Jewellers Vs. Commissioner of Income Tax and Another, , where it was held that on a perusal of Section 185(2) of the 1961 Act, it is clear that if an application for registration of a firm is not in order, the Income Tax Officer shall intimate the firm to remove the defect in the application for registration and also allow an opportunity to the firm to rectify such defect within a period of one month from the date of such intimation and that the word "application" occurring in this Section includes the documents which are required to be enclosed therewith and the partnership deed which shall accompany the application for registration is part of the application and, therefore, it is mandatory on the part of the Income Tax Officer to intimate the firm to rectify the defect in the application for grant of registration and an opportunity should be given to the firm to rectify such defect within one month from the date of such intimation and that the Income Tax Officer erred in law in not issuing the notice to the petitioner-firm u/s 185(2) of the 1961 Act to rectify the application.

16. It has been held in the case of Brij Rattan Lal Bhoop Kishore Vs. Commissioner of Income Tax, , by the Allahabad High Court that Sub-sections (2) and (3) of Section 185 regarding grant of registration to a firm indicate the intention of the Legislature that registration to a firm should not be refused on account of defects in the application for registration which can be cured and the law now enjoins that an opportunity should be afforded to the firm to remove the defects, if any, and an application for registration should not be rejected without affording an opportunity to the firm and, therefore, if an application for registration is not personally signed by one of the partners of a firm, the Income Tax Officer ought to give an opportunity to the firm to rectify the defect in the application and registration cannot be refused without giving such opportunity. Thus it is evident that if Prem Lal had not signed the application for registration in Form No. 11 which was filed on December 4, 1967, the Income Tax Officer could have issued a notice u/s 185(2) of the 1961 Act for removal of the defect and then Prem Lal could have signed the application in Form No. 11. Under such circumstances, the Commissioner of Income Tax was not justified in holding that the application for registration in Form No. 11 should have been rejected as Prem Lal had not signed the application.

17. In view of my discussions above, I hold that the Tribunal was correct in holding that registration could not be refused on the ground that the application for registration was not signed by a partner, namely, Prem Lal, and in directing the Income Tax Officer to give an opportunity to the assessee to correct the application by putting the signature. Question No. 1 can thus be answered in favour of the assessee and against the Revenue.

18. Now I shall take up question No. 2. Question No. 2 relates to the validity of the partnership although the deed had not been signed by Prem Lal as a partner

when he was a major at the time of execution of the deed.

19. I have already pointed out above that Prem Lal was born on May 31, 1949, and he became a major on May 31, 1967, and the deed of partnership was executed on September 25, 1967, when the partnership came into existence on March 28, 1967. It is evident that on March 28, 1967, the partnership was started by oral agreement between the parties for which the deed was executed on September 25, 1967. Thus by an oral agreement between the parties, Prem Lal was admitted to the benefits of the partnership on March 28, 1967, when the other four partners, namely, Banarsi Das, Tilak Raj, Mahendra Kumar and Jaswant Rai, became partners of the assessee-firm. In the deed dated September 25, 1967, the date of birth of Prem Lal was mentioned as May 31, 1949. On this basis, it was submitted before the Commissioner of Income Tax that when Prem Lal became a major on May 31, 1967, he had a right to elect to become a partner after the expiry of six months from May 31, 1967, and this period of six months will expire on November 30, 1967. Reliance was placed before the Commissioner of Income Tax on Section 30(5) of the 1932 Act. Section 30(1) of the 1932 Act lays down that a person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of the partnership. Section 30(5) of the 1932 Act lays down that at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm. The proviso to Section 30(5) of the 1932 Act lays down that if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months (automatically). Thus it is evident that on December 1, 1967, Prem Lal under the proviso to Section 30(5) of the 1932 Act became a partner of the firm. The deed of partnership is not before us. It is not mentioned in any of the orders that in the partnership deed executed on September 25, 1967, there was any mention that if Prem Lal attains majority, he will have so much share in the profits and so much share in the losses. Under such circumstances, it has to be held that there was no such clause in the deed as no such argument has been advanced on this point by Mr. Rameshwar Prasad No. 2 who argued the case for the assessee-firm. I do not mean to say that six months' period as a rule should be allowed to Prem Lal in the present case but even if the six months' rule is allowed, then on December 1, 1967, he was bound to become a partner and on December 1, 1967, there will be definitely a change in the individual shares of the partners and individual shares of losses and so a fresh partnership deed will be necessary on December 1, 1967. The accounting year for the assessment year 1968-69 ended on March 31, 1968, and as no fresh partnership deed was executed on December 1, 1967, the assessee-firm will not be entitled to registration.

20. However, in the present case, I hold that when Prem Lal had become a major

on May 31, 1967, and the partnership deed was executed on September 25, 1967, the partnership deed did not recite the correct facts and that when on September 25, 1967, Prem Lal was a major then he should not have been described as a minor when in the deed itself the date of birth of Prem Lal was given as May 31, 1949. It cannot be said that the partners missed this fact. The partners will be presumed to know on the basis of the date of birth of May 31, 1949, that Prem Lal was a major long before the date of the execution of the partnership deed dated September 25, 1967, and so in the partnership deed dated September 25, 1967, Prem Lal was described as minor when he should have been described as major partner and so it has to be held that the partnership deed was a defective deed and the defect could not be removed by putting the signature of Prem Lal and so, in view of this circumstance alone, registration could not be granted to the assessee-firm.

21. Even if it is held that Prem Lal attained majority on May 31, 1967, and so he had six months' time up to November 30, 1967, to decide whether he should be a partner in the firm or not, in view of the proviso to Section 30(5) of the 1932 Act, Prem Lal became a partner under the law on December 1, 1967, and so a fresh deed should have been executed specifying the shares of profits and losses of all the partners. No such deed has been executed. It has not been asserted on behalf of the assessee by Rameshwar Prasad No. 2 that in the deed dated September 25, 1967, there was a provision that on attaining majority, Prem Lal will have a particular share in the profits and losses of the firm. If there is no such provision in the deed, then on December 1, 1967, a fresh partnership deed was necessary and on this ground also, the registration to the assessee-firm could not be granted.

22. In the view which I have taken I am supported by various decisions. It has been held in the case of NIADAR MAL JAGDISH PARSHAD Vs. COMMISSIONER OF Income Tax, SIMLA., , which is a Full Bench decision of the Punjab High Court, that the requirements of law as to the registration of a partnership firm u/s 26A of the 1922 Act are : (a) the factual existence of the partner-ship during the whole of the accounting year under an oral agreement or a written instrument, (b) the existence of a written instrument during the accounting year specifying the individual shares of the partners and that if these requirements are satisfied, then the firm has to be registered for the assessment year to which the accounting year corresponds and it is immaterial when, during the accounting year, the instrument is executed. It was also held in this decision that a firm which came into existence by a verbal agreement was entitled to be registered u/s 26A of the 1922 Act if on the date of the application for registration, the terms and conditions of the partnership had been reduced to writing and the application for registration had been accompanied by such an instrument provided that the instrument of partnership was in existence during the relevant accounting year. It has also been held in this decision that under the partnership law, if a partnership comes into being by an oral agreement and later on an instrument of partnership is executed, the rights and liabilities of the partners will be governed

by that instrument from the very inception of the partnership. It appears that the principle still holds good u/s 184(1) of the 1961 Act. Thus by an oral agreement, a partnership can be brought into existence but the partnership deed must be in existence during the accounting year.

23. It has been held in the case of GANESH LAL LAXMI NARAIN Vs. COMMISSIONER OF Income Tax [1968] 68 ITR 969 (ALL) TREATED AS OVERRULED BY THE FULL BENCH DECISION IN BADRI NARAIN KASHI PRASAD v. ADDL. COMMISSIONER OF Income Tax [1978] 115 ITR 858 (ALL) : SEE COMMISSIONER OF Income Tax v. BAJAJ and CO. [1983] 143 ITR 218 (ALL)., , while considering Section 26A of the 1922 Act, by the Allahabad High Court that according to the law governing partnerships, it was not necessary in order to constitute a valid partnership that a minor, upon attaining majority, should execute a partnership deed along with the existing partners, and if there is no election by the minor, when he attains majority, to opt out of the partnership, the minor, on attaining majority, must be deemed to have become a full-fledged partner of the firm. It has also been held in this decision that this rule does not satisfy the requirements of the Income Tax law in respect of the registration of a firm and since Section 26A provides for the registration only of a firm constituted under an instrument of partnership specifying the individual shares of the partners, refusal to renew registration of the firm was not illegal.

24. It has been held in the case of Ram Das Ashok Kumar Vs. Commissioner of Income Tax, , by the Allahabad High Court, that there is no change in the constitution of a firm by the mere fact of a minor, admitted to the benefits of the partnership, becoming a major and electing to remain a partner and that he was already a partner and he continues as a partner; but it has to be determined whether there has been a change in the shares of the partners as evidenced by the instrument of partnership. It has also been held in this decision that a minor is not liable to share the losses of the firm though he is entitled to a share in the profits and the share of the losses relating to the share of the minor has to be provided for after he becomes a major. It has also been held in this decision that if, on a reasonable construction of the original instrument of partnership, the redistribution of the shares in losses cannot be ascertained, it will be a case where the instrument of partnership does not evidence the change in the shares and in case the original instrument of partnership envisages this change, the firm will be entitled to a continuance of the registration u/s 184(7) of the 1961 Act. It has also been held in this decision that it is necessary to see the original instrument of partnership with a view to find out whether it makes an adequate provision for the share in loss on the minor attaining majority and that it is not necessary that in a case where the relevant information is available in the original instrument of partnership itself, a fresh instrument of partnership must be drawn up. It has also been held in this decision that the matter cannot be decided merely on the footing that a fresh deed of partnership was not executed and that the original deed of partnership has to be looked into and if it fails to provide requisite information, then alone the cancellation of registration could be

held valid on the footing that a fresh deed of partnership had not been executed. Thus, it is evident that if there is no provision in the deed showing that the minor on attaining majority will share the profits and the losses in a particular specific share, then a fresh deed is necessary.

25. It has been held in the case of P.N. Sarmah Vs. Commissioner of Income Tax, , by the Gauhati High Court, that under the provisions of the 1932 Act, a minor admitted to the benefits of a partnership has two options open to him on attaining majority : (i) he may elect to become a partner in the firm; or (ii) he may repudiate or elect not to become a partner and if he elects to become a partner, he need not do anything nor give any public notice. On the expiry of six months, he becomes a partner of the firm. This is purely on the interpretation of the proviso to Section 30(5) of the 1932 Act.

26. It has been held in the case of Mobarak Ali Khan and Sons Vs. Income Tax Officer, A-Ward, , which is a decision of the Allahabad High Court, that where a minor who had been admitted to the benefits of the partnership attained majority on November 18, 1967, and the accounting year of the firm ended on December 31, 1967, before he could exercise his option u/s 30(5) of the 1932 Act within the period of six months given to him to join the firm as a partner, then there was no change in the constitution of the firm and the firm was entitled to continuance of registration.

27. In the case of Addl. Commissioner of Income Tax Vs. Gauri Vishwanath Dal Mills, , which is a Full Bench decision of the Allahabad High Court, for the assessment year 1962-63, the Income Tax Officer found that the loss was apportioned among the partners in a manner different from what was contemplated" in the partnership deed. The explanation furnished by the assessee was that one of the minors had attained majority. The Income Tax Officer took the view that after the minor had attained majority, a fresh deed of partnership should have been executed and, as this had not been done, the firm was not entitled to renewal of registration for the assessment year 1962-63. In those circumstances, it was held by the Full Bench of the Allahabad High Court that after the minor had attained majority, there was a change in the shares of the losses of the partners and there was no material for ascertaining how the losses were to be apportioned among the partners as a result of the minor becoming a major from the instrument of partnership and, therefore, the assessee-firm was not entitled to the renewal of registration for the assessment years 1963-64 and 1964-65. It was observed in this connection that the benefits of continuance of registration in the years subsequent to the year of original registration u/s 184(7) of the 1961 Act is dependent upon two conditions, namely, that the assessee files a declaration in Form No. 12 along with its return and there has not been a change in the constitution of the firm or in the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted.

28. In the case of Commissioner of Income Tax Vs. Mathura Prasad Annoolal, ,

two minors had been admitted to the benefits of a partnership. Registration of the firm had been continued up to the assessment year 1968-69. One of the minors, RL, became a major on March 14, 1969. For the assessment year 1969-70, a fresh application for registration in Form No. 11-A was filed by the firm along with a new deed of partnership executed on June 12, 1969. The Income Tax Officer rejected the application for registration as a fresh partnership deed had not been executed before March 31, 1969. In those circumstances; it was held by the Allahabad High Court that RL became a major on March 14, 1969, and the assessment year 1968-69 ended on March 31, 1969, and that up to that date, the period of six months given to a minor by Section 30(5) of the 1932 Act to exercise his option about his joining the firm as a partner had not expired and that during this period he continued to enjoy the same status in the firm as he had before attaining majority and before this period expired, a fresh partnership deed was entered into on June 12, 1969, and, thereafter, the application was filed for registration of the firm. It was, therefore, held that the Income Tax Officer was not right in holding that since a new partnership deed had not been entered into before March 31, 1969, the assessee could not be granted registration as no change in the constitution of the partnership had been brought about merely because RL, one of the partners, attained majority on March 14, 1969. The Allahabad High Court also held that the contention for the Revenue that inasmuch as under the definition of "partner" in Section 2(23) of the 1961 Act, a minor is a partner for the purposes of the Act, the question of waiting for six months as provided for in Section 30 of the 1932 Act did not arise, cannot be accepted as the question whether a partner admitted to the benefits of the partnership becomes a partner immediately on attaining majority is to be decided with reference to Section 30 of the 1932 Act apart from the definition given in the Income Tax Act.

29. From the aforesaid decisions, it is evident that under the proviso to Section 30(5) of the 1932 Act, a minor becomes a full-fledged partner in the firm on the expiry of six months and if on the expiry of six months no fresh partnership deed is executed and there is no provision in the original deed as to what will be his share of profits and losses in the partnership firm if the minor becomes a major, then a fresh partnership deed will have to be executed.

30. I have already pointed out above that it has not been asserted on behalf of the assessee-firm that there was any provision in the deed of partnership dated September 25, 1967, that the minor on attaining majority will have specific share in the profits and losses. In such circumstances, it was incumbent that on December 1, 1967, a fresh partnership deed should have been executed. I have already pointed out above that the accounting year of the assessee is the financial year which ended on March 31, 1968, and so when Prem Lal became a major on May 31, 1967, a fresh deed of partnership should have been executed on December 1, 1967, after a lapse of six months but no fresh deed of partnership has admittedly been executed during the accounting year from April 1, 1967 up to March 31, 1968, and, on this basis, the assessee-firm is not

entitled to registration.

31. However, I have already pointed out above that Prem Lal became a major on May 31, 1967, and so when the partnership deed was executed on September 25, 1967, Prem Lal should have been made a partner on September 25, 1967, and he could not be described as a minor on that date as all the partners knew that Prem Lal had become a major on May 31, 1967, when in the deed itself the date of birth of Prem Lal was shown as May 31, 1949, Under such circumstances, the partnership deed dated September 25, 1967, showing Prem Lal as a minor admitted to the benefits of the partnership was not a legal deed of partnership and so no legal firm came into existence on September 25, 1967, and so the firm was not entitled to registration on the basis of the partnership deed dated September 25, 1967, which contains false recitals showing Prem Lal as a minor and, on this basis, it has to be held that the Commissioner of Income Tax was justified in cancelling the order of the Income Tax Officer contained in annexure A.

32. The Commissioner of Income Tax has relied on the case of Kishore Chand Ramji Dass Vs. Commissioner of Income Tax, for the purpose that the omission by a major partner to sign an application u/s 26A of the 1922 Act for registration of a firm renders that application defective so that the registration could be refused. However, I have already discussed above that the defect in the application can be removed in view of Section 185(2) of the 1961 Act.

33. In view of my above discussions, I hold as regards question No. 1 that the Tribunal was correct in holding that the registration could not be refused on the ground that the application for registration was not signed by a partner and in directing the Income Tax Officer to give an opportunity to the assessee to correct the application by putting the relevant signature. Hence, question No. 1 is answered in the affirmative and in favour of the assessee and against the Revenue. However, in view of my findings relating to question No. 2, the finding on question No. 1 is merely academic. As regards question No. 2, I hold that the Tribunal was not correct in law in holding that the partnership was valid in spite of the fact that the deed had not been signed by the partner who was a minor at the time of coming into existence of the firm but was a major at the time of the execution of the deed. Question No. 2 is, accordingly, answered in the negative and against the assessee and in favour of the Revenue. As both parties have partly succeeded, there will be no order as to costs. Let a copy of this judgment be sent under the seal of the court and the signature of the Registrar to the Assistant Registrar of the Tribunal which shall pass such orders as are necessary to dispose of the case conformably to this judgment.

Uday Sinha, J.

34. I agree.