

(1979) 08 AP CK 0009

In the Andhra Pradesh High Court

Case No : Case Reference No. 135 of 1976 & Case Referred No. 135 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Krishna Mining Co.

RESPONDENT

Date of Decision : 24-08-1979

Acts Referred:

Income Tax Act, 1922 — Section 26A
Income Tax Rules, 1922 — Rule 2

Citation : (1980) 122 ITR 362

Hon'ble Judges : C. Kondaiah, C.J.; Ramachandra Rao, J.; P.A. Choudary, J.; Gangadhara Rao, J.; Chennakesav Reddy, J

Bench : Full Bench

Advocate : P. Rama Rao and A. Krishna Kumar, for the Appellant; S. Parvatha Rao, amicus curiae, for the Respondent

Judgement

Kondaiah, C.J.—This is a reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter called "the Act"), made by the Income Tax Appellate Tribunal, Hyderabad Bench, for the opinion of this court on the following question of law :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to the benefits of registration u/s 26A of the Indian Income Tax Act, 1922, for the assessment year 1959-60 ?"

2. The material facts as disclosed from the statement of case are as follows : The assessee is a partnership firm constituted under the deed of partnership dated August 12, 1942, with two partners, viz., Sri G. Ven-katasubbaiah and Sri G. Venkateswara Rao, sharing profits and losses equally. They were the kartas of their respective HUFs, which owned the firm's business originally. There were genuine partitions of movable and immovable properties among the members of both the families by September 30, 1958. Consequent upon the partition in each of the two families of the partners, there was a change in the constitution of the firm under a partnership deed drawn up on October 1, 1958. The members of the divided families became partners including some minors who had been

admitted to the benefits of the partnership. The profit-sharing ratio in accordance with the new deed is as follows :

Name Share in profits

1. G. Venkatasubbaiah 12½%
2. Smt. G. Audilakshamma (Widowed eldest daughter-in-law of No. 1) 4-1/6%
3. G. Seshagiri Rao 4-1/6%
4. Shri G. Venkateswara Rao 12½%

(Following minors have been admitted to the benefits of the partnership)

1. G. Pitcheswara Rao 4-1/6% | | | Sons of partner No. 2
2. G. Sekhar Babu 4-1/6%
3. G. Sekhar Babu 4-1/6% | | | Sons of partner No. 3
4. G. Ravi Kumar 4-1/6%.
5. G. Mohan Rao 12½% Son of partner No. 1
6. G. Giri Babu 12½% | | | | Sons of partner No. 4
7. G. Ramesh 12½%
8. G. Kumara Raja 12½%

3. For the assessment year 1959-60, the assessee-firm had filed an application u/s 26A of the Indian I.T. Act, 1922, on January 20, 1959, for the registration of the firm furnishing the names of the partners and the minors who have been admitted to the benefits of the partnership and their profit-sharing ratio as per the deed dated October 1, 1959. The ITO refused registration on the ground that the deed is silent as to the exact proportion in which losses, if any, are to be borne by the major partners. The supplemental deed executed on 15th August, 1959, indicating the ratio of losses, if any, to be divided between the four major partners was not acted upon as the same was executed not during but after the end of the accounting year. Though the ITO was of the view that the omission of not indicating the sharing of the losses, if any, amongst the major partners in the original deed of partition was by inadvertence, the registration was refused on the ground that there was no specification of the individual shares of the partners in respect of losses, if any. He was also of the view that if the firm wanted the benefits of registration the accounts should have been closed by August 30, 1959, and the profits up to that period should have been distributed among the two partners.

4. On appeal, the AAC held that the firm was genuine, that the grounds on which the ITO refused registration are only technical, that the partnership deed itself provides for the sharing of losses also, that a plain meaning of Clause 10 of the

deed is that the losses would be borne by the major partners only and that the partners would share losses also in the same ratio as the profit-sharing ratio indicated therein and ordered accordingly.

5. The ITO preferred an appeal to the Income Tax Appellate Tribunal challenging the correctness of the decision of the AAC and praying to restore his order for the reasons indicated therein. The Income Tax Appellate Tribunal agreed with the AAC and found thus:

"It is clear from the clauses of the partnership deed read as a whole, that the parties intended to share the losses and the proportion can be culled out from other-recitals in the partnership deed. The intention of the parties is clearly brought out. When the parties stated that the losses would be borne by all the major partners, it amounts that the major partners would share the losses in the proportion in which they agreed to share the profits. The profit-sharing ratio has been mentioned in clause No. 10 and in that proportion the losses can be distributed. In our opinion, the clause which we have extracted read with Clause 10 of the partnership deed and the conduct of the parties in so far as the distribution of the profits is concerned does not leave any room for doubt as to the intention of the parties regarding the sharing of losses."

6. The decision of this court in COMMISSIONER OF Income Tax, A. P. Vs. MANDYALA GOVINDU AND CO., was distinguished and relying on Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, , the Tribunal held that there was no infirmity in the partnership nor was there any violation of any of the provisions of Section 26A of the Indian I.T. Act, 1922. It consequently granted registration. The Tribunal was in full agreement with what the AAC had stated with regard to the closing of the accounts on 31st March, 1959, as the business was continued and carried on without any interruption in spite of the change in the constitution of the firm and the accounts. As there was an agreement among the partners to share the profits right from the beginning of the year till the accounts are closed as usual, the distribution of the profits for the entire year among all the partners was held to be in order. The Tribunal found that the parties, after the partition of all the family members, were entitled to profits and, therefore, the giving of the profits to all the partners for the entire year was quite consistent with what they would have otherwise got. The plea of the revenue that altogether a new firm came into existence from October 1, 1958, was not acceded to by the Tribunal on the ground that the provisions of the Partnership Act would apply subject to the contract to the contrary between the parties. The conduct of the parties in the case on hand and their position prior to the partnership deed dated October 1, 1958, clearly indicate that they intended to divide the profits right from the beginning. Simply because there was a change in the constitution of the firm on October 1, 1958, it cannot be said that altogether a new firm had come into existence on that date. The Tribunal also mentioned that in fact there were no losses in the year under consideration and, therefore, the question regarding specific sharing of the losses was only

academic. The further objection raised by the revenue that the application was defective on some other grounds was not accepted on the ground that it was belated and even otherwise, the application was not found to be defective. On a consideration of the entire facts and circumstances, the Tribunal found that the genuineness of the assessee-firm itself was never doubted nor the partitions, which were effected in the respective families, were in doubt and the appeal preferred by the ITO was dismissed upholding the conclusion of the AAC that the assessee-firm was entitled to the grant of registration. Hence, this reference at the instance of the Commissioner.

7. When the case came up before a Division Bench, the correctness of the decision of the Full Bench of this court in Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, had been challenged in view of the decision of the Supreme Court in Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, . Therefore, this larger Bench has been constituted to have an authoritative pronouncement on the question. That is how this case has come up before us.

8. The sum and substance of the submission of Sri P. Rama Rao, learned standing counsel for the I.T. department, is that there is no specification of the partners' shares in respect of losses in the deed of partnership, that this defect is fatal to the claim of the assessee-firm for the grant of registration, that the decision in Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, is no longer good law in view of the decision of the Supreme Court in Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, and that the division of profits among all the partners for the entire year is violative of the terms of the deed of partnership since a new firm had come into existence with effect from October 1, 1958.

9. This claim of the revenue is resisted by Sri S. Parvatha Rao, learned counsel appearing as amicus curiae, contending, inter alia, that on a reading of all the material clauses in the deed of partnership the intention of the partners was to share the losses, if any, in the proportion in which they agreed to share the profits and that in any event there is sufficient material in this case on the basis of which it can safely be gathered that the intendment of the major partners was to share the losses, if any, in the same proportion in which they agreed to share the profits. He further contends that the law laid down by the Full Bench of this court in Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, holds good as the decision of the Supreme Court in Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, is distinguishable on facts, that there is no illegality in dividing the profits of the entire year notwithstanding the change in the constitution of the firm on October 1, 1958, that the genuineness of the firm is not in doubt and that there is no error of law in the decision of the Tribunal.

10. Before dealing with the facts of the case, we may consider the law concerning the question. The registration u/s 26A of the Indian I.T. Act, 1922,

confers on the parties the benefit of lower rates of assessment and no tax is directly charged on the income of the assessee-firm. Partners would not be entitled to the benefits but for Section 26A which reads thus:

"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 and 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."

11. u/s 2(6B) of the 1922 Act, the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership. Section 30 of the Indian Partnership Act prohibits a minor from becoming a full partner. Therefore, a minor may be admitted to the benefits of the partnership with the consent of the other major partners. But under Sub-section (2) of Section 30, he cannot be made liable for losses. He can elect, on attaining majority, either to continue or refuse to continue as a partner in the firm u/s 30 of the Partnership Act. No deed of partnership which traverses beyond the scope of Section 30 of the Indian Partnership Act can be regarded as valid for the purpose of registration u/s 26A of the 1922 Act.

12. Rule 2 framed u/s 59 of the Indian I.T. Act, 1922, requires that the application shall be signed by the partners personally and prescribes the period within which the application shall be made for the year in question. Rule 3 provides that the application shall be made in the prescribed form and shall be accompanied by the original instrument of partnership. Rule 4 provides that if the ITO is satisfied that there is or was a firm in existence constituted as indicated in the partnership deed and that the application has been properly made, he shall enter in writing at the foot of the instrument a certificate in the prescribed form. Therefore, in order to get a firm registered for the purposes of the Act, there must exist a valid and genuine partnership constituted under an instrument specifying the individual shares of the partners and an application with the deed signed by all the partners personally and in conformity with the rules must be filed before the ITO, within the time prescribed therefor.

13. Section 26A read with Rules 2, 3 and 4 made u/s 59 of the 1922 Act enjoins a duty on the ITO to register a firm if the application made by the assessee-firm furnishes the requisite particulars. The ITO can refuse to register a firm if the application is not in conformity with the rules or if the firm is not genuine or has no legal existence. However, the discretion vested in the I.T. authorities u/s 26A is a judicial one and, therefore, the application for registration cannot be refused on suspicion or speculation ; nor is it open to the ITO to look into the instrument of partnership and the application for the purpose of finding loopholes to justify

the rejection of registration. But the instrument of partnership should be looked into or examined with a view to see whether there was a genuine firm and the requisite particulars entitling the firm to be registered were furnished and not to see how best the assessee could be denied the benefit of Section 26A. In other words, if the requisite conditions are satisfied the ITO has no power to reject the application except grant registration.

14. True, the right to obtain the benefit of registration is strictly regulated by the terms of the statute which confers it and the partnership seeking relief thereunder must bring itself strictly within the terms thereof. See *Ravula Subba Rao and Another Vs. The Commissioner of Income Tax, Madras*, . The instrument of partnership must be in existence in the accounting year in respect of which an assessment has been made. See *P.R. Chowdhary and S. Gangoli Vs. The State of U.P.*, . A supplemental deed of partnership rectifying the omissions in the original deed but executed after the year of account cannot be taken into account while considering the claim of the firm for registration for that year. It is well settled that unless the instrument of partnership specified the individual shares of the partners, the instrument of partnership would not conform to the requirements of Section 26A. (See *N.T. Patel and Company Vs. Commissioner of Income Tax, Madras*,).

15. As already stated, the firm to be registered must have been constituted under an instrument of partnership specifying the individual shares of the partners. This requirement, if found missing, is fatal to the claim of any firm for registration under this Section. It, therefore, falls to be considered what exactly the expression "an instrument of partnership specifying the individual shares of the partners" means. Section 26A, therefore, contemplates only such firm which is constituted under a deed of partnership specifying the individual shares of the partners that can claim this benefit. When the deed of partnership does not specify or indicate the individual shares of the partners, such firm is not entitled to registration u/s 26A.

16. The statute only requires the specification of the individual shares of the partners. This requirement of specifying the individual shares of the partners would be satisfied on a reasonable and fair construction of the deed of partnership as a whole. The specification of the individual shares of the partners may be either express or implied or worked out. It is one of intention or object of the partners who constituted the firm. This intention and object of the partners of the firm with regard to the specification of the individual shares of the partners can be gathered either from the very recitals of the deed of partnership as a whole or from the proved facts and circumstances indicated in the application for registration, books of account and the conduct of the parties. The specification of the shares of the partners is required for the purpose of distributing the profits or losses, as the case may be, among the partners and for enabling the I.T. authorities to make proper assessments on the true income of each one of the partners of the firm. Section 26A does not indicate that the

specification of the shares is for distributing the profits or losses. But that is normally implied. The very object of this requirement is to grant benefits of registration to valid and genuine firms only. The genuineness of the partnership is the most important condition precedent to claim registration under the Act. The trend of the legislation as could be seen from the provisions of the Act governing the registration of a firm is that technical defects are not very material when the genuineness of the firm is not doubted. Where the genuineness of the firm is not in doubt and if there is no change in the constitution of the firm, renewal of registration has to be granted by the I.T. authorities without much difficulty.

17. The term "specifying" is not defined either in the Act or in the Rules made thereunder. It has, therefore, to be interpreted reasonably and fairly. It is now well settled that the instrument of partnership must be construed reasonably. In *Commissioner of Income Tax, Mysore Vs. Shah Mohandas Sadharam*, , it was held that an instrument of partnership must be construed reasonably and that a guardian is entitled to agree to contribute capital on behalf of the minor, accept the benefits of partnership on his behalf, scrutinise the terms on which such benefits are received and do all that is necessary to effectuate the conferment and receipt of the benefits of partnership. To the same effect is the decision of the Supreme Court in *Commissioner of Income Tax, Mysore Vs. Shah Jethaji Phulchand*, .

18. In *Kylasa Sarabhiah, Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh*, , the Supreme Court held:

"The word "specifying" was used in Section 26A and rule 2 of the Indian Income Tax Rules, 1922, as meaning "mentioning, describing or defining in detail": it did not mean expressly setting out in fractional or other shares."

19. The question that fell for decision in that case was whether a larger firm constituted with five partners under a deed of partnership in which a smaller firm was described as the first partner and its members were collectively shown as having a share of 6 annas 9 pies in the profits of the larger firm in which four minors were admitted to the benefits of the partnership was entitled to registration u/s 26A. On a consideration of the material recitals in the deed it was held that the agreement for the constitution of the larger firm was in truth between the three major members who constituted the smaller firm and four outsiders, that the substance of the agreement could not be permitted to be overshadowed merely by the use of the collective description of some of the persons who agreed to be partners, that in the deed of partnership of the larger firm the shares were clearly defined, though they were not worked out in precise fractions, and that any defect in the deed of the smaller firm could not affect the right of the larger firm to be registered and, therefore, the larger firm was entitled to be registered u/s 26A.

20. *Parekh Wadilal Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh*,

Nagpur and Bhandara, Nagpur, is an authority for the proposition that the deed of partnership providing only that "profits or losses shall be divided amongst partners" without specifying the individual shares was considered to be sufficient to satisfy the requirement of specification of individual shares of the parties or persons within the meaning of Section 26A as the profits shown in the accounts and the application for registration had to be divided equally.

21. In *Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad*, the Supreme Court held:

The Income Tax Officer, before allowing the application for registration u/s 26A of the Indian Income Tax Act, 1922, must be in a position to ascertain the shares of the partners in the losses even if Section 26A did not require the shares in the losses to be specified in the instrument of partnership.

22. Where the shares in the profits were unequal, the losses must be shared in the same proportion as the profits also if there was no agreement as to how the losses are to be apportioned.

23. If the adult partners were to bear the losses in proportion to their respective shares in the profits, there was no means of ascertaining how the amount of loss in the minor's share was to be apportioned and, therefore, the firm was not entitled to registration u/s 26A.

24. It is pertinent to notice that there was no provision in the instrument of partnership indicating the proportion in which the partners were to bear the losses. This is made clear in the judgment of this court in *COMMISSIONER OF Income Tax, A. P. Vs. MANDYALA GOVINDU AND CO.*,

".....clause 2 of the partnership deed specifies the shares of the partners including that of the minor partner in the profits and it also specifies that the profits of the partnership business shall be divided and enjoyed according to the shares specified in Clause 2 of the partnership deed. There is, however, no specific clause stipulating as to the manner in which the losses, if any, sustained by the firm, shall be borne by the partners."

25. The decision of the Full Bench of this court in *Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others*, is an authority for the proposition that the registration of a partnership cannot be refused u/s 26A of the Act, as long as the shares of the partners in profits and losses can be worked out according to the specifications made in the partnership deed, that the specification of the shares need not be expressly set out in fractional or other shares, that there is no rule which compels the partnership firm always to take 100 paise or 16 annas as a unit, that it is open to the partners to take any digit as a basis and specify the shares in profits and losses and that the question of construction of the deed varies from case to case. On the facts of that case, it was held that the intention of the partners was evidently to take 100 paise as a unit for division of profits and 93 paise as one unit for sharing of losses and, therefore, the firm was

entitled to registration. The decision of the Division Bench in COMMISSIONER OF Income Tax, A. P. Vs. MANDYALA GOVINDU AND CO., was distinguished on facts as there was no clause in the partnership deed providing for the division of losses by the partners in any manner.

26. A Division Bench of this court consisting of Kumarayya C.J., and one of us, Kondaiah J. (as he then was) in S. R. G. Ginning & Oil Mills v. CIT [1970] 2 APLJ 194 observed thus at page 206 :

"It is settled law that the deed of partnership, for the purpose of registration u/s 26A of the Act, must be construed fairly and reasonably. The intention of the parties at the time of the execution of the deed of partnership as revealed from the clauses of the very instrument, is a relevant and material factor to find whether the minors have been made full partners or they have been admitted only to the benefits of partnership. Mere mention of the minors as partners in the preamble and their being represented by their guardians in the execution of the document will, in our considered opinion, none the less affect the validity of a genuine partnership."

27. In CIT v. R. S. Nikhera Construction Co. [1978] 114 ITR 294 the deed of partnership of the assessee-firm indicated that the eight partners of the firm formed themselves into three groups to share the profits at 1/3rd each. The claim of the assessee-firm for registration was refused by the I.T. authorities on the ground that the share of each partner of the various groups was not specifically mentioned in the deed of partnership. A. P. Sen C.J., speaking for the court, observed at page 296 :

"The department does not deny that the partners of each group were collectively entitled to 1/3rd share in the profits of the firm. It is true that the share of each partner of the respective group is not specifically mentioned, but, by implication, the partners are entitled to equally share the profits falling to the share of their particular group."

28. On a consideration of the entire material in that case it was held (Headnote):

"Even though the partnership deed did not expressly mention the individual shares of the eight partners, it mentioned that they belonged to three groups and each was to have one-third share in the profits. The deed also stipulated that the partners of each group would, in that proportion, bear the loss also. Though the share of each partner of the respective group was not specifically mentioned, yet, by implication, the partners were entitled to equally share the profits falling to the share of their particular group, because the department itself had assessed each of the eight partners on his one-third share. Therefore, the Tribunal was right in directing the Income Tax Officer to grant registration to the firm u/s 26A of the Act."

29. Chapter XVI of the Act consisting of Sections 182 to 187 provides for special provisions applicable to firms. Section 184 provides for the filing of an application

for the registration of a firm for the purposes of the Act, whereas Section 185 prescribes the procedure to be followed by the ITO, on receipt of such application. Sub-section (2) of Section 185 requires the ITO to intimate the defect, if any, in the application or if the application was not in order, give the firm an opportunity to rectify the defect within a period of one month from the date of such intimation. If the defect is not rectified within that period, the ITO shall reject the application. The ITO also has to provide an opportunity to rectify the defect in the declaration furnished by the firm in pursuance of Sub-section (7) of Section 184 if it is not in order. These provisions have been made in the new Act as Parliament did not intend to refuse registration to a firm which is really genuine and is entitled to the benefits of registration.

30. The trend of legislation governing registration of a firm for the purposes of the I.T. Act is that registration should not be refused to genuine firms on technical grounds. Where the deed of partnership did not specify the individual shares of partners either in respect of profits or in respect of losses, it can be rectified by the partners if the defect was pointed out immediately to the firm. The ITO has to assess the income of the partners and there is no difficulty in completing the assessments of the partners in the years during which no loss has been incurred or suffered by the firm. In the absence of a contract to the contrary, the loss must be shared by the major partners in the same proportion in which they are entitled to share the profits. It is not necessary that the instrument of partnership should give the detailed working out of the shares or the legal inferences to be drawn.

31. From the aforesaid discussion, the following principles emerge :

1. Section 26A confers a beneficial right or interest on a firm entitling it for registration for the purposes of the Act, if the application made by it furnishes the requisite particulars prescribed by Rules 2, 3 and 4.
2. In order to entitle a firm for registration there must exist a valid and genuine partnership constituted under an instrument.
3. Such deed of partnership must specify, either expressly or by implication, the individual shares of the partners.
4. The intendment and object of the requirement of specification of the individual shares of the partners may be gathered on a reasonable and fair reading of the whole document of partnership with the particulars furnished in the application.
5. Whether or not there is a specification of the individual shares of partners, which is one of the important ingredients to be established to enable a firm to get registration for the purpose of the Act, is a mixed question of fact and law to be determined on the facts and circumstances of each case.
6. The application for registration must be signed by all the partners personally.
7. The term "specify" used in Section 26A and Rule 2 means "mentioning,

describing or defining in detail "but does not mean" expressly set out in fractional or other shares".

8. Where no provision at all for sharing of the profits or losses is made in the deed of partnership such a partnership firm is not entitled for registration.

9. Where there is provision for sharing the profits only but not losses, such firm also is not entitled for registration.

10. Where there is a specific provision in respect of sharing of the profits as well as losses but a fraction of the shares in losses, the firm must be registered.

11. Where a minor or minors are admitted to the benefits of partnership only, the sharing of the losses must be provided amongst the major partners.

12. If the major partners have agreed to share the losses, if any, without the actual sharing ratio, they would, normally, share the losses in the same proportion as they share the profits in respect of which, a specific provision has been made, unless otherwise, provided.

13. There can be no hard and fast rule of universal application in this regard. Each case must depend upon the reasonable and fair construction of the deed of partnership as a whole and the particulars furnished in the application for registration and the conduct of the parties.

32. Applying the aforesaid principles, we shall now examine the present case. Admittedly, the assessee-partnership started in the year 1942 with two partners, viz., G. Venkatasubbaiah, partner No. 1, and G. Venkateswara Rao, partner No. 2, having equal shares in profits and losses. Both of them were the kartas of their respective HUFs, which owned the firm's business originally. Each of the original partners had three sons : The sons of Venkatasubbaiah are 1. the husband of Smt. G. Audilakshamma, the second partner, 2. G. Seshagiri Rao, the third partner, and 3. G. Mohan Rao, minor, who was given 12 1/2% share in the profits. As the husband of G. Audilakshamma, the 2nd partner, died, she was given 4-1/6% share whereas her two minor sons, Pitcheswara Rao and Sekhar Babu, were each given 4-1/6% share in the profits. G. Seshagiri Rao, the second son of Venkatasubbaiah, was given 4-1/6% share whereas his two minor sons, Sekhar Babu and Ravi Kumar, were each given 4-1/6% share in the profits. The third son of Venkatasubbaiah who was a minor, viz., Mohana Rao, was having 12 1/2% share in the profits. Audilakshamma, the 2nd partner, represents the branch of her husband along with her two minor sons and the entire branch will have 12 1/2% share in the profits. Similarly, in the case of G. Seshagiri Rao, the third partner. G. Venkateswara Rao, the half-sharer in the original firm, has three minor sons and they were each given 12 1/2% share in the profits along with him. The share of profits of G. Venkateswara Rao and his three minor sons would come to 50% whereas the share of profits of Venkatasubbaiah and the three branches of his sons, each having 12 1/2%, would make the total of 50%. In short, the profit-sharing adopted in the firm

constituted under the deed of partnership dated October 1, 1958, maintained the original proportion of the profit-sharing, agreed upon under the original deed of partnership which carried on business from August 12, 1942.

33. The statement of case also indicates that there was a change in the constitution of the firm consequent upon the partition in each of the two families of the partners in respect of their interest in the firm on September 30, 1958, whereby the members of the divided families became partners including some minors who had been admitted to the benefits of partnership, Clause 10 of the deed of partnership referred to earlier clearly indicates that the losses, if any, shall be borne only by the "parties hereto". The expression "parties hereto" refers to the four major partners, viz., G. Venkatasubbaiah, Smt. G. Audilakshamma (widowed eldest daughter-in-law of Venkatasubbaiah), G. Seshagiri Rao (son of Venkatasubbaiah) and G. Venkateswara Rao. The aforesaid clause specifically mentions that the minors, eight in number, had been admitted to the benefits of the partnership and they shall not be liable in any manner for losses. The ITO also was of the view that it was only an omission in not describing the ratio of the losses, if any, amongst the major partners though they agreed to share the losses, if any, amongst themselves and the minor sons were not liable, for any loss since they were admitted only to the benefits of the partnership. Admittedly, the profit-sharing ratio amongst the major as well as the minor partners has been clearly indicated in the deed of partnership itself. The Tribunal, which is the final fact finding authority, held that by reading all the clauses of the partnership deed as a whole the parties intended to share the losses and the proportion could be culled out from the other recitals in the partnership deed. The intention of the parties is clearly brought out. When the parties stated that the losses would be borne by all the major partners, it amounts to that the major partners would share the losses in the proportion in which they agreed to share the profits. The distribution of the profits for the entire year amongst all the partners was held to be valid as there was an agreement between the partners to share the profits right from the beginning of the year till the accounts are closed as usual. The Tribunal also took note of the fact that there were no losses so far as the year under consideration was concerned and the question regarding losses was only academic. The genuineness of the firm was never doubted nor the partitions which were effected in the respective families were in doubt. The Appellate Tribunal agreed with the AAC that the firm is genuine and is entitled to registration.

34. On a careful and proper reading of all the clauses of the partnership deed as a whole, we have no hesitation to hold that the major partners alone intended to share the losses, if any. The respective guardians, who represent the bigger family, would be liable to bear his loss incurred by the minors. G. Venkatasubbaiah would bear the loss at 12 1/2% as well as 12 1/2% of his minor son, G. Mohana Rao, i.e., he will bear a total loss of 25%. G. Audilakshamma would be liable for loss of her share of 4-1/6% and the two shares of her minor sons, each at 4-1/6%, which would make a total of 12 1/2%.

So also in the case of G. Seshagiri Rao, i.e., 12 1/2%, G. Venkateswara Rao would bear the loss of his share of 12 1/2% and also that of his three minor sons each at 12 1/2% which would come to 50%. As pointed out earlier, the actual sharing-ratio may be either express or by implication. This ratio can easily be inferred from the facts and circumstances of the case. We have to look to the application and the admitted facts. What the parties really agreed to was in respect of the sharing of the losses, if any. This can be easily inferred without any difficulty in the case on hand.

35. We must, therefore, hold that the case of Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, is distinguishable on facts. The decision of the Full Bench of this court in Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, must be upheld as, on a reasonable construction of the instrument of partnership as a whole, it was found that there was specification of the shares of the partners in respect of loss, if any, of the partnership in the same proportion as they distribute the partners' share of profits. We are unable to agree with Sri P. Rama Rao, learned standing counsel for the revenue, that the Full Bench decision must be deemed to have been overruled or is no longer good law in view of the decision of the Supreme Court in Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, .

36. For all the reasons stated, our answer to the question must be and is in the affirmative holding that the assessee-firm is entitled to the benefits of registration u/s 26A of the Indian I.T. Act, 1922, for the assessment year 1959-60. The Commissioner shall pay the costs of the reference to the assessee-firm. Advocate's fee Rs. 500 payable to Sri S. Parvatha Rao, who was appointed as amicus curiae.