
(1984) 07 RAJ CK 0022

In the Rajasthan High Court

Case No : Income Tax Reference No. 10 of 1975

Raj Construction Co.

APPELLANT

Vs

Additional Commissioner of Income Tax

RESPONDENT

Date of Decision : 30-07-1984

Acts Referred:

Income Tax Act, 1961 — Section 184, 184(1), 185

Citation : (1985) 49 CTR 348 : (1986) 157 ITR 734

Hon'ble Judges : Kanta Bhatnagar, J; Dwarka Prasad Gupta, J

Bench : Division Bench

Advocate : R.C. Maheshwari, Dinesh Maheshwari and M.L. Kala, for the Appellant; J.P. Joshi, for the Respondent

Judgement

Bhatnagar, J.—The Income Tax Appellate Tribunal, Jaipur Bench, at the instance of the assessee, M/s. Raj Construction Co., Mount Abu, has made this reference to this court u/s 256(1) of the Income Tax Act, 1961, for the opinion of this court on the following question of law :

"Whether, on the facts and in the circumstances of the case and on a proper construction of the partnership deed dated January 27, 1966, and application in Form No. 11, the Tribunal was correct in law in refusing grant of registration u/s 185 of the Income Tax Act, 1961, to the assessee-firm ?"

2. The assessee is a firm styled as "M/s. Raj Construction Co.", Mount Abu. The assessment year in question is 1967-68. The assessee-firm was constituted of three partners, viz., Munshilal, Laxmi Chand and Babu Bhai, under a partnership deed to this effect executed on January 27, 1966. The firm filed an application in Form No. 11 for the aforesaid assessment year for registration u/s 184 of the Income Tax Act (hereinafter to be referred as "the Act"). The Income Tax Officer (for short "the ITO") was of the view that the shares of the losses of the partners were not specified in the deed and, as such, the firm could not be granted registration. He, therefore, rejected the application u/s 185 of the Act, vide order dated January 18, 1972, annexure B. The assessee-firm filed an appeal before

the Appellate Assistant Commissioner (for short "the AAC"), who justified the order of refusal of registration of the firm u/s 185 of the Act passed by the Income Tax Officer and dismissed the appeal. The assessee-firm then preferred an appeal before the Income Tax Appellate Tribunal, Jaipur Bench (for short "the Tribunal"). The Tribunal affirmed the findings of the Appellate Assistant Commissioner and dismissed the appeal. The assessee-firm filed an application u/s 256(1) of the Act for stating the case and making a reference on the questions of law as to whether the Tribunal was justified in holding that the shares were not properly specified as required u/s 184 of the 1961 Act and for that reason no registration could be granted to the assessee-firm. The application was allowed and the Tribunal submitted the statement of the case and referred the aforesaid question of law to this court for its opinion.

3. Annexure A is the deed of partnership. In Clause 6, the shares in the profits of the partners have been specified. One of the partners, viz., Babubhai Popatlal Shah, was a minor. In Clause 7, it has been provided that in case of any loss to the firm, the partners named Shri Munshilal Ganpatram and Shri Lakshminchand Johrilal, will share the total loss. In the Schedule of Form No. 11, the application for registration, the ratio of 50 : 50 to be borne by Laxmi Chand and Munshilal was, however, mentioned.

4. The first point of law involved in the matter is whether it is the requirement of law that the shares of the partners in profits as well as losses should be specified in the instrument of partnership. The relevant provision of Section 184 of the 1961 Act read as under :

"184. Application for registration.--(1) An application for registration of a firm for the purposes of this Act 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."

5. This second requirement, i.e., the individual shares of the partners to be specified in the partnership instrument has been a matter of controversy for a long period. There were divergent opinions of the various High Courts on the point as to whether the term "individual shares of partners" was confined to the shares in profits of the partners or included the shares in losses also.

6. In the case of P.R. Chowdhary and S. Gangoli Vs. The State of U.P., their Lordships of the Supreme Court enumerated the essential conditions to be specified for entitling a firm for registration u/s 26A of the 1922 Act as under (at p. 198):

"(1) That the firm should be constituted under an instrument of partnership, specifying the individual shares of the partners.

(2) That an application on behalf of, and signed by, all the partners, containing

all the particulars as set out in the Rules, has been made.

(3) That the application has been made before the assessment of the income of the firm, made u/s 23 of the Act... ...for that particular year.

(4) That the profits (or loss, if any) of the business relating to the previous year, that is to say, the relevant accounting year, should have been divided or credited, as the case may be, in accordance with the terms of the instrument, and lastly,

(5) That the partnership must have been genuine, and must actually have existed in conformity with the terms and conditions of the instrument."

7. In the case of *R. Sannappa and Sons Vs. Commissioner of Income Tax, Mysore*, the deed of partnership provided only for sharing of profits after setting aside a portion for reserves but was silent as to the manner of distribution of losses among the partners. Registration was refused. On a reference to the High Court, it was held that Section 26A contemplates only specification of individual shares of partners and in the absence of a contract to the contrary, losses should be shared by the partners in the same proportion in which they share the profits. The firm was held to be entitled to registration.

8. The principle was followed in the case of *R.B. Angadi and Sons Vs. Commissioner of Income Tax, Mysore*, and it was held that it cannot be said to be proper for the Income Tax Officer to refuse registration u/s 26A of the 1922 Act of an instrument of partnership on the ground that though the instrument of partnership specifies the individual shares of the partners in the profits, it does not specify the shares in the losses.

9. Similar was the view expressed in the case of *Hiralal Jagannath Prasad Vs. Commissioner of Income Tax, U.P., Lucknow*, and it was held that the omission to specify in a partnership deed the shares of the partners in the losses will not make the deed invalid so as to prevent the firm from being registered u/s 26A of the Act.

10. The view on the other side taken by the Gujarat High Court in the case of *Thacker and Co. Vs. Commissioner of Income Tax, Gujarat*, was that the words "the individual shares of the partners" in Section 26A(1) of the Indian Income Tax Act, 1922, 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 in that section to obtain registration.

11. In the case of *C.T. Palu and Sons Vs. Commissioner of Income Tax*, the High Court of Kerala justified the refusal of registration because the minor not being liable for the loss, there was no provision or clarification regarding the sharing of the loss. The Kerala High Court in a subsequent decision in the case of *Commissioner of Income Tax Vs. Ithappiri and George*, observed that the expression "the individual shares of the partners" in Section 184 is wide enough to take in both shares in profits and losses.

12. In view of the facts and circumstances of the case of N.T. Patel and Company Vs. Commissioner of Income Tax, Madras, their Lordships of the Supreme Court held that although an instrument of partnership was in existence in the account year, but 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 subsequent to the order of assessment, it could not be said that there was a requisite instrument of partnership specifying the individual shares of the partners during the year of account and the High Court was held to be right in holding that the firm was not entitled to registration. After discussing the relevant clauses of the instrument, as it stood in the assessment year, their Lordships were pleased to observe as under (at p. 228):

"But in none of these clauses is it stated what the shares of the partners in the profits and losses of the firm were to be and that in our opinion was a requisite for registration of the partnership u/s 26A of the Act and as that was wanting, registration was rightly refused."

13. Their Lordships were further pleased to observe that (p. 228):

"Registration u/s 26A of the Act confers a benefit on the partners which the partners would not be entitled to but for Section 26A. The right can be claimed only in accordance with the statute which confers it and a person seeking relief under that section must bring himself strictly within the terms of that section."

14. Reference was made to the following principle enunciated in P.R. Chowdhary and S. Gangoli Vs. The State of U.P., that:

"It is, therefore, essential, in the interest of proper administration and enforcement of the relevant provisions relating to the registration of firms, that the firms should strictly comply with the requirements of the law, and it is incumbent upon the Income Tax authorities to insist upon full compliance with the requirements of the law."

15. In the case of COMMISSIONER OF Income Tax, A. P. Vs. MANDYALA GOVINDU AND CO., the shares of the individual partners both in the profits and losses of the firm were not specified and, as such, the firm was held not entitled to registration. In an appeal by special leave from the aforesaid judgment, their Lordships of the Supreme Court in the case of Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, affirmed the view taken by the Andhra Pradesh High Court and considered the question at length to decide which view was correct, because, according to their Lordships, on the facts of the case, the appeal was bound to fail. Their Lordships did not consider it necessary to decide the question whether in order to comply with the conditions laid down in Section 26A to obtain registration, the shares of the partners in the losses have to be specifically stated in the instrument of partnership. The following principle was, however, propounded (at p. 5):

"It is not, and it cannot be, disputed that the Income Tax Officer before allowing

the application for registration 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."

16. The conclusion to be gathered from the aforesaid pronouncements is that in order to entitle a firm to registration u/s 184 of the Act, the specification of shares of the partners in profits as well as losses is required. The nature of that specification in the Instrument of partnership or in the application filed for registration in Form No. 11, we would presently discuss.

17. The learned counsel for the Revenue as well as for the assessee-firm referred to a number of decisions on the point.

18. Mr. Joshi, learned counsel for the Revenue, referred to the case of Khummaji Milapchand and Co. and Another Vs. Commissioner of Income Tax, where consequent upon the death of one of the four partners, the two assessee-firms were reconstituted and three minor sons of the deceased partner were admitted to the benefits of partnership, the registration certificate granted by the Income Tax Officer was cancelled by the Commissioner on the ground that the grant of registration was not in accordance with law and was prejudicial to the interests of the Revenue. On a reference to the High Court, it was held that in both the instruments of partnership, the three minor sons of the deceased partner who were admitted to the benefits of the partnership have been shown as one unit with a cumulative share in the profits and that the mandatory requirement of law that the individual shares of the partners should be specified in the deed of partnership was not fulfilled and that, therefore, the assessee-firms were not entitled to the grant of registration.

19. In Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, three adult partners in the appellant firm had their respective shares in the profits of 31 per cent., 23 per cent. and 23 per cent. One minor was admitted to the benefits of partnership with a share of 23 per cent. in the profits. There was no clause in the deed of partnership specifying the proportion in which the three adult partners were to share the losses. There was, of course, a clause providing that the partnership was according to the stipulations in the deed and according to the provisions of the Indian Partnership Act, 1932. The question for consideration before their Lordships of the Supreme Court was whether the firm was entitled to registration u/s 26A of the 1922 Act. The principle enunciated in the case was that 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. In view of the facts before them, their Lordships held that since the partners had unequal shares, there could be no presumption that the losses were to be shared equally and having regard to the scope of Section 13(b) of the Partnership Act, the section had no application. It was further observed that the rule that where the shares in the profits were unequal, the

losses must be shared in the same proportion as the profits also did not apply because, even 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.

20. In the case of CIT v. R.S. Nikhera Construction Co. [1978] 114 ITR 294 the eight partners of the assessee-firm formed themselves into three groups each of which shared one-third of the profits of the firm. The application for registration of the firm u/s 26A of the Act was rejected by the Income Tax Officer on the ground that the share of each partner of the various groups were not specifically mentioned in the partnership deed. The order was upheld by the Appellate Assistant Commissioner. On further appeal, the Appellate Tribunal held that the requirements of Section 26A of the Act were satisfied, inasmuch as the partnership deed could be reasonably construed as clearly implying that the shares of the partners of each group were equal ; that all the eight partners had signed the application for registration ; that the Department had already ascertained the individual shares of the eight partners and assessed them accordingly construing the partnership deed in the same manner. The Income Tax Officer was directed to grant registration to the firm. On a reference, their Lordships of the Madhya Pradesh High Court held that 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. In view of these facts, the Department itself had assessed each of the eight partners on his one-third share. Therefore, the direction by the Tribunal to the Income Tax Officer to grant registration to the firm u/s 26A of the Act was held to be correct.

21. The question as to whether the instrument of partnership should necessarily specify the actual shares in losses in fraction came up for consideration before the Full Bench of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, . A firm had been reconstituted after inducting some more partners, out of whom, one was a minor having seven paise share out of a total of 100 paise and admitted only to the benefits of the partnership. One of the terms of the partnership deed was that all the profits and losses will be divided in the ratios as stated in the deed. The Income Tax Officer refused to grant registration and his order was confirmed by the Appellate Assistant Commissioner. On further appeal, the Tribunal held that as the minor was only admitted to the benefits of partnership, registration cannot be refused on that ground, The plea of the Revenue, urged for the first time before the Tribunal, that registration was refused as the shares of the partners in the profits were not specified in column 6 of the application filed u/s 26A of the Act was also rejected by the Tribunal on the ground that it was not put to the assessee earlier and it could not be allowed to be raised at that stage. The principle enunciated in the case was 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. It was further observed that there is no rule which compels the partnership firm always to take 100 paise or 16 annas as a unit. It is open to the partners to take any digit as a basis and specify the shares in profits and losses. On the facts and circumstances of the case, 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. The assessee for that reason was entitled to registration.

22. The question of specification of the shares in profits and losses also came up for consideration before the Full Bench of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Krishna Mining Co., The relevant facts of the case were that the assessee was a partnership firm originally constituted in 1942 with two partners sharing the profits and losses equally. They were the kartas of their respective Hindu undivided families which owned the firm's business originally. Consequent to a partition in their respective families, a fresh partnership deed was drawn up on October 1, 1958, whereunder some minors, who had been admitted to the benefits of partnership, became partners. The assessee-firm filed an application for the registration of the firm u/s 26A of the Indian Income Tax Act, 1922, on January 20, 1959. The application contained the names of the partners and the minors who had been admitted to the benefits of the partnership. The profit-sharing ratio as per the partnership deed was also indicated. The Income Tax Officer refused registration on the ground that the deed was silent as to the exact proportion in which losses, if any, were to be borne by the major partners. On appeal, the Appellate Assistant Commissioner held that the firm was genuine and the grounds on which the Income Tax Officer refused registration were only technical and the partnership deed itself provided for the sharing of losses also. In the opinion of the Appellate Assistant Commissioner, the plain meaning of Clause 10 of the deed was 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. The Income Tax Officer felt dissatisfied by his order being set aside and preferred an appeal before the, Income Tax Appellate Tribunal. The Tribunal was of the opinion that it was 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 Tribunal distinguished the decision in Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, and relied on Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, and 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 Income Tax Act, 1922. Consequently, registration was granted. At the instance of the Commissioner, the matter was referred for the opinion of the High Court. Initially, the reference on the question was placed before the Division Bench of that court. The learned counsel for the Revenue contended that the view taken by the Full Bench of that court in Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others, holding 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 specification made in the partnership deed, did not lay down the correct principle and was no longer good law in view of the decision of the Supreme Court in *Mandyalu Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad*, and that the decision of the Tribunal based on the view expressed by the Full Bench of that court referred to above was, therefore, erroneous in law. The learned counsel appearing as *amicus curiae* on the other hand contended that the view expressed by the Full Bench in *Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others*, was correct and the Supreme Court did not overrule the Full Bench decision and, therefore, the Full Bench decision was binding on the Division Bench of the court. In view of the controversy in the case, the question was referred to a Full Bench constituted of five judges for determining the correct position of law. Their Lordships distinguished the decision of the Division Bench passed in *COMMISSIONER OF Income Tax, A. P. Vs. MANDYALA GOVINDU AND CO.*, affirmed in appeal, on the ground that on the facts there was no clause in the partnership deed providing for the division of the loss by the partners in any manner. For that reason, the finding of the Tribunal, based on the Full Bench decision of *Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others*, that the firm was entitled to registration was held to be correct. Their Lordships of the Full Bench laid down the following principle (headnote of *Commissioner of Income Tax Vs. Krishna Mining Co.*,

"The tests prescribed for grant of registration to a partnership firm under the Income Tax Act are that the firm must be constituted under a registered deed and the individual shares of the partners that can claim benefit in the firm must be specified. The word "specify" has not been defined either in the Income Tax Act or in the Rules. So, the word "specify" must be interpreted reasonably and fairly. In fact, Section 26A of the Indian, Income Tax Act, 1922, does not indicate that the specification of shares of the partners is for distribution of profits and losses. But that is normally implied. Having regard to this, the word "specify" u/s 26A of the Indian Income Tax Act and Rule 2 means "mentioning or describing or defining in detail" but does not mean "expressly set out in fractional or other shares". Therefore, if the partnership deed specifies either expressly or by implication the shares of the individual partners in the firm, the firm is entitled to registration under the Income Tax Act. The intention and object of the partners of the firm in regard to specification of the shares can be culled out either from the recitals in the partnership deed as a whole or from the proved facts and circumstances indicated in the application for registration, books of account and the conduct of the partners. However, if the partnership deed does not provide for sharing of profits or losses at all or of losses while providing for sharing of profits, the firm is not entitled to registration." (Emphasis is ours)

23. It was further observed as under :

"Whether or not there is a specification of the individual shares of the partners,

which is one of the important ingredients to be established to enable a firm to get registration for the purposes of the Act, is a mixed question of fact and law to be determined on the facts and in the circumstances of each case."

24. Bearing in mind the aforesaid principles enunciated in the various decisions, when we turn to the case before us, the contents of the document, viz., the instrument of partnership and the application for registration in Form No. 11, will have to be taken into consideration. We wish to make it clear that the case before us is not of the type where there is no mention about the shares of the loss of the partners, rather it is a case in which there is no specification of the actual shares of the loss to be apportioned to the adult members but the ratio, however, has been given in the application for registration.

25. It is abundantly clear that the two partners, viz., Munshilal and Laxmi Chand, were to share the total loss in case of any loss to the firm and that intention has been incorporated in Clause 7 of the partnership deed, annexure A. This is not in dispute and finds place in the order of the Appellate Assistant Commissioner also that the assessee-firm in Form No. 11 in the remarks column mentioned the sharing of the loss to be 50: 50 in the case of Munshilal and Laxmi Chand.

26. There is a distinction between the case where there is no provision either for sharing of loss and those where the provision of course is there but is defective because of the shares having not been specifically expressed. If a particular case falls in the first category, there is no escape from the position of law that the essential requirements of an application u/s 184 of the Act do not exist. However, if the case falls in the second category and from the construction of the deed taken as a whole, it can be worked out that the intention to share the loss is there, be it not exactly specified, and the exact position can be inferred from the contents of the application for registration or the books of account or from the conduct of the parties, there would be no justification in refusing registration. To put it in other words, the intention of the parties regarding the shares of loss to be borne is to be gathered from a reasonable construction of the document, application or material available to the assessing authority.

27. The purpose of specifying the shares of the partners in profits and losses is to enable the Income Tax authorities to make a proper assessment of the income of the firm or individual partners of the firm and for that purpose to make out whether the firm is genuine or not. Genuineness of the partnership is an important factor in matters of registration.

28. The word "specify" used in Section 26A of the 1922 Act (now Section 184 of the 1961 Act) was the subject-matter of discussion in the case of *Kylasa Sarabhiyah, Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh*, and it was held that "the word 'specify' is used in Section 26A and Rule 2 as meaning mentioning, describing or defining in detail and does not mean expressly setting out in fractional or other shares". This principle was kept in view by the Full Bench of the Andhra Pradesh High Court in *Commissioner of*

Income Tax Vs. Krishna Mining Co., while holding that the registration of a partnership cannot be refused on technical grounds or for lack of setting out the shares in fraction.

29. The argument of Mr. Joshi is that the shares of the three partners, two major and one minor, being unequal, provision of Clause 7 that the two major partners will share the loss would not give any idea about the actual loss to be borne by them. The answer is not far to seek. The intention stands clarified by the mention in the remarks column of the application about the ratio of 50 : 50 of the shares of the losses of the two major partners named therein.

30. The contents of the application clarifying any ambiguity in the instrument came up for consideration before their Lordships of the Supreme Court in the case of Parekh Wadilal Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, Their Lordships were dealing with the point in an appeal by special leave from the judgment and order of the Bombay High Court in In Re: Parekh Wadilal Jiwanbhai, . The view of the Bombay High Court was that the words "specify the individual shares of the partners in Section 26A" meant expressly and definitely mentioning the individual shares of the partners in the profits of the firm and for that reason the registration of the firm by the Income Tax Officer for 1951-52 to 1953-54 cannot be said to have been made after due scrutiny on the material on record and, as such, there was no bar in the way of the Income Tax authorities in refusing to renew the registration of the firm for the year 1953-54. Upon considering the instrument, the application for registration and the books of account for all the years, their Lordships of the Supreme Court did not feel inclined to agree with the view of the Bombay High Court and set aside the order passed by the latter and allowed the appeal.

31. The relevancy of the aforesaid Supreme Court decision for the present purpose is that the contents of the application for registration were also taken into consideration for ascertaining the specification of the shares of the individual partners.

32. Even at the risk of repetition, we may again refer to the Full Bench decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Krishna Mining Co., where the circumstances indicated in the application for registration were considered to be relevant factors to be taken note of by the assessing authority in ascertaining whether the individual shares of the partners in profits and losses had been specified. It will also be profitable to refer to the observations of their Lordships of the Andhra Pradesh High Court in that case that the trend of legislation governing the registration of firms for the purpose of Income Tax Act is that the registration should not be refused to genuine firms on technical grounds. Reference has been made to the various sections of Chapter 16 of the 1961 Act. Subsection (2) of Section 185 requires the Income Tax Officer to intimate the defect, if any, in the application or if the application was not in order, give the firm an opportunity to rectify within a period of one month from the date of such information. The Income Tax Officer has to provide the

opportunity to rectify the declaration furnished by the firm in pursuance of Sub-section (7) of Section 184 of the 1961 Act, if it is not in order. The very purpose of incorporating these provisions in the new Act was to give proper opportunity to the firm to place relevant material before the assessing authority so that the registration may not be refused to the firm, which is genuine and entitled to benefit of registration, on technical ground.

33. In view of the above discussion, the conclusion to be drawn would be that the term "individual shares of the partners required to be specified in the partnership instrument" according to Section 184(1)(ii) refers to shares in profits as well as in losses. So far as the connotation of the word "specify" is concerned, mentioning or describing or defining in detail the shares would be sufficient and expressly setting out fractions is not required. The intention of the parties is to be gathered by reading the instrument as a whole and construing it reasonably. If the specification of the individual shares cannot be worked out from the partnership deed, the contents of the application or the books of account or the conduct of the parties in determining the profits and bearing the losses may be taken help of by the assessing authority.

34. Turning to the facts of the case before us in the light of the aforesaid observations, we are inclined to hold that the instrument of partnership does contain a provision for sharing the total loss by two major partners. The position stands clarified by the contents of the application to the effect that in case of loss, if any, the two major partners named therein shall bear the loss 50 : 50. As such, there remains no ambiguity so as to disable the assessing authority to ascertain the actual shares of the partners in losses.

35. The conclusion drawn, therefore, is that on the facts and in the circumstances of the case and on proper consideration of the partnership deed dated January 27, 1966, and application in Form No. 11, the Tribunal was not correct in law in refusing grant of registration u/s 185 of the 1961 Act to the assessee-firm.

36. Consequently, we answer the question referred to us in the negative. i.e., in favour of the assessee and against the Revenue.