

**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).**

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**Court :** Allahabad

**Decided On :** Mar-14-1967

**Reported in :** [1968]68ITR696(All)

**Appeal No. :** Income-tax Reference No. 281 of 1963

**Appellant :** Ganesh Lal Laxmi Narain

**Respondent :** Commissioner of Income-tax [1968] 68 Itr 969 (All) Treated as Overruled by the Full Bench Decision I

**Judgement :**

PATHAK J. - The Income-tax Appellate Tribunal has referred this case for the opinion of this court on the following question :

'Whether, on the facts and in the circumstances of the case, the income-tax authorities were justified in refusing registration under section 26A of the Act ?'

Under a deed of partnership executed on January 10, 1948, a firm was constituted for the purpose of carrying on business in the name and style of M/s. Ganeshi Lal

Lakshmi Narain Lal. The members of the firm were Muneshwar Prasad and Satchidanand, and one Om Kumar, a minor, was admitted to the benefits of partnership. The partnership firm was registered annually under section 26A up to and inclusive of the assessment year 1958-59. For the assessment year 1959-60 an application for renewal of registration signed by Muneshwar Prasad, Satchidanand and Om Kumar was filed before the Income-tax Officer. It appears that Om Kumar had meanwhile attained majority and had, therefore, signed the application for renewal of registration. In the application there was a specific statement to the effect that the annual profits of the firm had been divided between the partners. The Income-tax Officer rejected the application on two grounds. He found that upon Om Kumar becoming a major, no fresh partnership deed had been executed. He also found that the profits of the business carried on under the name 'Standard Hotel' had not been divided at the Appellate Assistant Commissioner, who allowed the appeal and directed renewal of registration. The Income-tax Officer proceeded in appeal to the Income-tax Appellate Tribunal, and the Tribunal, accepting the contentions that the original instrument of partnership was not acceptable as a basis for renewing registration of the firm and that the omission of the assessee to divide the annual profits of the Standard Hotel business was fatal to the application, allowed the appeal and dismissed the application for renewal of registration. At the instance of the assessee the case has been referred to this court.

Learned counsel for the assessee contends that, according to the law governing partnership, 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. It is pointed out that it is sufficient that there is no election by the minor, when he attains majority, to opt out of the partnership and in the absence of the such election, the minor, on attaining majority, must be deemed to have become a full-fledged partner of the firm. Now, while that may be so for the purposes of the partnership law, the question is whether it satisfies the requirements of the income-tax law in respect of registration of a partnership firm. Section 26A of the Indian Income-tax Act Provides for the registration of a firm constituted under an instrument of partnership specifying the individual shares of the partners. It is true, as pointed out by the Supreme Court in R. C. Mitter & Sons

v. Commissioner of Income-tax, that the instrument of partnership need not be a document creating the partnership and that it may be an instrument merely giving a legal form to the partnership by reducing the terms and conditions of the partnership to writing. Nevertheless, the instrument must indicate who are the partners and what are their shares. The deed of partnership dated January 10, 1948, indicated two partners only, namely, Muneshwar Prasad and Satchidanand. Om Kumar was referred to as a minor admitted to the benefits of partnership. The deed did not, and could not, refer to him as a partner. According to the deed there were only two partners. Clearly, that deed cannot serve as an instrument of partnership under which a firm consisting of three partners, Muneshwar Prasad, Satchidanand and Om Kumar, is constituted. The income-tax authorities were plainly right in the view taken by them that there was no instrument of partnership specifying the present constitution of the assessee-firm. Indeed, the assessee-firm, which consisted of three partners, was not the same firm as was constituted under the partnership deed of January 10. 1948. Upon this ground alone the Income-tax Officer was justified in declining to grant registration.

As regards the second ground upon which registration has been refused, learned counsel for the assessee contends that it was not incumbent upon the members of the assessee-firm to divide the profits at the end of the previous years. Now, it seems clear that, in order to enjoy the benefit of registration under section 26A, it is necessary that the assessee should strictly comply with all the requirements of the income-tax law pertaining to the grant of with all the requirements of the income-tax law pertaining to the grant of registration. The law requires that the profits should be divided or credited annually between the partners and it is necessary for a firm applying for registration to state that in the application : (Surajmalls v. Commissioner of Income-tax). Indeed, in the instant case such statement was made in the application but there is no dispute that the annual profits of the Standard Hotel business were neither divided nor credited between the partners. That being so, it is clear that the Income-tax Officer was justified in refusing to register the assessee-firm on that ground also.

We answer the question referred to this court in the affirmative.

The Commissioner of Income-tax is entitled to his costs, which we assess at Rs. 200. The fee of learned counsel is also assessed at Rs. 200.

Question answered in the affirmative.

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