

## CIVIL REFERENCE.

*Before Falshaw and Kapur, JJ.*

M/s. BANKA MAL-LAJJA RAM AND CO.,—Petitioner

*versus*

THE COMMISSIONER OF INCOME-TAX,—Respondent

Civil Reference No. 5 of 1951

*Indian Income-tax Act (XI of 1922)—Sections 26-A and 66—Indian Partnership Act (IX of 1932)—Section 30—Whether a minor son can, according to law, enter into a partnership through his mother, the natural guardian, with*

1953

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June, 17th

*the consent of the other partners—High Court—Whether can go behind the findings of the Tribunal or the statement of the case or raise any question suo motu—Assessee, whether can be allowed to raise a question in the High Court which he raised before the Tribunal but not referred to the High Court.*

*Held*, that under section 30 of the Indian Partnership Act, a minor cannot be a full-fledged partner in a partnership firm and, therefore, the contract entered into making a minor a partner would be invalid and cannot be registered under section 26-A of the Income-tax Act. A minor cannot enter into a partnership through his guardian even when the other partners are consenting.

*Held further*, that the High Court cannot go behind the findings of the Tribunal nor can it raise any question suo motu. It is also not open to the High Court to go behind the statement of the case nor can the assessee be allowed to raise the other question which he raised before the Tribunal but which has not been referred to the High Court.

*Jakka Devayya and Sons v. Commissioner of Income-tax, Madras (1), and Vincent and others v. Commissioner of Income-tax, Madras (2), distinguished; Sobha Singh v. Commissioner of Income-tax (3), Rajindra Narayan Bhanja Deo v. Commissioner of Income-tax, Bihar (4), Trustees Corporation (India), Limited v. Commissioner of Income-tax (5), Hardutt Ray Gajadhar Ram v. Commissioner of Income-tax (6), and V. M. N. Radha Ammal v. Commissioner of Income-tax, Madras (7), relied on.*

*Case referred under section 66(1) of the Indian Income-tax Act, by the Income-tax Appellate Tribunal, Delhi Bench, consisting of Shri K. S. Sankaraman, Judicial Member, and Shri A. L. Sehgal, Accountant Member,—vide order, dated the 7th May 1951, referring the following question for the opinion of this Court :—*

*“ Whether a minor son can, according to law, enter into a partnership through his mother, the natural guardian, even with the consent of the other partners ? ”*

DEVA SINGH, for Petitioner.

S. M. SIKRI, Advocate-General, and H. R. MAHAJAN, for Respondent.

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- (1) 22 I.T.R. 264
  - (2) 22 I.T.R. 285
  - (3) 18 I.T.R. 998
  - (4) 8 I.T.R. 495 (P.C.)
  - (5) A.I.R. 1930 P.C. 151
  - (6) 18 I.T.R. 106
  - (7) 18 I.T.R. 225

ORDER

KAPUR, J. This is a reference made by the Income-tax Appellate Tribunal, Delhi Bench, by their order, dated 7th May 1951, referring the following question for the opinion of this Court :—

“ Whether a minor son can, according to law, enter into a partnership through his mother, the natural guardian, even with the consent of the other partners? ”

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The question has arisen in the following circumstances. In 1937, a partnership was entered into of which the partners were five individuals and ten units who were different Hindu Undivided Families. As some doubts arose in regard to the legality of this partnership, on the 18th of July 1942, there was a reconstituted firm having fifteen partners 10 of whom were the managers of the Hindu Undivided Families and 5 were the other individuals.

Sohan Lal, who was a partner in this firm, died and a new partnership was entered into on the 28th of June 1945, and one of the partners was Sohan Lal's son Satish Kumar, who is described at No. 6 in the partnership deed as "Satish Kumar, minor son of Lala Sohan Lal, B.Sc., by his guardian and mother Shrimati Shakuntala Devi, residing at Ferozepore City." The name of this partnership was Bankamal-Lajjaram and the deed recites : "We the parties shall be bound by the following terms and conditions :—

1. This partnership shall be in existence up to and inclusive of 31st of August 1947 A.D. and the conditions agreed to by the parties hereto and set out below shall be binding on us all the parties aforesaid. No party will have power to contravene any of the conditions agreed to and contained herein or to dissolve this partnership.

2. \* \* \* \* \*

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3. The shares of the parties in the profits and loss of this business shall be as follows :—

\* \* \* \* \*

(vi) Satish Kumar, minor son of Lala Sohanlal, by his mother Shrimati Shakuntala Devi party of the 6th part Re 0-0-4 41/64 in a rupee.

\* \* \* \* \*

That is to say we all the aforesaid partners shall be entitled to receive and liable to pay profit and loss in the proportion of the aforesaid shares.

\* \* \* \* \*

The other terms of the partnership deed make no distinction between the liabilities of the minor partner Satish Kumar and the other partners. According to this partnership then all the partners including Satish Kumar were jointly responsible for the loss and entitled to the profits of this business.

Application was made for the assessment year 1945-46, for registration of this partnership deed under section 26A of the Indian Income-tax Act, which was rejected by the Income-tax Officer and by the Assistant Appellate Commissioner of Income-tax, Delhi Range. The matter was taken on appeal to the Appellate Tribunal, who by an order, dated 1st August 1950, upheld the order of the Assistant Commissioner but on a different ground. It held that as a minor had become a partner and had not merely been admitted to the benefits of the partnership no valid partnership had been constituted and, therefore, the partnership could not be registered.

The assessee then applied for statement of the case to the High Court and raised four questions which are printed on page 25 of the paper book. On the 31st March 1951, a draft statement was

prepared and sent to the assessee and by an application, dated the 27th April, 1951, the assessee asked for the modification of the question of law to be raised. The modified question suggested was :—

“Whether the mother as a guardian can, according to law, enter into the partnership with others on behalf of her minor son.”

It was stated in this application that according to the draft statement the real partner appeared to be the minor whereas the correct position was “that the real partner is the mother though she acts on behalf of her minor son.” Another question which was sought to be raised by this application was that even if it was held that because Satish Kumar was a partner the partnership would be invalid it (the partnership) should be deemed to be a partnership of 14 partners and the registration should be allowed on that basis, the share of Satish Kumar being distributed proportionately amongst the other partners.

After again considering the partnership deed the members of the Tribunal were of the opinion that according to the partnership deed of the 28th June 1945, the real partner was Satish Kumar and not his mother and, therefore, refused to modify the question as prayed for by the assessee. With regard to the second question that the partnership should be taken to be one consisting of 14 partners excluding the minor, the Tribunal refused to allow this to be raised on the ground that it could not be taken up for the first time and that it did not arise out of the order of the Tribunal and, therefore, they said “we hold that there is no room for giving the indulgence claimed by the assessee.” And the question as it was originally framed has been submitted for the opinion of this Court.

According to section 30 of the Partnership Act, a person who is a minor cannot be a partner in a firm but with the consent of all the partners he may be admitted to the benefits of partnership, and certain consequences follow, one of them being that the minor is not personally liable for the acts of the firm and he cannot sue the partners of the

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firm for accounts or for the payment of his share of the property or profits except when he is severing his connections with the firm. The other consequences as a result of his choosing to become a partner or not choosing to become a partner when he attains the age of majority are not relevant for the purposes of this case. As the Income-tax Law now stands, under section 2(6B) "firm", "partner" and "partnership" have the same meanings, respectively, as in the Indian Partnership Act, 1932 (IX of 1932), provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership.

On behalf of the assessee it was first submitted that the partnership deed in the present case should be so read that Satish Kumar, minor, should be deemed to have been given the benefit of partnership as contemplated by section 30(1) of the Partnership Act and should not be treated as a partner. If it is so read, it is submitted that the partnership would then be valid and the invalidity which arose because of the introduction of a minor partner would no longer be there. Reliance was placed in support of this argument on *Jakka Devayya and Sons v. Commissioner of Income-tax, Madras* (1), where it was held that the fact that the minor was included in a partnership would not make it (the partnership) as between the two adult partners invalid and the minor might be deemed to have been admitted to the benefits of partnership by the adults, and that a minor admitted to the benefits of a partnership becomes a partner under the Income-tax Act and, therefore, there was a valid partnership in respect of the business which could be registered under section 26A of the Income-tax Act. It appears that the learned Judges were alive to the fact that according to law it is not permissible to have a deed of partnership where a minor is a sharer in profits and liable for losses of the business. At page 275, it was observed by Satyanarayana Rao, J. :—

"Lakshminarayana and Krishnamurti were willing to admit the minor to the bene-

fits of the partnership, and in fact in the accounts they opened a ledger page in his name and entered the profits earned on his behalf for the two years. We think, therefore, that too rigid a construction of the document need not be placed, and that the real intention of the parties can be gathered from the document and from their conduct in crediting the profits in the accounts."

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In the second case which was relied upon *Vincent and others v. Commissioner of Income-tax, Madras* (1), a testator died leaving a widow and six children of whom one was a minor. The widow entered into partnership in respect of the business of the testator and the deed of partnership was signed by the minor as a major. The Income-tax authorities refused to register the deed of partnership under section 26A of the Income-tax Act, on the ground that the deed was invalid as it was signed by a minor. It was held that the six adults should be treated as having entered into a valid partnership, the minor being admitted to the benefits of partnership and in such a case because of the existence of section 2(6B), the partnership deed could be registered under section 26A of the Act. Following the previous judgment the learned Judges allowed the partnership to be registered under section 26A. In these two cases the learned Judges interpreted the partnership deeds in a manner different from the tenor of those documents and whether they could in accordance with the statement of the case as sent up by the Tribunal go into the matter or not is not necessary for me to decide. In the present case the finding of the Tribunal was that the minor had become a partner, the agreement having been made on his behalf by his mother and that such a partnership was not valid. No question of Satish Kumar having been admitted to the benefits of the partnership was raised nor does it, in my opinion, arise.

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In *Sobha Singh v. Commissioner of Income-tax* (1), this Court held that the findings of the Tribunal are binding on the Court and no question which has not been referred to the Court can be raised unless it was raised in the first instance before the Tribunal. At page 1009, it was said in this judgment :—

“ All these cases show that the jurisdiction of the High Court can only be exercised in accordance with the provisions of section 66 of the Income-tax Act, and all formalities must be observed before a question is raised, and unless and until a question is duly referred to the High Court under the provisions of section 66(1), or the High Court calls upon the Appellate Tribunal to refer under section 66(2), the High Court is incompetent to raise any question *suo motu*.”

No question of a different interpretation being put on the deed of partnership was raised before the Tribunal and even when the draft statement was prepared the modification sought was that the guardian was the ostensible partner and not that the minor had been admitted to the benefits of partnership and, therefore, following the judgment of our own Court which has been referred to above and which refers to several Privy Council Judgments I am of the opinion that it is not open to us to go behind the statement of the case nor can the assessee be allowed to raise the other question which he raised before the Tribunal that the partnership should be taken to be valid partnership of 14 persons excluding the minor partner as no such question has been referred to us.

Relying on section 66(5) of the Income-tax Act, the assessee's learned Advocate submitted that the expression that the High Court shall upon the hearing of any such case “decide the question of law raised thereby” means decide the questions of law raised by the case and that the duty of the



Court is not confined to answering questions of law framed by the Appellate Tribunal and that, therefore, the questions that he is seeking to raise can be raised. This is really covered by the judgment of this Court in *Sobha Singh's* case (1). It is not necessary to refer to all those cases again. Their Lordships of the Privy Council have deprecated departure from regular procedure and formulating of the questions by the High Courts themselves. In *Rajendra Narayan Bhanja Deo v. Commissioner of Income-tax, Bihar* (2), their Lordships of the Privy Council said that the function of the High Courts in cases referred under section 66, is merely advisory and is confined to considering and answering the actual question referred to them. In *Trustees Corporation India, Limited v. Commissioner of Income-tax* (3), their Lordships said that "the High Courts will in future cases be well-advised to require before they seem to entertain any question under section 65 of the Income-tax Act, that the preliminary requirements of the section are strictly complied with." I am, therefore, of the opinion that this Court cannot go behind the findings of the Tribunal nor can it raise any question *suo motu*.

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The learned Advocate-General has referred to two cases *Hardutt Ray-Gajadhar Ram v. Commissioner of Income-tax* (4), and *V. M. N. Radha Ammal v. Commissioner of Income-tax, Madras* (5). In the former case, it was said at page 110 :—

"There can be no doubt that the minor was incapable of entering into such a contract and though in England such an agreement is voidable at the option of the minor, in this country, since a minor is incapable of entering into a contract, the contract on his behalf is void subject to such benefits that he may be entitled to get under section 30 of the Indian Partnership Act."

(1) 18 I.T.R. 998 at p. 1007

(2) 8 I.T.R. 495 (P.C.)

(3) A.I.R. 1930 P.C. 151

(4) 18 I.T.R. 106

(5) 18 I.T.R. 225

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And in the latter case what was held was that a widow on the death of her husband was not the *karta* of an Undivided Hindu Family and consequently an agreement of partnership purported to have been entered into by a widow on behalf of her minor sons and as representing the joint family would be invalid. I do not think it necessary to discuss these cases any further.

As I have said before, under section 30 of the Indian Partnership Act, a minor cannot be a full-fledged partner in a partnership firm and, therefore, the contract entered into making a minor a partner would be invalid and cannot be registered under section 26A of the Income-tax Act. The answer to the question must, therefore, be in the negative, i.e., a minor cannot enter into a partnership through his guardian even when the other partners are consenting. As the question has been decided against the assessee the Commissioner of Income-tax will have his costs of the reference. Counsel's fee Rs. 250.

FALSHAW, J.—I agree.