
G.S. Dugal and Co. Pvt. Ltd. Vs Commissioner of Income Tax

Income-tax Reference No. 3 of 1967

Court: Bombay High Court

Date of Decision: Aug. 6, 1976

Acts Referred:

Income Tax Act, 1922 " Section 26A

Citation: (1978) 111 ITR 757

Hon'ble Judges: Kantawala, C.J; Tulzapurkar, J

Bench: Division Bench

Advocate: S.E. Dastur and S.J. Mhaispurkar, for the Appellant; R.J. Joshi and V.J. Pandit, instructed by V.B. Shastri, Attorney, for the Respondent

Judgement

Kantawala, C.J.

The question in this reference whether the assessee-firm is entitled to registration and renewal of registration has been

very strenuously argued both on behalf of the assessee-firm as well as the revenue. The statement of the case relates to the assessment years

1952-53, 1953-54 and 1954-55. Under the instrument of partnership dated April 5, 1950, the assessee was purported to be constituted as a

firm. The instrument of partnership showed that the partnership was to consist of three partners, namely, Messrs. G. S. Dugal & Co. Ltd., a firm

by name, Messrs, Bishan Singh Jaswant Singh and as individual by name, S. Lakhinder Singh. The shares of M/s. G. S. Dugal & Co. Ltd. and the

firm of Messrs. Bishan Singh Jaswant Singh were respectively 7 annas in a rupee and the share of the third partner, S. Lakhinder Singh, was 2

annas in a rupee. This instrument of partnership was signed on behalf of G. S. Dugal & Co. Ltd. by its managing director, G. S. Dugal, on behalf of

the firm of M/s. Bishan Singh Jaswant Singh by its partner, Tej Singh, and by the third partner as an individual. In the books of account maintained

by the assessee, 7 annas share of profit was credited to the account of Messrs. Bishan Singh Jaswant Singh for all the three assessment years and

no credit was made in the names of the four individual partners of the firm of Messrs. Bishan Singh Jaswant Singh. In the returns of income filed by

the assessee for all the assessment years under consideration the assessee-firm has stated that the firm of Messrs. Bishan Singh Jaswant Singh was

one of the partners of the assessee with 7 annas share in the profits and losses.

2. On May 10, 1950, a declaration was signed in the matter of partnership agreement dated April 5, 1950, whereby the individual partners" of the

firm of Messrs. Bishan Singh Jaswant Singh declared their individual shares in the assessee-partnership as being equal in proportion, i.e., one anna

nine pies each. The declaration was signed by the four individual partners of the firm of Messrs. Bishan Singh Jaswant Singli and was attested by

two witnesses. Below the signatures of the witnesses, under the remark ""noted"", it was signed by S. Lakhinder Singh and by Messrs. G. S. Dugal

& Co. Ltd. by its managing director.

3. On August 22, 1951, the instrument of partnership was executed by the four partners of the firm of Messrs. Bishan Singh Jaswant Singh. The

recitals and the operative part of this partnership deed provided that it merely related to the distribution of the seven annas share of profits arising

to the firm of Messrs. Bishan Singh Jaswant Singh in the assessee and how the profits and losses thereunder were to be distributed amongst the

four individual partners thereof. It, inter alia, provided that the goodwill in the trade name of M/s. Bishan Singh Jaswant Singh exclusively belonged

to one of the partners, namely, Jaswant Singh Dugal. The firm of Messrs. Bishan Singh Jaswant Singh applied for registration and was granted

registration and renewal of registration for the assessment years 1952-53, 1953-54 and 1954-55.

4. For the assessment year 1951-52, the Income Tax Officer did not allow registration to the assessee but treated the firm as an unregistered firm

u/s 23(5)(b) of the Indian Income Tax Act, 1922 (hereinafter referred to as ""the Act""). The assessee also filed applications for renewal of

registration for the assessment years 1952-53, 1953-54 and 1954-55. The applications for the first two years were filed on June 30, 1953, and

the application for the third year was filed on June 28, 1954. All the three applications for renewal were signed, inter alia, by Tej Singh, one of the

partners, on behalf of Messrs. Bishan Singh Jaswant Singh. However, later on, on March 14, 1958, the assessee filed three separate applications

for renewal of registration of the assessee u/s 26A of the Act for the three assessment years 1952-53, 1953-54 and 1954-55. All these three

applications for the three assessment years were signed on behalf of G. S. Dugal & Co, Ltd. by its managing director and by Lakhinder Singh.

They were also signed by the four partners of the partnership firm of M/s. Bishan Singh Jaswant Singh. Later on, on April 23, 1958, an application

for registration of the assessee-firm was filed u/s 26A of the Act for the assessment year 1952-53.

5. The question of registration of the assessee-firm for the assessment year 1952-53 and for renewal of registration for the assessment years 1953-

54 and 1954-55 was considered by the Income Tax Officer and by his order dated December 17, 1958, he refused to grant registration to the

assessee and directed that the assessee should be treated as an unregistered firm. Such refusal of registration was by reason of the following

grounds :

1. A firm is one of the partners in the bigger firm that is applying for registration. Following the Supreme Court decision in the case of Dulichand

Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , the registration cannot be granted.

2. No deed or deeds constituting the partnership in question give the individual shares of the individual partners.

3. Neither the deed of April 5, 1950, nor the agreement of May 10, 1950, has been signed by all the individual partners in their capacity as such

partners.

4. The profits are not allocated in the books between the various individual members of the partnership. The books indicate only the share of M/s.

Bishan Singh Jaswant Singh and not the shares of the four partners constituting this smaller partnership.

6. On appeals filed by the assessee against the order of the Income Tax Officer, the Appellate Assistant Commissioner allowed registration to the

assessee-firm for the first year and granted renewal of registration for the subsequent two years. He took the view that the application dated April

23, 1958, was signed personally by all the partners and the shares of the partners were ascertainable from the deed dated April 5, 1950, read with

the declaration dated May 10, 1950. He, inter alia, observed in his order that nowhere it was pointed out that the application was otherwise not in

order and that the genuineness of the firm was not in dispute, the status having been accepted by the Income Tax Officer. In the three separate

appeals preferred by the revenue against the orders of the Appellate Assistant Commissioner for the three years, the Tribunal set aside the orders

that were passed by the Appellate Assistant Commissioner and restored the orders passed by the Income Tax Officer. The Tribunal took the view

that the assessee was not entitled to obtain registration for any of the three assessment years. The Tribunal in its order, inter alia, pointed out that

the instrument of partnership dated April 5, 1950, has not been signed by the four individual partners of the firm of Messrs, Bishan Singh Jaswant

Singh ; that the same was signed only by Tej Singh who affixed his signature to the instrument for and on behalf of the firm of Messrs. Bishan Singh

Jaswant Singh. So far as the declaration dated May 10, 1950, was concerned, according to the Tribunal, the same merely declared the shares of

the four individual partners of the firm of Messrs. Bishan Singh Jaswant Singh out of the share of 7 annas derived from the assessee. The said

declaration was neither a deed of rectification rectifying the instrument of partnership dated April 5, 1950, nor was it a deed of clarification. Barring

the declaration of shares, there was nothing in the declaration dated May 10, 1950, to support the contention of the assessee that the four partners

of M/s. Bishan Singh Jaswant Singh had become partners of the assessee-firm.

7. It also observed that the declaration dated May 10, 1950, was not signed by G. S. Dugal on behalf of G. S. Dugal & Co. Ltd., and the other

partner, Lakhinder Singh, in their capacity as partners, but their signatures were under the endorsement ""noted"" in the said declaration. According

to the Tribunal, the declaration dated May 10, 1950, was only a declaratory document concerning the firm of Messrs. Bishan Singh Jaswant Singh

and had nothing to do with the instrument of partnership constituting the assessee. According to the Tribunal, in the assessee, the firm of Messrs.

Bishan Singh Jaswant Singh was alone a partner and the individual partners thereof were not partners therein. The Tribunal also took notice of the

fact that the applications for renewal of registration filed by the assessee on June 30, 1953, for the assessment years 1953-54 and 1954-55 were

signed on behalf of the firm of Messrs. Bishan Singh Jaswant Singh by its partner, Tej Singh, but the same were not signed by all the four partners

constituting the firm. According to the Tribunal, the shares specified in the instrument of partnership dated April 5, 1950, and the recitals in the

instrument of partnership dated August 22, 1951, constituting the firm of Messrs. Bishan Singh Jaswant Singh established beyond doubt that one of

the partners of the assessee-firm was the smaller firm of M/s. Bishan Singh Jaswant Singh. Such a conclusion got support and corroboration from

the finding of fact that the profits in the account books of the firm were credited not to the accounts of the four individual partners of the smaller

firm of Messrs. Bishan Singh Jaswant Singh, but the same were credited to the accounts of the firm of Messrs. Bishan Singh Jaswant Singh. Such

corroboration was also further gathered from the fact that the returns of income filed by the assessee showed that the smaller firm of Messrs.

Bishan Singh Jaswant Singh was one of its partners. The Tribunal distinguished the case of Chhotalal Devchand Vs. Commissioner of Income Tax,

Bombay City II, , on the ground that in that case the partnership deed, though purporting to be between two firms and an individual, was signed by

all the individuals who were the partners of the firms as well as the individual partners. Upon appreciation of the entire evidence on record the

Tribunal took the view that the firm of Messrs. Bishan Singh Jaswant Singh had become a partner of the assessee and such a thing was not

permissible in law. It was on this ground that the Tribunal set aside the order that was passed by the Appellate Assistant Commissioner and

restored the order that was passed by the Income Tax Officer refusing to grant registration for the first year and renewal for the subsequent two

years. From this order of the Tribunal the question that has been referred for our determination is as under :

Whether, on the facts and in the circumstances of the case, was the assessee-firm entitled to the grant of registration for the assessment years

1952-53, 1953-54 and 1954-55 ?

8. Mr. Dastur, on behalf of the assessee, submitted that upon the true appreciation of the evidence on record the firm of Messrs. Bishan Singh

Jaswant Singh was not one of the partners of the assessee, but the assessee was a partnership firm consisting of six partners, namely, G. S. Dugal

& Co. Ltd., the four individual partners of the firm of Messrs. Bishan Singh Jaswant Singh and S. Lakhinder Singh. He submitted that even when a

firm is a partner in a bigger partnership automatically the partners of such smaller firm become partners of the bigger firm and such partnership has

to be treated as being constituted by partners of the smaller firm along with the other partners and is entitled to registration. He pointed out that

even though it is a well-settled position in law that the provisions of Section 26A of the Act and the statutory rules pertaining to registration must be

strictly complied with so far as instrument or instruments of partnership are concerned, they should be reasonably construed. According to his

submission, if the instrument of partnership dated April 5, 1950, and the declaration dated May 10, 1950, are reasonably construed, then it is quite

evident that the firm of Messrs. Bishan Singh Jaswant Singh is not a partner in the assessee but the four partners of the firm of Messrs. Bishan

Singh Jaswant Singh with the limited company and the individual are the partners therein. Such a firm was a genuine firm and was entitled to

registration for the assessment year 1952-53 and for renewal of registration for the subsequent two years. He submitted that the mere fact that in

the books of account of the assessee profits were credited to the firm of Messrs. Bishan Singh Jaswant Singh was an irrelevant factor and,

notwithstanding such a credit being made, the assessee was entitled to registration for the first year and renewal of registration for the subsequent

two years. Mr. Joshi, on the other hand, on behalf of the revenue submitted that in the present case on the entire material on record the Tribunal

was justified in taking the view that the assessee-firm was a partnership constituted under the instrument of partnership dated April 5, 1950, and it

comprised of three partners, namely, Messrs. G. S. Dugal & Co. Ltd., the firm of Messrs. Bishan Singh Jaswant Singh and the individual by name

S. Lakhinder Singh. He submitted that in law a firm cannot become a partner in a partnership firm and if the instrument of partnership discloses that

the firm has become a partner, then such a partnership will not be entitled to registration. He also submitted that even if the four partners of the firm

of Messrs. Bishan Singh Jaswant Singh are treated as partners of the assessee-firm, the instrument of partnership dated April 5, 1950, does not

show the specific shares of the individual partners so far as the four partners of Messrs. Bishan Singh Jaswant Singh are concerned. He, therefore,

submitted that the Tribunal was right in refusing registration to the assessee-firm for the assessment year 1952-53 and renewal of registration for

the subsequent two years.

9. Section 26A of the Act provides for procedure in registration of firms and its provisions are as under:

26A. Procedure in registration of firms.--(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.

10. By securing registration under the Act the partners of the firm obtain the benefit of lower rates of assessment and no tax is directly charged on

the income of the firm. This is an important benefit to which partners of a registered firm become entitled as a consequence of registration and if it is

entitled to secure that benefit the requirements of Section 26A of the Act and the rules framed under the Act must be strictly complied with. It is

equally a well-settled principle of law that when an application for registration of a partnership firm is made the assessee must strictly comply with

the requirements of Section 26A and the rules relating to registration, but so far as the instrument or instruments of partnership are concerned, they

should be reasonably construed. In order that a firm may be entitled to registration u/s 26A of the Act the following essential conditions must be

satisfied, namely :

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

(2) an application on behalf of, and signed by, all the partners and containing all the particulars as set out in the rules must be made;

(3) the application should be made before the assessment of the firm, u/s 23, for that particular year;

(4) the profits or losses, if any, of the business relating to the accounting year should have been divided or credited, as the case may be, in

accordance with the terms of the instrument; and

(5) the partnership must be genuine and must actually have existed in conformity with the terms and conditions of the instrument of partnership, in

the accounting year.

11. Having regard to the rival contentions on both the sides, the crucial question that arises for determination is whether the assessee-firm is a

partnership of three partners, namely, G. S. Dugal & Co. Ltd., the partnership firm of Messrs. Bishan Singh Jaswant Singh and the individual by

name, S. Lakhinder Singh, or it is a firm consisting of six partners, namely, G. S. Dugal & Co. Ltd., the four partners of Messrs. Bishan Singh

Jaswant Singh and the individual partner by name, S. Lakhinder Singh. If upon consideration of the relevant material on record, the former is the

position, the Income Tax Officer and the Tribunal were right in taking the view that the assessee was not entitled to registration or renewal of

registration. If, however, upon appreciation of the material on record it appears that the latter is the correct view, then the Appellate Assistant

Commissioner was right in granting registration to the assessee-firm for the first year and renewal of registration for the subsequent two years.

12. It is not disputed before us that a partnership can be constituted by more than one document provided that all such documents are in existence

in the accounting year. The first year for which the question relates is the year 1952-53 and we have to consider in the accounting year what were

the relevant documents which should be considered for the purpose of determining whether the assessee is entitled to registration. The instrument

of partnership under which the assessee is constituted is dated April 5, 1950. The recital of the instrument shows that this is a deed between the

following partners :

THIS DEED OF PARTNERSHIP made at Poona this 5th day of April, 1950, between Messrs. G.S. Dugal & Co. Ltd., having its Head Office

at Bombay and Branch Office at 15, Bombay Road, Poona, by its Managing Director, Dr. G.S. Dugal of the FIRST PART, Messrs. Bishan

Sisingh Jaswant Singh having their office at 94, Ambala Cantt. through their duly constituted Attorney, Mr. Tej Singh Dugal of the SECOND

PART and S. Lakhinder Singh of 94, Ambala Cantt. of the THIRD PART, witnesseth that the parties hereto mutually agree to become partners

upon terms and conditions hereinafter contained.

13. So far as the instrument of partnership is concerned, the firm has not been given an independent firm name, but Clauses 1 and 2 of the

instrument provide that the business of the partnership shall be civil engineering contracts which may be secured from time to time under the title of

Messrs. G.S. Dugal & Co. Ltd. or Messrs. Bishan Singh Jaswant Singh and all transactions in respect of partnership shall be entered into under

the name of Messrs. G. S. Dugal & Co. Ltd. or Messrs. Bishan Singh Jaswant Singh, as the case may be, for the contracts secured in their

respective names. So far as the capital of the firm is concerned, it is to be provided by the party of the first part, namely, Messrs. G. S. Dugal &

Co. Ltd., and by the party of the second part, namely, the firm of Messrs. Bishan Singh Jaswant Singh; in equal proportion. Clause 4 deals with

sharing of profits and bearing the losses and its provisions are as under :

Party of the First Part seven annas in a rupee. Party of the Second Part seven annas in a rupee. Party of the Third Part two annas in a rupee.

14. Clause 5 provided for remuneration to a working partner and it provides as under:

5. Every working partner shall be entitled to an allowance of Rs. 1,000 (one thousand) per month which shall be chargeable to the partnership

account.

15. Clause 9 provided when net profits or losses were to be ascertained. Under that clause on completion of each contract a final account shall be

drawn up and the net profit or loss thereof ascertained and paid to the partners according as they are entitled to share thereof.

This instrument of

partnership is signed by the party of the first part by its managing director, by the party of the second part by partner, Tej Singh, and by the party

of the third part.

16. Upon a plain reading of this instrument of partnership it is quite apparent that the firm of Messrs. Bishan Singh Jaswant Singh is one of the

partners. It is not disclosed in the instrument how many partners are in that firm and what are their names. Both the recital as well as the provisions

of Clause 4 show that the firm of Messrs. Bishan Singh Jaswant Singh was one of the partners entitled to a share in the profits of seven annas in a

rupee and was liable to bear the same share in the losses of the partnership. No part of this instrument of partnership suggests that the individual

partners of the firm of Messrs. Bishan Singh Jaswant Singh have become partners in this partnership.

17. Strong reliance is, however, placed by Mr. Dastur upon the declaration dated May 10, 1950, for contending that if the instrument of

partnership dated April 5, 1950, is read with this declaration it is quite evident that the firm of Messrs. Bishan Singh Jaswant Singh is not one of the

partners of the assessee, but the assessee consists of six partners, namely, Messrs. G.S. Dugal & Co. Ltd., S. Lakhinder Singh and the four

partners of Messrs. Bishan Singh Jaswant Singli. This declaration provides as under:

In the matter of partnership agreement dated the 5th day of April, 1950, between Messrs. G.S. Dugal & Co. Ltd. of the First Part, Messrs.

Bishan Singh Jaswant Singh of the Second Part, and S. Lakhinder Singh of the Third Part, we the various partners of the said firm, Bishan Singh

Jaswant Singh, hereby declare that our individual shares in the above partnership are in equal proportion, that is as follows :

1. S. Jaswant Singh one anna nine pies

2. S. Hawiam Singh ditto

3. S. Tej Singh ditto

4. S. Kartar Singh ditto

Signed this 10th day of May, 1950, at Poona.

Witness. 1. Sd. Jaswant Singh

1. Sd. D. C. Capasi, Advocate. 2. Sd. Harnam Singh

2. Sd. S. M. Antonio. 3. Sd. Tej Singh

Noted. 4. Sd. Kartar Singh,

Sd. Lakhinder Singh

Sd. G.S. Dugal

for G.S. Dugal & Co. Ltd.

18. The argument of Mr. Dastur is that this declaration should be reasonably construed and it ought to be read with the provisions in the instrument

of partnership dated April 5, 1950, and if it is so done, then it is quite apparent that in the assessee-firm, the firm of Messrs. Bishan Singh Jaswant

Singh is not a partner but the four partners of this smaller firm, viz., Jaswant Singh, Harnam Singh, Tej Singh and Kartar Singh, are partners in the

assessee-firm along with the two other partners, S. Lakhinder Singh and Messrs. G.S. Dugal & Co. Ltd. He submitted that even though this

declaration is made by the four partners of the firm of Messrs. Bishan Singh Jaswant Singh it is in relation to their individual shares in the assessee-

firm and he relied upon the expression "our individual shares in the above partnership". His submission is that the expression "in the above

partnership" means the assessee-firm and not the firm of Messrs. Bishan Singh Jaswant Singh. He further urged that even though the signatures

Lakhinder Singh and G. S. Dugal for G. S. Dugal & Co. Ltd., appear under the expression "noted", they should be treated as parties to the

declaration and if it is so done, then there can be no doubt that the assessee-firm consists of six partners as mentioned above. The argument, on the

other hand, of Mr. Joshi on behalf of the revenue is that the expression "in the above partnership" means the firm of Messrs. Bishan Singh Jaswant

Singh. Alternatively, he submitted that even if the expression "in the above partnership" means the assessee-firm, it is quite clear that it relates to the

individual shares of the co-partners who are the partners in the firm of Messrs. Bishan Singh Jaswant Singh and it is a declaration made by these

four partners and what has been done by the other two partners of the assessee is that they have noted the declaration made by the four partners

of the firm of Messrs. Bishan Singh Jaswant Singh as regards division or distribution of the share which the firm will get in the assessee-firm. His

submission was that in no case Lakhinder Singh and G. S. Dugal & Co. Ltd. signed as executants of the declaration. If this is a declaration signed

by the four partners of Messrs. Bishan Singh Jaswant Singh and the two other partners of the assessee-firm, then naturally the declaration will have

been signed in a normal manner by all the six partners, but that has not been done in the present case. Actually, the operative part of the

declaration clearly shows that it is made only by the four partners of Messrs. Bishan Singh Jaswant Singh and it relates to the distribution of the

share of the firm of M/s. Bishan Singh Jaswant Singh in the assessee-firm amongst the four partners of the smaller firm. There is nothing in this

declaration to indicate that S. Lakhinder Singh and M/s. G. S. Dugal & Co. Ltd. have accepted these four partners as partners of the assessee-

firm. On a fair reading of this declaration it deals with distribution amongst the four partners of their shares in the share of the firm of Messrs.

Bishan Singh Jaswant Singh in the assessee-firm.

19. Section 26A of the Act does not indicate what a firm signifies and how it has to be constituted. Section 2(6B) of the Act clearly provides that

firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932. We have, therefore, to go to the

last-mentioned Act to ascertain what a firm is and how it can be created. Turning to the Indian Partnership Act, 1932, Section 4 defines

partnership", "partner", "firm" and "firm name" in the following manner:

4. Definition of "partnership", "partner", "firm" and "firm name".--" Partnership " is the relation between persons who have agreed to share the

profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively " a firm ", and the name under which

their business is carried on is called the " firm name ".

20. This section clearly speaks of three elements constituting a partnership, namely;

(1) there must be an agreement entered into by two or more persons;

(2) that the agreement must be to share the profits of a business; and

(3) that the business must be carried on by all or any of them acting for all.

21. On a fair reading of the instrument of partnership dated April 5, 1950, read with the declaration dated May 10, 1950, it is quite clear that the

agreement is entered into by three parties, namely, a limited company by name G.S. Dugal & Co. Ltd., the partnership firm of Messrs. Bishan

Singh Jaswant Singh and an individual by name S. Lakhinder Singh. It is these three persons who have agreed to share the profits and losses of the

partnership as provided in the agreement and the specification of shares is amongst the three partners and not amongst the six partners. What the

declaration merely connotes is that the amount which comes to the share of the firm of Messrs. Bishan Singh Jaswant Singh is to be distributed or

shared in the manner provided therein, i.e., equally amongst the four partners of the smaller firm. There is nothing in these two documents to

indicate that G.S. Dugal & Co. Ltd. and S. Lakhinder Singh regarded the four individual partners of Messrs. Bishan Singh Jaswant Singh as their

partners, nor did they authorise any one of these four partners of the smaller firm to act on behalf of the assessee-firm so as to bind the assessee-

firm.

22. That such was the real nature of the agreement between the parties is quite evident if regard be had to the subsequent conduct. On August 22,

1951, an instrument of partnership is executed between the four partners of the firm of Messrs. Bishan Singh Jaswant Singh. The recital of this

instrument of partnership is relevant and it is as under :

Whereas the firm, M/s. Bishan Singh Jaswant Singh, which is constituted by the parties to this deed is carrying on partnership business with M/s.

G. S Dugal (S: Co. Ltd. and Sardar Lakhinder Singh under the instrument of partnership dated 5th day of April, 1950, and whereas the said firm

of M/s. Bishan Singh Jaswant Singh is a partner with seven annas share in the bigger firm alluded to here above which as stated is constituted under

the instrument of partnership dated 5th day of April, 1950, and whereas the stipulation between the parties to this deed is that the profits accruing

to the firm of M/s. Bishan Singh Jaswant Singh from the said partnership shall be divisible equally between the parties to this deed and likewise the

losses, if any, emanating from this source are to be borne equally and whereas no deed or writing hitherto existed evidencing the terms and

conditions governing the mutual rights and obligations inter se the parties to this deed and whereas it is considered expedient to execute such a

document; Now, therefore, this partnership provided as under :

That the seven annas share of profit arising to the firm of M/s. Bishan Singh Jaswant Singh from the firm alluded to above which stands constituted

under the instrument of partnership dated 5th of April, 1950, shall be divisible between the parties to this deed in equal proportions. Likewise, the

looses, if any, from this source shall also be borne by the parties to this deed in equal proportions.

23. Clause 2 provided that no outsider can be admitted into this partnership business without the unanimous consent of the existing patties to the

deed and Clause 3 provided that so far as the goodwill of the firm of Messrs. Bishan Singh Jaswant Singh is concerned, it will belong to S. Jaswant

Singh Dugal. This is in fact the instrument of partnership between the four partners of Messrs, Bishan Singh Jaswant Singh and the recital clearly

states that this firm of Messrs. Bishan Singh Jaswant Singh is a partner with seven annas share in the larger firm, i.e., the assessee-firm, which is

constituted under the instrument of partnership dated April 5, 1950. The recital further provides that in the larger firm, i.e., the assessee-firm, the

profits will only accrue to the firm of Messrs. Bishan Singh Jaswant Singh and the object of this instrument of partnership is to make provision as

regards division of such profits or sharing of loss which may be borne by the firm of Messrs. Bishan Singh Jaswant Singh. Further, it is clear from

this instrument of partnership that it only relates to division of seven annas share of profit accruing to the firm of Messrs. Bishan Singh Jaswant

Singh. The instrument does not contemplate that any other business is to be done by this firm. If as contended by Mr. Dastur the four partners of

this firm were the partners of the assesses-firm, it was unnecessary for them to execute this deed. On the contrary, the very fact thai they executed

this deed really indicates that they themselves regarded that so far as the assessee-firm was concerned one of the partners therein was Messrs.

Bishan Singh Jaswant Singh and not the four partners constituting that firm. Secondly, they regarded the fact that so far as the assessee-firm was

concerned, the share of profits would accrue to the firm of Messrs, Bishan Singh Jaswant Singh and not to the individual four partners of Messrs.

Bishan Singh Jaswant Singh. This instrument, therefore, lends support to the conclusion that the instrument of partnership dated April 5, 1950,

notwithstanding the execution of the declaration dated May 10, 1950, was in regard to a partnership between G. S. Dugal & Co. Ltd., the firm of

Messrs. Bishan Singh Jaswant Singh and the individual by name, S. Lakhinder Singh. Even the firm of Bishan Singh Jaswant Singh is registered

under the Income Tax Act. That such was the real understanding of the parties is also apparent from the subsequent conduct. In the books of

account maintained by the assessee seven annas share of profit was credited, to the account of Messrs. Bishan Singh Jaswant Singh for all the

three assessment years and not in equal proportion to the name of each of the four individual partners who constituted that firm. Further, in the

returns of income filed by the assessee for all the assessment years under consideration, the assessee-firm has stated that the firm of Messrs.

Bishan Singh Jaswant Singh was one of the partners of the assessee-firm with seven annas share in the profits and losses. Even when the

application for registration of the assessee-firm was initially made for the assessment year 1952-53 and applications for renewal of registration

were made for the subsequent two years, such applications were signed by Tej Singh as a partner for and on behalf of the smaller firm of Messrs.

Bishan Singh Jaswant Singh and the other partners, G. S. Dugal as the managing director of G. S. Dugal & Co. Ltd. and S. Lakhinder Singh.

24. It was only later on when an application for renewal of registration was made on March 14, 1958, that for the first time it was signed by six

partners. Thus, the subsequent conduct indicated above corroborates the conclusion that the assessee-firm consisted of three partners, namely, G.

S. Dugal & Co. Ltd., the firm of Messrs, Bishan Singh Jaswant Singh and the individual by name, S. Lakhinder Singh.

25. It is a well-settled position in law that a firm as such cannot be a partner in a partnership firm. In Dulichand Lakshminarayan Vs. The

Commissioner of Income Tax, Nagpur, , the Supreme Court held that a firm is not a person and as such is not entitled to enter into a partnership

with another firm or Hindu undivided family or individual. In that case, an individual, a joint Hindu family and three firms purported to enter into a

partnership. The deed was signed by five individuals, viz., by the individual partner, by the karta of the joint family and by one partner each of the

three firms. This deed of partnership was sought to be registered u/s 26A of the Act, the application being signed by the same five individuals. The

Supreme Court held that no question could arise of the registration u/s 26A of the Act of a partnership purporting to be one between three firms, a

Hindu undivided family business and an individual. It further held that even assuming that a valid partnership was constituted, as all the members of

the three firms had not personally signed the application it was not in proper form under Rule 2 of the Income Tax Rules. We are concerned in the

present case with the first ground on which the Supreme Court took the view that the firm was not entitled to registration. Such view was taken

even though it is common ground that out of the five constituent parties Dulichand Laxminarayan, Jairamdas Hiralal and Laxminarayan Chandulal

were separate firms constituted under three separate deeds of partnership and Laxminarayan, Beharilal and Chandulal, who signed the deed on

behalf of those firms, were partner's in their respective firms. It was in this case that the main argument was considered by the Supreme Court

whether a firm as such can be a partner in another firm. After referring to the definition under the Indian Partnership Act and the provisions of the

General Clauses Act and the law prevailing in Scotland and England, the Supreme Court observed that it has been consistently held in this country

that a firm as such is not entitled to enter into partnership with another firm or individuals. It is further pointed out that the word "persons" in Section

4 of the Indian Partnership Act contemplates only natural or artificial, i.e., legal persons and a firm is not a "person" and as such is not entitled to

enter into a partnership with another firm or Hindu undivided family or individual. In such a view of the matter there can arise no question of

registration of a partnership purporting to be one between three firms, a Hindu undivided family business and an individual as a line u/s 26A of the

Act. It is clear from this decision of the Supreme Court that if upon a fair reading of the material on record, a firm as such has purported to become

a partner in a partnership firm, then the partnership firm will not be entitled to registration u/s 26A of the Act, because a firm is not a "person" and

as such is not entitled to enter into a partnership with another firm or Hindu undivided family or individual.

26. In the course of the arguments our attention was invited to a large number of cases on either side, but we do not think it necessary to consider

each one of them. Suffice it for the present purpose if reference is made to the decisions of the Supreme Court, the decisions of this High Court

and other decisions directly dealing with the question involved.

27. Reference was made to the decision of the Supreme Court in the case of *Kylasa Sarabhiah, Bombay Cloth Shop, Secunderabad Vs.*

Commissioner of Income Tax, Andhra Pradesh, The facts of the case show that there were three major partners in firm A in which four minors

were admitted to the benefits of partnership. Its profits were to be shared equally between the seven persons whereas the losses were to be shared

by the three major partners equally. A larger firm, firm B, was constituted, with five partners, under a deed of partnership in which firm A 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. The fact

that four minors were admitted to the benefits of the partnership in firm A with equal shares in the profits but losses were to be shared only by its

three major partners was, however, recited in the preamble to the deed of partnership of firm B. The deed of partnership of firm B was signed by

all the major partners of firm A. The question was whether firm B was entitled to be registered u/s 26A of the Act. The Supreme Court held that

although the application for registration of a firm u/s 26A had strictly to be in conformity with the Act and the Rules, in ascertaining whether the

application was in conformity with the Rules, the deed of partnership had to be reasonably construed; that the right to registration u/s 26A being

conditional upon the specification of the individual shares of the partners, a deed of partnership between a firm and an individual which specified

the collective shares of the firm, without more, could not be registered; that, however, 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 the agreement for the

constitution of firm B was in truth between the three major members who constituted firm A and four outsiders ; that the word "specifying" was

used in Section 26A and Rule 2 of the rules as meaning "mentioning, describing or defining in detail"; it did not mean expressly setting out in

fractional or other shares ; that in the deed of partnership of firm B, the shares were clearly defined though they were not worked out in precise

fractions ; that any defect in the deed of firm A could not affect the right of firm B to be registered; that if the statutory conditions which qualified

firm B for registration were fulfilled, an arrangement between some of the partners of firm B which bound them to distribute the profits under a

stipulation which was not a part of the partnership agreement in relation to firm B did not affect the right of firm B to claim registration u/s 26A and

that, therefore, firm B was entitled to be registered u/s 26A.

28. Great reliance is placed by Mr. Dastur upon the observations of the Supreme Court at page 222 to the following effect--See *Kylasa*

Sarabhaiah, Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh,

A firm is strictly not a person : it is an association of persons, and an agreement by which a firm purports to enter into a partnership with an

individual or another firm merely makes the partners of that firm individually partners of the larger partnership.

29. Relying upon these observations the submission of Mr. Dastur is that as in the case before us the firm of Messrs. Bishan Singh Jaswant Singh is

a partner in the assessee-firm, the partners of the firm of Messrs. Bishan Singh Jaswant Singh are individually partners of the assessee-firm. The

observations made by the Supreme Court quoted above have to be read in the light of the facts of the case and they cannot be understood to lay

down an absolute proposition to the effect that in every case where a firm purports to enter into a partnership with an individual or another firm, the

partners of that firm become automatically partners of the larger partnership. If the contention of Mr. Dastur has to be accepted, then the decision

of the Supreme Court in *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur*, cannot be given effect to. The observations

on which reliance is placed by Mr. Dastur are to be understood in the light of the facts which were before the Supreme Court in *Kylasa Sarabhaiah,*

Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh, . Though in the clause dealing with the shares of the

respective partners a collective share of Re. 0-6-9 was given to the firm of Messrs. *Kylasa Sarabhaiah*, in the recital it was provided that the firm

consisted of three major partners and four minors were admitted to the benefits of partnership and the profits of the said firm were to be shared by

all the seven persons equally and the losses were to be borne in equal shares only by the three major partners. Moreover, the instrument of

partnership of firm B was signed by all the partners including the three major partners of the smaller firm A. Having regard to these facts, the

Supreme Court took the view that the agreement was in truth between the three major members who constituted the smaller firm and four

outsiders. Each of them has signed the application and the covenants of the partnership agreement bind the partners individually.

30. The other decision of the Supreme Court to which our attention is invited is in the case of *Parekh Parekh Wadilal Jivanbhai Vs. Commissioner*

of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, . The facts of the case are correctly stated in the head-note as under :

After the dissolution of a larger firm, N, T and R, who were partners thereof having each a 2 as, share therein, constituted themselves into a new

firm as from November 1, 1949, under a deed of partnership executed on March 19, 1950, to take over the business of two of the branches of

the larger firm, which was allotted to them. Clause 3 of the partnership deed provided that the capital allotted to each partner was equal, viz., 5

shares of Rs. 16,000 each in a total capital of Rs. 2,40,000. Clause 10 provided that after meeting all expenses, interest and other charges, the

resulting net profit or loss shall be ascertained and divided amongst all partners". In the books of account of the new firm for all the years since its

commencement from November 1, 1949, the profits had been apportioned equally among the three partners. In its applications for registration of

the firm u/s 26A of the Indian Income Tax Act, 1922, for the assessment years 1951-52 to 1953-54, the three partners had been shown to share

the profits equally. Though the Income Tax Officer granted registration for 1951-52 and renewed the registration for 1952-53, he refused to

renew the registration of the firm for 1953-54 on the ground that in the deed dated March 19, 1950, there was no clause specifying the individual

share of each partner as required by Section 26A.

31. The Supreme Court took the view that reading the partnership deed as a whole and in the context of the relevant circumstances of the case,

there was specification of the individual shares of the partners in the profits within the meaning of Section 26A and the firm was entitled to

registration for 1953-54. In this judgment, though there was reference made to the provisions of Section 13 of the Partnership Act which, *inter alia*,

provides that subject to the contract between the parties the partners are entitled to share equally in the profits earned and shall contribute equally

to the losses sustained by the firm, however, the decision that the firm was entitled to registration was based upon consideration of the relevant

facts and there is nothing in the judgment to indicate that that conclusion was arrived at relying upon the provisions of Section 13.

32. Mr. Dastur has relied upon three decisions of this court, one an un-reported decision in the case of Industrial Stores Company v.

Commissioner of Income Tax (I.T. Reference No. 32 of 1955, decided on February 23, 1956) and the other two being the decision in the case of

Commissioner of Income Tax, Bombay North Vs. Shantilal Vrajlal and Chandulal Dayalal and Co., and the decision in the case of Chhotalal

Devchand Vs. Commissioner of Income Tax, Bombay City II, . These were all the cases where even though the partnership was shown to have

been entered into between a firm and an individual, the deed of partnership in fact was signed by all the partners of the firm and the individual who

constituted the firm. In Industrial Stores Company's case (ITR No. 32 of 1955, decided on 23-2-1956) the assessee I. S. & Co. was a firm

consisting of I and Co. a firm and K, each having 8 annas share. An application for registration dated 2nd August, 1950, was signed by K and by

L and S, partners of I and Co. There was another partnership deed consisting of I and Co. where S and L were partners with 11 annas and 5

annas shares respectively. L retired from the assessee-firm from 1st February, 1951. On October 1, 1951, an application for renewal of

registration for the assessee-firm signed by S and K was made for the accounting year ending Diwali 1950. Both the original application and

renewal application for registration were rejected by the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal. On a

reference before the High Court, the High Court took the view that though the first partnership deed relied upon by the assessee for the original

application did not mention separate shares of K, L and S in I. S. and Co., the two deeds of partnership read together clearly showed all the

partners and their individual shares. The expression "instrument of partnership" included two or more documents of partnership. So far as the

application for renewal of registration was concerned, it was stated that it was required to be signed only by persons who were partners on the

date of the application and not those who were partners in the year of account. Hence the renewal application was properly signed by S and K

who were the only partners on October 1, 1951, though L was a partner in the year of account. The assessee-firm was, therefore, entitled to

registration. Though in the judgment there is no reference to the fact that the partnership deed of the assessee-firm of I. S. & Co. was signed by

two partners, I and Co. and the other partner K, we have ascertained from the original papers in the reference that the partnership deed of the

assessee-firm of I. S. & Co. was signed by all the three partners, namely, the two partners of I. S. & Co., namely, L. & S. and the third partner, K.

When such was the position, the High Court took the view that for ascertainment of the shares of L and S as the partners of I. S. & Co. reference

can be had to the partnership deed of the firm of I. S. & Co. and if the partnership deed of I. S. & Co. was referred to then the individual shares of each

one of the three partners of the assessee-firm could be ascertained. It was on that ground that the application for registration as well as the

application for renewal of registration were granted by this court.

33. The second decision is the decision of this court in Commissioner of Income Tax, Bombay North Vs. Shantilal Vrajlal and Chandulal Dayalal

and Co., . Ordinarily, we would have referred to the facts of this case, but having regard to the decision of the Supreme Court in the case of N.T.

Patel and Company Vs. Commissioner of Income Tax, Madras, , the decision of this High Court in Commissioner of Income Tax, Bombay North

Vs. Shantilal Vrajlal and Chandulal Dayalal and Co., cannot be regarded as good law. In Commissioner of Income Tax, Bombay North Vs.

Shantilal Vrajlal and Chandulal Dayalal and Co., registration was granted for the year of account November 2, 1948, to October 21, 1949, inter

alia, relying upon the agreement that was executed on September 12, 1951. That agreement was not in existence during the year of account; still

the High Court relied upon the same and granted registration holding that once the documents were looked at, the individual shares of the partners

could be ascertained. That was also a case where under the said agreement all the partners of the two firms which constituted the partnership of

the larger firm had signed the document. Though this court relying upon a document of later date granted registration it appears that it is not

permissible in law to refer to a document not existing in the year of account. Such a view, is taken by the Supreme Court in the case of N.T. Patel

and Company Vs. Commissioner of Income Tax, Madras, . The Supreme Court has there pointed out that although an instrument of partnership

was in existence in the accounting year 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 dated September 17, 1955. Therefore, it could not be said that there was the requisite instrument of

partnership specifying the individual shares of the partners during the year of account and the High Court was right in holding that the firm was not

entitled to registration. It is very clear from this decision that all the documents that could be relied upon for considering an application for

registration must have existed in the year of account. In view of this decision of the Supreme Court the view taken by this court in Commissioner of

Income Tax, Bombay North Vs. Shantilal Vrajlal and Chandulal Dayalal and Co., , cannot be regarded as good law.

34. The third decision is in the case of Chhotalal Devchand Vs. Commissioner of Income Tax, Bombay City II, . In this case, by a partnership

deed dated September 13, 1945, an agreement of partnership was arrived at between three parties, viz., two firms (one of four partners and the

other of two) and an individual. The deed was signed by all the seven individuals. Capital was to be contributed equally by the three parties and the

profit or loss was to be divided in equal shares by the three parties. The deed provided, inter alia, for arbitration between the individuals. In order

to ascertain the shares of the seven individuals the partnership deeds of the two firms which were on the file of the department were relied upon.

There was a change in the constitution of the partnership by the death of one of the individuals, and a fresh partnership deed was executed on

November 29, 1954, on the basis of which, an application for registration u/s 26A of the Income Tax Act was made for the assessment year

1954-55. Registration was refused for that year on the grounds : (i) that it was not a valid partnership, as it was constituted of two firms and an

individual, (ii) that in the books of, account, of the partnership the profits were credited not to the names of each constituent individual but only to

the names of the firms, and (iii) that the deed of partnership did not specify the share of each of the individuals, constituting the two firms. On a

reference before the High Court, it took the view that it was the constituent members of the two firms and not the two firms as entities that had

entered into a partnership with the individual, and, therefore, the partnership so constituted was a valid partnership. It was further held that the fact

that the profits were not credited to the individual accounts of the constituent members of the two firms but were credited to the accounts of the

two firms was immaterial. It was pointed out that as there were partnership deeds constituting the two firms and those deeds were on the file of the

department and for the ascertainment of the shares of the constituent individuals of these firms they were relied upon, it was not necessary that the

deed of partnership itself should have specified the shares of the individuals. Both in the case of Industrial Stores Co. (ITR No. 32 of 1955,

decided on 23-2-1956) as well as in the case of Chhotalal Devchand Vs. Commissioner of Income Tax, Bombay City II, reference was made to

the deeds of partnership of the smaller firm when the partnership deed of the larger firm was signed by all the partners, i.e., by the partners of the

larger firm as well as by the constituent partners of the smaller firm who were partners therein. Thus, both in the Industrial Stores Co.'s case (ITR

No. 32 of 1955, decided on 23-2-1956) and Chhotalal Devchand Vs. Commissioner of Income Tax, Bombay City II, , registration was granted

because the partnership deed of the larger firm was in fact signed by each one of the partners, i.e., the constituent partners of the smaller firm who

were partners therein and the other individuals. Though strong reliance is placed by Mr. Dastur on these decisions, he has overlooked the

distinction that exists between the facts of the present case and the facts existing in the cases of Industrial Stores Co. (ITR No. 32 of 1955,

decided on 23-2-1956) and Chhotalal Devchand Vs. Commissioner of Income Tax, Bombay City II, In the case before us the partnership deed

dated April 5, 1950, has not been signed by all the partners of the smaller firm of Bishan Singh Jaswant Singh. On the other hand, it is signed only

by G. S. Dugal & Co. Ltd., the firm of Messrs. Bishan Singh Jaswant Singh and S. Lakhinder Singh. As the constituent partners of the firm of

Messrs. Bishan Singh Jaswant Singh have not signed the document it is not possible for us to take the view that the partnership deed dated April 5,

1950, was signed by G. S. Dugal & Co. Ltd., S. Lakhinder Singh as the individual and Tej Singh Dugal, a partner of the firm of Messrs. Bishan

Singh Jaswant Singh, as their agent so as to bind anything done by him on behalf of the partnership on all the partners. The element of agency is

absent in cases where all the partners do not sign the deed. Such a thing is not there either in the case of Industrial Stores Co. (ITR No, 32 of

1955, decided on 23-2-1956) or in the case of Chhotalal Devchand Vs. Commissioner of Income Tax, Bombay City II, . Further, it should be

noted that the fact that the share of Messrs. Bishan Singh Jaswant Singh was credited to the name of the firm in the books of account of the

assessee-firm has not been relied upon by itself as a sufficient ground for refusing registration. That factor has been relied upon by us as one of the

relevant factors which corroborates the earlier conclusion which we have come to upon the instrument of partnership dated April 5, 1950, read

with the declaration dated May 10, 1950. Thus these decisions of the Bombay High Court do not assist us in accepting Mr. Dastur's contentions.

35. Reference can be made to the decision of the Madras High Court in the case of S. Meikole Udayar Vs. S.P. Periasami Konar and Others, ,

relied upon by Mr. Dastur. This is not a case relating to registration of firms under the provisions of the Act, but it pertains to a suit filed by some of

the partners of the firm. In this case the Madras High Court has taken the view that a firm is not a legal entity and cannot be regarded as a person

unlike a company which is a corporate body and a person in the eye of the law. A firm is but a compendious expression to indicate the relationship

brought about between two or more persons who agree between themselves on a common venture on terms based on mutual consent. A firm

cannot, therefore, be a partner of another firm. The true position in law would be that the partners of the joining firm will automatically become the

partners of the new firm. Relying upon this decision the submission of Mr. Dastur was that, in the present case, the constituent partners of the firm

of Messrs. Bishan Singh Jaswant Singh should be regarded as partners of the assessee-firm, even though the deed may state that one of the

partners was the firm of Messrs. Bishan Singh Jaswant Singh. The view taken by the Madras High Court, in this case, is directly contrary to the

one taken by the Supreme Court in the case of Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, . In Dulichand

Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , an individual, a joint Hindu family and three firms purported to enter into a

partnership under an instrument of partnership. For the three constituent firms separate deeds of partnership existed. Still the Supreme Court took

the view that a firm as such could not become a partner and did not draw an inference that the partners of the constituent firms automatically

became partners of the larger firm. In none of the later decisions of the Supreme Court any doubt has been thrown upon the correctness of the

decision given in Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , and in cases where all the partners of the constituent

firms have not signed the partnership deed of the larger firm a consistent view has been taken that the larger firm will not be entitled to registration

merely because separate deeds of partnership existed in respect of the smaller firms which were constituent members of the larger firm.

36. Reference was also made by Mr. Dastur to the decision of the Madras High Court in the case of A. Asha and Co. Vs. Commissioner of

Income Tax, . In this case, the Division Bench of the Madras High Court departed from the view that was taken by the Division Bench in three

earlier cases on the ground that the said decisions were impliedly overruled by the decisions of the Supreme Court in Kylasa Sarabhiah, Bombay

Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh, and in Parekh Wadilal Jivanbhai Vs. Commissioner of Income

Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, . This was also a case where the decision in Chhotalal Devchand Vs. Commissioner of

Income Tax, Bombay City II, , which was earlier not followed by the Division Bench of the Madras High Court, was followed by the court. The

facts in this case were practically similar to those in Chhotalal Devchand Vs. Commissioner of Income Tax, Bombay City II, . The partnership

deed or the instrument of partnership of the larger firm was signed by all the partners including the partners of the constituent firms and separate

deeds of partnership existed in respect of the constituent firms. When such was the position, the court took the view that the firm was entitled to

registration u/s 26A of the Act. Such a view undoubtedly is taken by the Bombay High Court in the two cases which we have referred to above.

However, Mr. Joshi has pointed out that the Madras High Court has based its decision on the footing that the decision of the Supreme Court in

Parekh Wadilal Jivanbhai's case [1967] 63 ITR 485 was based on the provisions of Section 13 of the Partnership Act. While discussing the facts

of that case we have pointed out earlier that though reference was made to the provisions of Section 13 the decision was not based upon the said

provisions but upon the relevant circumstances that were existing in that case and the decision was based upon the partnership deed read with the

relevant circumstances. The observation of the Madras High Court in A. Asha and Co. Vs. Commissioner of Income Tax, , that in Parekh Wadilal

Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, , registration was granted to the firm relying upon

the provisions of Section 13 of the Partnership Act does not appear to be borne out.

37. Thus, in our opinion, the Tribunal was right in taking the view that the assessee-firm was not entitled to registration for any of the three years.

Accordingly, our answer to the question referred to us is in the negative for all the three years. The assessee shall pay the costs of the revenue.