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But even that argument is of no value, for twenty-five per cent of the voting power attached to the ordinary shares is not exercisable by the public. This, therefore, is a case in which shares not entitled to a fixed dividend carrying not less than twenty-five per cent of the voting power are not shown to have been allotted unconditionally to, or acquired unconditionally by or beneficially held by the public. The Explanation, therefore, has no operation.

Whether in view of the third proviso the company may be regarded as one in which the public are substantially interested, is a question to which no attention was paid by the Tribunal. Whether in fact there exists such a controlling interest in the hands of one shareholder or a group of shareholders as would render the company one in which the public are not substantially interested is a question which therefore cannot be decided by this Court.

The order of the High Court must therefore be confirmed, but on different grounds. The interpretation of the Explanation by the High Court, for reasons already set out, was incorrect. The Explanation had no application, because no presumption on the facts found could arise thereunder. The Revenue authorities have not made any investigation on the question whether there existed any controlling interest in a group of persons, so as to bring the case within the third proviso.

The appeals must be dismissed with costs. One hearing fee.

Appeals dismissed.

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April, 29.

COMMISSIONER OF INCOME-TAX, MADRAS

v.

SIVAKASI MATCH EXPORT COMPANY

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.)

Income Tax—Partnership deed—Application for registration—Discretion of Income-tax Officer in granting Registration—Jurisdiction of the Income Tax Officer—Jurisdiction of High Court on reference on

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questions of fact—Indian Income-tax Act, 1922 (11 *of* 1922), *s.* 26-*A* —*Indian Income-tax Rules,* 1922, *rr.* 2, 3, 4.

There were five firms in Sivakasi manufacturing matches under the name and style of Shenbagam Match Works, Brilliant Match Works, Manoranjitha Match Works, Pioneer Match Works and Gnanam Match Works. The sole proprietor of Shenbagam Match Works and one partner from each of the four firms entered into a partnership in their individual capacity and executed a partnership deed dated April 1, 1950. The Income-tax Officer registered the said partnership deed under s. 26(A) of the Act; but the Commissioner of Income-tax acting under s. 33B of the Act, cancelled the registration of the said partnership deed.

On appeal, the Tribunal held that the said partnership deed was not a genuine one. On a reference the High Court held on a construction of the partnership deed that the Match Works were not the real parties to the partnership but the parties to the document were the real partners. This appeal has come by way of special leave.

HELD:—(i) (per *K. Subba Rao* and *S. M. Sikri JJ*) that the discretion conferred on the Income-tax Officer under s. 26-A of the Act is a judicial one and he cannot refuse to register a firm on mere speculation, but he shall base his conclusion on relevant evidence. The jurisdiction of the Income-tax Officer under s. 20-A is, confined to the ascertaining of two facts namely,

(i) whether the application for registration is in conformity with the rules made under the Act, and

(ii) whether the firm shown in the document (Partnership deed) presented for registration is a bogus one or has no legal existence.

(ii) In the present case the partnership deed *ex facie* conforms to the requirements of the law of partnership as well as the Income-tax Act. There is no prohibition under the partnership Act against a partner or partners of other firms combining together to form a separate partnership to carry on a different business. The fact that such a partner or partners entered into a sub-partnership with others in respect of their share does not detract from the validity of the partnership; nor the manner in which the said partner deals with the share of his profits is of any relevance to the question of validity of the partnership.

(iii) The tribunal erred in holding the partnership deed as not a genuine one. In the present case the assessee-firm has a separate legal existence, and as such the two circumstances relied upon by the Tribunal, namely, that one of the partners of the assessee firm, brought in the capital from his parent firm or that the profits earned by some of the partners were surrendered to the parent firm, would be irrelevant. A partner of a firm can certainly secure his capital from any source or

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surrender his profits to his sub-partner or any other person. Those facts cannot conceivably convert a valid partnership into a bogus one.

In the present case the partnership deed is a genuine document and it complies with the requirements of law. It is not an attempt to evade tax, but a legal device to reduce its tax liability.

(iv) A question of law within the meaning of s. 66(2) of the Act arose for decision in this case as the Tribunal misconstrued the provisions of the partnership deed and relied upon irrelevant considerations in coming to the conclusion.

Sree Meenakshi Mills Ltd. v. *Commissioner of Income-tax, Madras.* [1956] S.C.R. 691, relied on.

Per Shah, J.—(i) It was exclusively within the province of the Tribunal to decide the question whether the partners entered into the partnership in their individual capacities or as representing their match factories and its decision that in entering into the deed of partnership, the named partners represented their respective match factories, was not open to be canvassed in a reference under s. 66(2) of the Indian Income-tax Act. In a reference under s. 66(2) the High Court was not authorised to disregard the finding of the Tribunal on a question which was essentially one of fact. In the present case the High Court was not justified in interfering with the finding of the Tribunal on a question of fact because it was not the case of the assessee that the conclusion of the Tribunal was based on no evidence or that it was perverse.

(ii) Where the law prescribes conditions for obtaining the benefit of reduced liability to taxation, those conditions, unless otherwise provided, must be strictly complied with, and if they are not so complied with, the taxing authorities would be bound to refuse to give the tax payer the benefit claimed. It would be open to the Income-tax Officer to decline to register a deed, even if under the general law of partnership the rights and obligations of the partners *ex nomine* thereto may otherwise be adjusted.

If the requirements relating to the form in which the petition is to be presented are not complied with, and the relevant information is withheld the Income-tax Officer may be justified in refusing registration. In the present case the Income-tax Officer was bound to refuse registration as the application submitted by the five partners of the assessee did not conform to the requirements of rr. 2 and 3 of Indian Income-tax Rules.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 700 of 1963.

Appeal by special leave from the judgment and order dated January 11, 1961 of the Madras High Court in Case Referred No. 131 of 1956.

H. N. Sanyal, Solicitor-General, N. D. Karkhanis and *R. N. Sachthey,* for the appellant.

K. Srinivasan and *R. Gopalakrishnan,* for the respondent.

April 29, 1964. The judgment of SUBBA RAO AND SIKRI JJ. was delivered by SUBBA RAO J. SHAH J. delivered a dissenting opinion.

SUBBA RAO, J.—This appeal by special leave is directed against the order of the High Court of Madras in a reference made to it by the Income-tax Appellate Tribunal under s. 66(2) of the Indian Income-tax Act, 1922, hereinafter called the Act.

The facts that have given rise to the appeal may briefly be stated. There are 5 firms in Sivakasi manufacturing matches under the name and style of Shenbagam Match Works, Brilliant Match Works, Manoranjitha Match Works, Pioneer Match Works and Gnanam Match Works. The total number of the partners of all the 5 firms does not exceed 10 or 11 in number. Rajamoney Nadar is the sole proprietor of Shenbagam Match Works and in the other 4 firms there are more than one partner. In the year 1948 a person from each of those firms in his representative capacity formed a partnership to carry on the business of banking and commission agents, the principal business being the marketing of the products of the different match factories in Sivakasi. When the said partnership applied for registration for the assessment year 1949-50, it was refused by the Income-tax Department on the ground that different firms could not constitute a valid partnership. Thereafter, Sankaralinga Nadar, Arumughaswami Nadar, Arunachala Nadar, Palaniswamy Nadar and Rajamoney Nadar the first four being one of the partners of their respective firms and the last being the sole proprietor of his firm, in their individual capacity entered into a partnership for the aforesaid purpose and executed a partnership deed dated April 1, 1950. They presented the said deed of partnership to the Income-tax Officer for registration. The Income-tax Officer by his order dated October 27, 1952, registered the same under s. 26A of the Act: but the Commissioner of Income-tax, acting under s. 33B of the Act, cancell-

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ed the registration by an order dated October 23, 1954, and directed the assessment to take place as that of an unregistered firm. On appeal, the Income-tax Appellate Tribunal held, on a construction of the partnership deed and also on the basis of some other circumstances, that the said deed "is not genuine and brought into existence only as a simulate arrangement, that the profits which are distributed under the deed to the individuals mentioned therein are not the true profits of those individuals." In short it held that the said partnership deed was not a genuine one. On a reference made to the High Court of Judicature at Madras, a Division Bench of that High Court, on a construction of the document, came to the conclusion that the Match Works were not the real parties to the partnership but the parties of the document were the real partners. Hence the present appeal.

Learned counsel for the Revenue raises before us the following two points, namely, (i) the findings of the Appellate Tribunal was one of fact and that the High Court had no jurisdiction to canvass the correctness of its finding on a reference made under s. 66(2) of the Act, and (ii) the conclusion arrived at by the Tribunal was the correct one and the High Court erroneously interfered with it.

It is common place that under s. 66(2) of the Act a reference to the High Court lies only on a question of law. The scope of the provision has been elaborately considered by this Court in *Sree Meenakshi Mills Ltd.* v. *Commissioner of Income-tax, Madras*(1). Therein the scope of the provision has been laid down under different propositions. On the basis of the judgment it cannot be gainsaid that if the order refusing registration goes beyond the scope of the jurisdiction conferred on the Income-tax Officer under s. 26A of the Act and the Rules made thereunder or if the decision depends upon the construction of the partnership deed or if there is no evidence to sustain the finding of the Tribunal, then the High Court will have jurisdiction to entertain the reference under s. 66(2) of the Act. In our view, the finding of the Tribunal falls squarely under the said three heads. The relevant provisions of the Act read thus:

(1) [1956] S.C.R. 691.

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Section 26*A*. (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.

In exercise of the powers conferred by s. 59 of the Act, the Central Board of Revenue made the following rules:

Rule 2. Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, under the provisions of Section 26A of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer, the particulars contained in the said Instrument on application made in this behalf.

Such application shall be given by all the partners (not being minors) personally and shall be made—

(a) before the income of the firm is assessed for any year under Section 23 of the Act, or

. . . . . .

Rule 3. The application referred to in Rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original Instrument of Partnership under which the firm is constituted, together with a copy thereof;

. . . . . .

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FORM I

For of Application for Registration of a Firm under section 26A of the Indian Income-tax Act, 1922

.....

Rule 4. If, on receipt of the application referred to in Rule 3, the Income-tax Officer is satisfied that there is or was a firm in existence constituted as shown in the instrument of partnership and that the application has been properly made, he shall enter in writing at the foot of the instrument or certified copy, as the case may be, a certificate in the following form, namely:—

.....

Rule 6B. In the event of the Income-tax Officer being satisfied that the certificate granted under Rule 4, or under Rule 6A, has been obtained without there being a genuine firm in existence, he may cancel the certificate so granted.

A combined effect of s. 26A of the Act and the rules made thereunder is that if the application made by a firm gives the necessary particulars prescribed by the rules, the Income-tax Officer cannot reject it, if there is a firm in existence as shown in the instrument of partnership. A firm may be said to be not in existence if it is a bogus or not a genuine one, or if in law the constitution of the partnership is void. The jurisdiction of the Income-tax Officer is, therefore, confined to the ascertaining of two facts, namely, (i) whether the application for registration is in conformity with the rules made under the Act, and (ii) whether the firm shown in the document presented for registration is a bogus one or has no legal existence. Further, the discretion conferred on him under s. 26A is a judicial one and he cannot refuse to register a firm on mere speculation, but he shall base his conclusion on relevant evidence.

What are the facts in the present case? The partnership deed is dated April 1, 1950. In the document five persons are shown as its partners. The name of the firm is given, the

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objects of the partnership business are described, the duration of the business is prescribed and the capital fixed is divided between them in equal share. Clause 16 of the Partnership deed, on which the Tribunal relied, reads:

> "This firm shall collect a commission of half an anna per gross on the entire production of the match factories of the partners, respectively, the Brilliant Match Works, Manoranjitha Match Works, Pioneer Match Works, Shenbagam Match Works and Gnanam Match Works produced from 1st April 1950 whether sales were effected through this firm or not and a further commission of half an anna per gross on the sales effected through this firm. This commission will be collected on all kinds of matches produced from the abovesaid factories. The commission of half an anna per gross on the entire production of these factories accrued due at the end of every month shall be debited to the respective factories under advice to them."

Clauses 22 and 23 which throw further light on the question raised read:

> *Clause* 22. The business of this firm shall have and has no connection with the match manufacturing business carried on now by the partners separately or in partnership with others.
>
> *Clause* 23. Any loss to the firm by way of fire accident or by any other cause during the course of the business of the firm, notwithstanding the fact that the loss might have arisen on the sale of or transaction relating to the match manufacturing concerns of the partners to this deed, shall be borne by this firm and shall be equally divided between the partners to this deed.

It is not disputed that the partnership deed *ex facie* conforms to the requirements of the law of partnership as well as the Income-tax Act. Under s.4 of the Indian Partnership Act partnership is the relation between persons who have agreed

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to share the profits of the business carried on by all or any of them acting for all persons who have entered into the partnership with one another called individually partners and collectively a firm and the name under which the business is carried on is called the firm name. The document certainly conforms to the said definition. There is also no prohibition under the Partnership Act against a partner or partners of other firms combining together to form a separate partnership to carry on a different business. The fact that such a partner or partners entered into a sub-partnership with others in respect of their share does not detract from the validity of the partnership; nor the manner in which the said partner deals with the share of his profits is of any relevance to the question of the validity of the partnership. The document, therefore, embodies a valid partnership entered into in conformity with the law of partnership.

But the Tribunal has held that the partnership is not a genuine one for the following reasons: (i) previously the firm entered into a partnership but the registration of the same was rejected; (ii) under cl. 16 of the partnership deed the firm has the right to collect the commission of the entire match production of the larger partnerships whether they effect their sales through the firm or not; (iii) the books of Gnanam Match Works show unmistakably that the capital was contributed not by Palaniswamy Nadar in his individual capacity but by the larger firm as such; and (iv) regarding the other three larger firms also the profit delivered by their representatives from the assessee firm was divided amongst all the partners according to their profit sharing ratio in the larger firms. On the other hand, the High Court found, on a construction of the relevant clauses of the partnership deed that the business was the business of the partners of the firm alone and that the two circumstances relied upon by the Tribunal were irrelevant in acertaining whether the said partnership was real or not. We have already pointed out that the document *ex facie* discloses a valid partnership. The partnership was avowedly entered into by the partners in their individual capacity as their previous partnership in their representative capacity was not registered on the ground that such a part-

nership was illegal. If the larger firms cannot constitute members of a new partnership, some of the partners of those firms can certainly enter into a partnership shedding their representative capacity if they can legally do so. If they can do so, the mere fact that one of them borrowed the capital from a parent firm—we are using this expression for convenience of reference—or some of them surrendered their profits to the parent firm cannot make it anytheless a genuine firm. Nor does cl.16 of the partnership deed detract from its genuineness: that clause does not create any right in the partnership to collect the commission; in view of the close connection between the assessee firm and the parent firms, the parent firms were expected to effect all their sales through the assessee firm. If they did not and if they refused to pay commission, the assessee-firm could not enforce its right under the said clause. Clause 22 in express terms emphasizes the separate identities of the assessee-firm and the parent firms, and cl. 23 declares that notwithstanding the fact that the loss to the assessee-firm has arisen on the sale or transaction relating to the match manufacturing concerns, the assessee-firm alone shall bear the loss and thereby indicates that the loss of the assessee-firm will not be borne by the parent firms. If the assessee-firm has a separate legal existence, the two circumstances relied upon by the Tribunal, namely, that Palaniswamy Nadar, one of the partners of the assessee-firm, brought in the capital from his parent firm or that the profits earned by some of the partners were surrendered to the parent firms, would be irrelevant. A partner of a firm can certainly secure his capital from any source or surrender his profits to his sub-partner or any other person. Those facts cannot conceivably convert a valid partnership into a bogus one.

The Tribunal mixed up the two concepts, *viz.*, the legality of the partnership and the ultimate destination of the partners' profits. It also mixed up the question of the validity of the partnership and the object of the individual partners in entering into the partnership. If to avoid a legal difficulty 5 individuals, though four of them are members of different firms, enter into a partnership expressly to comply with a provision of law, we do not see any question of fraud

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or genuineness involved. It is a genuine document and it complies with the requirements of law. It is not an attempt to evade tax, but a legal device to reduce its tax liability. The fact that all the partners of all the firms did not exceed 12 in number and if they chose all of them could have entered into the partnership indicates that there was no sinister motive behind the partnership. As the Tribunal misconstrued the provisions of the partnership deed and relied upon irrelevant considerations in coming to the conclusion it did, the High Court rightly differed from the view of the Tribunal. In the circumstances, in view of the decision of this Court in *Sree Meenakshi Mills'* case(1), a question of law within the meaning of s.66(2) of the Act arose for decision. The High Court rightly answered the question in the negative.

In the result, the appeal is dismissed with costs.

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SHAH J.—Sivakasi Match Export Company—hereinafter referred to as 'the assessee'—is a partnership "carrying on business as bankers, commission agents and distributors of the products of different match factories at Sivakasi in the State of Madras". The assessee was formed under a deed dated April 1, 1950. There were five partners of the firm (1) N.P.A.M. Sankaranlinga Nadar (2) K. S. S. Arumughaswami Nadar (3) K. A. S. Arunuchala Nadar (4) K. P. A. T. Rajamoney Nadar and (5) V. S. V. P. Palaniswamy Nadar. Before April 1, 1950, there existed a firm also named Sivakasi Matches Exporting Company which "consisted of a combine of six match factories" at Sivakasi constituted under a partnership deed dated March 12, 1948. Registration of this partnership under s. 26-A of the Income-tax Act, 1922, was refused on the ground that the partnership deed did not specify the actual shares of the individual partners. Thereafter a deed forming the partnership which is sought to be registered in these proceedings was executed on April 1, 1950. It was recited in the preamble that originally four out of the five partners had been carrying on business in partnership as representatives of their respective match concerns, and it was found necessary that they should carry on the said business from April 1, 1950, jointly in their individual capacity, and it was agreed to admit into their part-

(1) [1956] S.C.R. 691

nership as and from April 1, 1950 the fifth person, namely V. S. V. Palaniswamy Nadar. The following are the material paragraphs of the agreement of partnership:

"(16) This firm shall collect a commission of half an anna per gross on the entire production of the match factories of the partners, respectively, the Brilliant Match Works, Manoranjitha Match Works, Pioneer Match Works, Shenbagam Match Works and Gnanam Match Works, produced from 1st April 1950 whether sales were effected through this firm or not and a further commission of half an anna per gross on the sales effected through this firm. This commission will be collected on all kinds of matches produced from the abovesaid factories. The commission of half an anna per gross on the entire production of these factories accrued due at the end of every month shall be debited to the respective factories under advice to them.

"(22) The business of this firm shall have and has no connection with the match manufacturing business carried on now by the partners separately or in partnership with others.

(23) Any loss to the firm by way of fire, accident or by any other cause during the course of the business of the firm, notwithstanding the fact that the loss might have arisen on the sale of or transaction relating to the match manufacturing concerns of the partners to this deed, shall be borne by this firm and shall be equally divided between the partners to this deed."

It is common ground that each partner was concerned in the manufacture of matches either as owner or as partner with others. Sankaralinga Nadar carried on business as a manufacturer of matches with two others in the name of the Brilliant Match Works; Armughaswamy Nadar as a partner with three others in the name of the Manoranjitha Match Works; Arunachala Nadar as a partner with two others in the name of the Pioneer Match Works. Rajamoney Nadar

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as a sole proprietor of the Shenbagam Match Works, and Palaniswamy Nadar as a partner with three others in the name of the Gnanam Match Works.

On October 27, 1952, the Income-tax Officer passed an order under s. 26-A granting registration of the partnership constituted under the deed dated April 1, 1950, but the Commissioner of Income-tax, Madras, exercising revisional jurisdiction under s. 33-B of the Act, set aside the order and directed that the partnership be assessed to tax as an unregistered firm. In the view of the Commissioner the partnership deed did not represent the true state of affairs and that "the actual position as distinguished from the recitals in the partnership deed was that all the partners of the Match Factories were directly partners of the assessee" and as the names of all the partners were not set out in the deed and the other requirements relating to registration had not been complied with, registration be refused. The order was confirmed in appeal to the Income-tax Appellate Tribunal.

At the direction of the High Court of Madras under s. 66(2) of the Indian Income-tax Act, 1922, the Tribunal referred the following question:

> "Whether on the facts and the circumstances of the case the refusal of registration of the assessee firm under s. 26-A of the Income-tax Act was correct in law?"

The High Court answered this question in the negative. Against that order, with special leave, the Commissioner of Income-tax has appealed to this Court.

The Tribunal held that the covenants in the deed of partnership and especially in paragraphs 3 and 16 viewed in the light of the entry in the books of account of Gnanam Match Works debiting the capital contributed in the name of Palaniswamy Nadar to the assessee, and not in the name of its partner, and division of the profits received from the assessee by Palaniswamy Nadar, Sankarlinga Nadar, Arumaghaswamy Nadar and Arunachalam Nadar with others owners of their respective business, indicated that the named partners were acting as representatives of those owners. The

High Court also held that cl. 16 of the partnership agreement did not impose any liability upon the manufacturing concerns to pay any commission as stipulated therein on the "production of the match factories". The High Court observed:

> "Clause 16 does not lay any liability upon the manufacturing concerns and cannot operate as an enforceable contract against those other match companies. If one of those match companies should decline to put through its sales business through the assessee-firm, the only result would perhaps be that the partnership would not advance moneys or finance to that manufacturing concern; it might also be that the particular partner interested in the manufacturing concern might stand to lose the benefit of this partnership. But that is not the same thing as to say that those manufacturing concerns themselves had become partners of the assessee partnership."

The High Court also observed that the assessee was not concerned with the disposal of the profits received by its partners. Finally the High Court observed that "an individual member of the partnership is not prevented from engaging in business as member of another partnership. The law does not prohibit such a course and even the Income-tax law relating to registration of partnerships only refuses registration when the formation of such partnerships is intended to evade the incidence of income-tax and nothing more. We are not satisfied that the Tribunal correctly appreciated the facts of the present case in coming to the conclusion that the match works were the real parties to this instrument of partnership".

The Solicitor-General appearing for the Commissioner contended that the High Court had in exercising its advisory jurisdiction, in substance assumed appellate powers and had sought to reappraise the evidence on which the conclusion of the Tribunal was founded. Counsel contended that the Tribunal had recorded a clear finding on the facts that the

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"match works were the real" partners, and the High Court was bound on the question framed to record its opinion on the questions of law referred on the basis of that finding.

Section 26-A of the Indian Income-tax Act enacts the procedure for registration of firms. By that section on behalf of any firm application may be submitted to the Income-tax Officer for registration, if the firm is constituted under an instrument of partnership, specifying the individual shares of the partners. The application has to be made by such person or persons and at such times and shall contain such particulars and shall be in such form as may be prescribed. It is open to a firm to carry on business without registration under the Indian Registration Act. By obtaining an order of registration, the partners of the firm are enabled to get the benefit of lower rates of tax than those applicable to the whole income of the firm, when charged as a unit of assessment. In the relevant year of assessment if the firm was unregistered the tax payable by it had to be determined as in the case of any other distinct entity and tax had to be levied on the firm itself. If, however, the firm was registered, the firm did not pay the tax and therefore the tax payable by the firm was not determined, but the share of profit received from the firm was added to the income of each partner, and on the total so determined tax was levied against the partners individually. It is manifest that if the firm desired to secure this privilege it had to conform strictly to the requirements prescribed by law. Under the rules framed under s. 59 of the Indian Income-tax Act, 1922, rules 2 to 6B deal with registration and renewal of registration of firms. The application for registration has to be signed by all the partners (not being minors) personally, and the application has to be in the form prescribed by rule 3. The form prescribed requires the partners of the firm to disclose the names of each partner, his address, date of admittance to partnership, and other relevant particulars including each partner's share in the profits and loss, "particulars of the firm as constituted at the date" of the application, and particulars of the apportionment of the income, profits or gains or loss of the business, profession or vocation in the previous year between the partners who in that previous

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year were entitled to share in such income, profits or gains or loss, where the application is made after the end of the relevant previous year. If the Income-tax Officer is satisfied that there is a firm in existence constituted as shown in the instrument of partnership and the application has been properly made, he has to enter in writing at the foot of the instrument or certified copy, as the case may be, a certificate of registration of the partnership under s. 26-A of the Act. This certificate of registration ensures only for the year mentioned therein, but the firm is entitled to obtain renewal of the registration.

On the conclusion recorded by the Tribunal that the partnership deed dated April 1, 1950 was in truth an instrument relating to an agreement to carry on business by all the persons who owned the five businesses of which the representatives signed the deed, the application submitted by the five named partners of the assessee did not conform to the requirements of rules 2 and 3 and the Income-tax Officer was bound to refuse registration. It is true that the ground given by the Tribunal that the share of profits received by individual partners of the assessee was distributed by four of those partners who had entered into partnership contracts with other persons in the business of their respective match factories, standing independently of other grounds, may not be of much value in deciding whether all the partners of the match factories were intended to be partners of the assessee. It is open to a partner who receives his share in the profits of the firm to dispose of that share in any manner he pleases, and no inference from the distribution of the share of such profits alone can lead to the inference that the persons who ultimately received the benefit of the profits are partners of the firm which had distributed the profits. But the Tribunal adverted to three circumstances. The terms of the deed of partnership purported to impose an obligation to pay Commission on the production of the five match factories, representatives of which sought to join as partners *eo nomine*. Imposition of such an obligation was in the view of the Tribunal inconsistent with the representatives of those factories being partners of the assessee in their individual capacities. Again it was

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found that Gnanam Match Works had contributed capital to the assessee directly and not through its representative. These two circumstances, coupled with the ultimate distribution of profits by the individual partners among the partners of the match factories, led to the inference that each partner who signed the deed dated April 1, 1950 was acting not in his personal capacity, but as representing his match factory. Granting that the evidence from which the inference was drawn was not very cogent, it was still exclusively within the province of the Tribunal to decide that question on the evidence before it, and its decision that in entering into the deed of partnership, the named partners represented their respective match factories, was not open to be canvassed in a reference under s. 66(2) of the Indian Income-tax Act. The High Court observed that cl. 16 of the partnership deed did not impose any obligation upon the partners or their representatives of the five firms to pay commission as stipulated under that clause. Undoubtedly, there is no covenant expressly imposing such liability upon the match factories, but it was open to the Tribunal from the incorporation of such an unusual covenant to infer that the named partners of the assessee were acting as representatives of their respective factories. To assume from the terms of cl. 16 that the owners of these match factories were not bound by the covenants contained in cl. 16 is to assume the answer to the question posed for opinion. There was also the circumstance that in the books of account of the Gnanam Match Works of which Palaniswamy Nadar was a representative, capital was debited as contributed to the assessee. This indicated that the Gnanam Match Works was directly interested in the partnership. If that factory had made an advance to Palaniswamy Nadar to enable the latter to contribute his share of the capital, the entry in the factory's books of account would have been in the name of its partner and not in the name of the assessee. That also is a circumstance justifying an inference that in entering into the deed dated April 1, 1950 Palaniswamy acted for and on behalf of all the partners of the Gnanam Match Works. Sharing of profits received by the named partners, with their partners in the respective match factories may not, as I have

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already observed, by itself be a decisive circumstance. But that did not authorise the High Court to disregard the finding of the Tribunal on a question which was essentially one of fact. When the High Court observed that they were satisfied that the Tribunal had not correctly appreciated the evidence in arriving at the conclusion that each Match factory was the real party in the instrument of partnership, they assumed to themselves jurisdiction which they did not possess.

It was not the case of the assessee that there was no evidence on which the conclusion arrived at by the Tribunal could be founded, nor was it the case of the assessee that the conclusion was so perverse that no reasonable body of men properly instructed in the law could have arrived at that conclusion. It is also clear from the record that no such question was even canvassed before the Tribunal. Manifestly such a question could not arise out of the order of the Tribunal, and none such was referred to the High Court. By the question actually referred, the Tirbunal sought the opinion of the High Court whether on the facts and circumstances refusal of the application for registration of the assessee was correct in law. If it was the case of the assessee that the conclusion of the Tribunal was based on no evidence, or that it was perverse, the High Court could be asked to call for a reference from the Tribunal on that question. But that was never done.

It is true that the object of enacting s. 26-A and the rules relating to the procedure for registration is to prevent escapement of liability to tax. But it is not necessary that before an order refusing registration is made, it must be established that there was evasion of tax attempted or actual. It is always open to a person, consistently with the law, to so arrange his affairs that he may reduce his tax liability to the minimum permissible under the law. The fact that the liability to tax may be reduced by the adoption of an expedient which the law permits, is wholly irrelevant in considering the validity of that expedient. But where the law prescribes conditions for obtaining the benefit of reduced liability to taxation, those conditions, unless otherwise provided, must be strictly complied with, and if they are not

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so complied with, the taxing authorities would be bound to refuse to give the taxpayer the benefit claimed. When application for registration of the firm is made, the Income-tax Officer is entitled to ascertain whether the names of the partners in the instrument are of persons who have agreed to be partners, whether the shares are properly specified and whether the statement about the shares is real or is merely a cloak for distributing the profits in a different manner. If all persons who have in truth agreed to be partners have not signed the deed or their shares are not truly set out in the deed of partnership, it would be open to the Income-tax Officer to decline to register the deed, even if under the general law of partnership the rights and obligations of the partners *eo nomine* thereto may otherwise be adjusted. As a corollary to this, if the requirements relating to the form in which the petition is to be presented are not complied with, and the relevant information is withheld, the Income-tax Officer may be justified in refusing registration.

In my view the High Court was in error in holding on the question submitted that the registration of the assessee under s. 26-A of the Income-tax Act was wrongly refused.

The answer to the question referred to the High Court should be in the affirmative.

ORDER

In accordance with the opinion of the majority, the appeal is dismissed with costs.

Appeal dismissed

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April, 29.

COMMISSIONER OF INCOME-TAX KERALA AND COIMBATORE

v.

KRISHNA WARRIAR

(K. SUBBA RAO, J. C. SHAH, AND S. M. SIKRI JJ.)

Income Tax—Exemption from taxation—Business held in trust—Part of profits to be utilised for religious or charitable purposes—