Supreme Court of India

K. D. Kamath & Co vs C.I.T., Bangalore on 11 October, 1971

PETITIONER:
K. D. KAMATH & CO

Vs.

RESPONDENT:
C.I.T., BANGALORE

DATE OF JUDGMENT11/10/1971

BENCH:

ACT:
Indian Income-tax Act, 1922, s. 26A-Indian Partnership Act , 1932, ss. 4, 14, 18-Working partners to work under direction and control of managing partner-Working Partners not authorised to pledge property of firm or raise loans on behalf of firm-Whether partnership lacks essential element of agency of partners--Firm whether to be registered under s. 26A of Income-tax Act.

HEADNOTE:
The appellant was a firm consisting of six partners and the partnership was constituted under a document dated March 20, 1959, the business of the partnership having already commenced from October 1, 1958. The partnership was registered under the Indian Partnership Act 1932 on or about August 11, 1959. For the assessment year 1959-60 corresponding to the previous year ending March 31, 1959 the appellant filed an application for registration under s. 26A of the Indian Income-tax Act, 1922. The Income-tax Officer by his order dated September 28, 1960 declined to grant registration on the ground that there was no . relationship of partners inter se created under the partnership deed. The Appellate Assistant Commissioner upheld the order of the Income-tax Officer. The Tribunal held that there was agreement to share profits between partners and each of the partners could act as agent of all and therefore the requirements of partnership were fully satisfied. In the reference the High Court held that cls. 8, 9 and 16 of the deed showed that the management as well as the control of business was entirely left in the hands of the first partner and that the other partners were on to serve under his directions and further they had no authority to ac cept any business except with the consent of the first partner nor could they raise any loan or pledge the firm's interest. On this reasoning the High Court came to the conclusion that there was no relationship of partners

created under the partnership deed and as the essential element of agency was lacking the appellant was not eligible to be granted registration under s. 26A.

In appeal to this Court,

HELD : (i) The mere nomenclature given to a document is by itself not sufficient to hold that the document in question is one of partnership. Two essential conditions to be satisfied are (1).that there should be an agreement to share profits as well as. the losses of the business and (2) the business must he carried on by all or any of them acting for all within the meaning of the definition of partnership under s. 4 of the partnership Act. The fact that the exclusive power to control by agreement of the parties is vested in one partner or the further circumstance that only one partner can operate the bank account or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions mentioned earlier are satisfied. [1050 F-G]

(ii)Under the partnership deed in question the relationship which had been brought into existence between the six parties was a relationship of partners who had agreed to share profits and losses of the, business carried on by all or any of them acting for all and it satisfied the definition of partnership under s. 4 of the Partnership Act. There was sharing

1035

of the profits or losses of the business by the partners in the ratio of the proportion mentioned in cl. 5. That clause read with other clauses clearly showed that the first condition namely of all persons agreeing to share profits or losses was satisfied. Even on the basis that the entire control or management of the business was vested in Party No. 1 and that parties 2 to 6 were working partners who had to work under his directions, from all the other %circumstances it was clear that the conduct of business by Party No. 1 was done by him acting for all the partners. There was no indication to the contrary in the partnership deed. Therefore even without anything more it was clear that as the partnership business was carried on by Party No. 1 acting for all, the second condition of agency was also satisfied. This idea was further reinforced by cl. 16 of the deed which provided that the firm's affairs were to be carried on for mutual benefits. [1051 C-F]

(iii)The High Court was wrong in holding that cl. 9 of the deed under which parties 2 to 6 had no right to raise loans for and on behalf of the firm or pledge the firm's interest was destructive of the element of partnership. No doubt under s. 18 of the Partnership Act a partner is the agent of the firm for the business of the firm. But that section itself clearly says, that it is subject to the provisions of the Act. It is open to the parties under s. 11 to enter into an agreement regarding their mutual rights and duties as partners of the firm. Further if the ingredients of partnership referred to in s. 4 of the Act are found to exist there is no escape from the conclusion that a partnership has come into existence. So far as the outside world was concerned, so long as parties 2 to 6 were held out as partners of the firm, as had been done under the partnership deed their acts would bind the partnership. The provision in cl. 9 was only an inter se arrangement entered into by the partners in and by which the working partners had agreed not to raise loans or pledge the firms interest. [1052 A-E]

(iv)The provisions of s. 14 of the Act could not sustain the argument that cl. 9 of the deed negatived the theory of agency. Section 14 itself clearly shows that the provisions contained therein are subject to the contract between the parties. [1052 G-H]

In the result, the appeal must be allowed.

Babubhai Gulabdas Navlakhi v. C.I.T., Bombay, [1962] 46 I.T.R. 492, C.I.T., Gujarat v. A. Abdul Rahim & Co., [1965] 55 I.T.R. 651, C.I.T. Kerala v. Pathrose Rice & Oil Mills, [1960] 40 I.T.R. 353, P.G. C. Ratnaswamy Nadar & Sons v. C. I. T., Madras, [1962] 46 I.T.R. 1148, C.I.T. v. R. S. Shoe Factory, [1963] 47 I.T.R. 917, Murlidhar Kishangopal v. C. I. T.. M.P. Nagpur & Bhandara, [1963] 50 I.T.R., 628 and City Tobacco Mart v. C.I.T., Mysore, [1967] 64 I.T.R. 478, referred to.

Umarbhai Chandbhai v. C.I.T., Bombay City, [1952] 22 I.T.R. 27 and M. P. Davis v. Commissioner of Agricultural, Income-tax, [1959] 35 I.T.R. 803, distinguished.

Steel Brothers & Co. v. C.I.T., [1958] 33 I.T.R. 1 and Agarwal & Co.

C.I.T., U.P., [1970] 77 I.T.R. 10, relied on.

C.I.T., Mysore V. K. D. Kamath & Co., [1964] 54 I.T.R. 72, reversed.

1036

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1242 of 1968.

Appeal by special leave from the judgment and order dated January 21, 1964 of _the Mysore High Court in I.T.R.C. No. 13 of 1963.

S.K. Venkataranga Iyengar and J. Ramamurthi, for the appellant.

S. K. lyer and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by special leave, raises the. question whether the, deed dated March 20, 1959 and marked Ex. A is an Instrument of Partnership on the basis of which the ,appellant firm is eligible to be granted registration under S. 26A of the Indian Income-tax Act, 1922 (hereinafter to be referred as the Income-tax Act).

The appellant is a firm consisting of six, partners and the partnership was constituted under the document dated March 20, 1959. The 'business of the partnership, as recited in the deed. is stated to have been carried on in partnership from October 1, 1958. The partnership was registered under the Indian Partnership Act, 1932, (hereinafter to be referred as the Partnership Act) on or about August II,, 1959. For the assessment year 1959-60, corresponding to the previous year ending March 31, 1959, the appellant filed an application to the Income-tax Officer, 'A' Ward, Dharawat under s. 26A for registration of the partnership in the name of M/s. K. D. Kamath and Company. The Income-tax Officer by his order dated September 28, 1960 declined to grant registration on the ground that there was no genuine partnership brought into existence by the deed of March 20, 1959 and that the claim of the firm having been constituted is not genuine. The said officer further held that the business should be held to be the sole concern of K. D. Kamath. For coming to this conclusion, the Income-tax Officer has mainly relied on clauses 8, 9, 12 and 16 of the partnership deed. Though the Income-tax Officer has used a loose expression that there is no genuine partnership, the sum. and substance of his finding is that there is no relationship of partners inter se created under the said document.

Mr. S. k. Iyer, learned counsel for the Revenue, has also ,clarified the position before us by stating that the Department is not challenging the genuineness of the document. According to the learned counsel, the stand taken by the Revenue is that no legal relationship of partners has been brought about as between the parties to the document. In short, his contention is that the arrangement evidenced by Ex. A is not that of "partnership" as understood in law.

On appeal by the assessee, the Appellate Assistant Commis- sioner on May 5, 1961 confirmed the order of the Income-tax Officer. According to the Appellate Assistant Commissioner no partnership has been brought about by the deed dated March 20, 1959 and that the business continues to be the proprietary concerti of K. D. Kamath. In coming to. this conclusion 'the appellate authority has laid special emphasis on clause 12 of the deed-.

The assessee carried the matter in further appeal I.T.A. No. 3220 of 1961-62 (Assessment year 1959-60) before the. Income-, tax Appellate Tribunal, Bombay Bench 'B'. The Appellate Tribunal, after a reference to the relevant clauses in the partnership deed, came to the conclusion that the two essential requirements as laid down by the courts for determining whether there is a partnership, namely, an agreement between the parties to ;hare profits and each of the parties acting as agent of all, are fully satisfied in this case. In this connection the Tribunal placed reliance on the decision of the Bombay High Court in Balubhai Gulabdas Navlakhi v. Commissioner of Income-Tax, Bombay(1) and distinguished an earlier decision of the same court reported in Umarbhai Chandbhai v. Commissioner of Income- tax, Bombay City(2). Ultimately, the Appellate Tribunal held that the partnership deed makes it clear that profits and losses are to be shared between the parties and that, subject to the over-riding authority of K. D. Kamath, the other partners could act for the firm. In this view, the Appellate Tribunal held that the deed does create a relationship of partners inter se between the parties thereto and directed the Income-tax Officer to register the firm under s. 26A of the Income-tax Act.

herein, made an application on October 4, 1962 under s. 66(1) of the Income-tax Act praying for a reference being made by the Appellate Tribunal to the High Court of the question of law mentioned in the application. The said application was numbered as 66-RA-978 of 1962-63. The Appellate Tribunal accordingly submitted an agreed statement of case and referred to the High Court for its opinion the following question of law :

> "Whether, on the facts and in the circumstances of the case, M/s. K. D. Kamath & Co., could be granted registration under Section 26A of the 1 Act for the assessment year 1959-60 ?".
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> (1) [1962] 46 I.T.R. 492.

(2) [1952] 22 I.T.R. 27 The High Court by its judgment and order dated January 21, 1964 in I.T.R. C. No. 13 of 1963 answered the question ,referred to it against the assessee and held that the appellant firm could not be granted registration under s. 26A for the assessment year 1959-60. It is against this decision of the, High Court that the assessee has filed the above appeal.

The High Court has generally considered the effect of cls. 5 to 9, 12 and 16 of the partnership deed. The High Court also considered the question whether the partnership deed satisfies the two essential requisites to constitute the partnership, namely, (1) whether there is an agreement to share profits as well as the losses of the business, and (2) whether each of the partners under the deed can act as agent of all. From the discussion in the judgment, the learned Judges. so far as we could see, have not thought it necessary to consider elaborately the question whether there is an. agreement in the partnership deed to share the profits and losses of the business. Obviously, the High Court must have been satisfied from the recitals in the partnership deed that this requirement is amply satisfied in this case. That is why we find that the learned Judges have focused their attention as they themselves say in the Judgment, on the question whether it is possible to hold from the recitals in the partnership deed that each partner is entitled to act as agent of all. In considering this aspect, the learned Judges have referred particularly to cls. 8, 9 and 16 of the partnership deed and have held that it is clear from these clauses that the management, as well as the control of the business, is entirely left in the hands of the alleged first partner K. D. Kamath and that the other partners are only to work under his directions and share profits and losses in accordance with the proportions mentioned in cl. 5. It is the further view of the High Court that it is not within the power of the other five parties to act as agent of the other partners as they cannot accept any business except with the consent of K. D. Kamath nor can they raise any loan or pledge the firm's interest. On this reasoning, the High Court has come to the conclusion that there is no relationship of partners created under the partnership deed and as this esseftial element of agency is lacking, the appellant was not eligible to be granted registration under S. 26A. The learned Judges, in coming to this conclusion, have placed considerable reliance on the decision of the Bombay High Court in Umarbhai Chanbhai v. Commissioner Of Income-tax, Bombay City(1) as well as the decision of this Court in M. P. Davis v. Commissioner of Agricultural Income-tax(2). At this stage we may mention that the judgment of the Mysore High Court, which is under appeal before us, is reported in Commissioner of Income-tax, Mysore v. K. D. Kamath & Co.($).

(1) [1952] 22 I.T.R. 27.

(2) [1959] 35 I.T.R. 803.

(3) [1964] 54 I.T.R. 72.

Mr. S. K. Venkataranga Iyengar, learned counsel for the assessee-appellant referred us to the various clauses in the partnership deed and urged that the view of the High Court that the essential element of agency is absent in this case, is erroneous. The counsel further urged that the, partnership deed, read as a whole, leaves no room for doubt that there is an agreement to share the profits and losses of the business in the proportion mentioned in the deed. Therefore, one of the essential ingredients to constitute a partnership is satisfied in this case. He further urged that though a large amount of control regarding the conduct of business may have been left in the hands of the first partner K. D. Kamath, that circumstance, by itself, does not militate against the view of one partner acting as a of the other partners. He referred us, in this connection, tip- certain decisions of the High Courts, as well as of this Court, where under circumstances similar to the one exisitng before us, it has been held that the mere fact that more control is to be exercised only by one of the partners, is 'not a circumstance which militates against the parties having, entered into a partnership arrangement as understood in law, Mr. S. K. Iyer, learned counsel for the Revenue, supported the reasoning of the High Court its entirety. According to the learned counsel, the question whether there is an agreement to share the profits and the losses of the business and the further question whether each of the partners is entitled to act as agent of all are to be determined by looking into all the facts as borne out by the deed of partnership. He urged that on a consideration of all such facts, the High Court ha' held that one of the essential conditions, namely, the right of one partner to act as. agent of all, does not exist in the present case. If so, the counsel urged, the opinion expressed by the High Court that the appellant is not eligible for registration under s. 26A is correct. 'In support of his contentions, the counsel also referred us to certain clauses in the partnership deed as well as to certain provisions of the Partnership Act.

From what is stated above, it is clear that the various authorities as well as the High Court have only considered some of the clauses of the partnership deed for coming to the conclusion one way or the other. In considering the question whether the partnership deed creates the relationship of partners as between the parties thereto, as understood in law, it is desirable to have a complete picture of the entire document. Ex. A, the partnership deed runs as follows "INSTRUMENT OF PARTNERSHIP.

Articles of agreement made at Hubli, this 20th day of March, 1959, Among (1) Shri krishnarao Dadasaheb Kamat, hereinafter called the Party hereto of the 1st part, (2) Shri Narayan Ganesh. kamat hereinafter called the party hereto of the 2nd part, (3) Shri Shripadrao Damodara Kamat, hereinafter called the party hereto of the 3rd part, (4) Shri Dnyanoba Jotiram Mohite, hereinafter called the party hereto of the 4th part, (5) Shri Shankar Govind Joshi, hereinafter, called the party, hereto of the 5th party, and (6) Shri Yashavant Bhawoo Kate, hereinafter called the party of the 6th part, All Hindu inhabitants. residing at Hubli, and whereas the parteis from 2 to 6, who have been serving with party No. 1since a very long time and in view of the appreciation of their honest and sincere services which the above parties have rendered in past and with the object that the above parties should also have their material and economical- progress, party No. i.e. Shri K. D. Kamat has been pleased to convert his sole proprietary concern, as a partnership concern, by admitting the above parties from 2 to 6 as working partners and the party No. 1 shall be the main financing and managing partner and the, business of the partnership is agreed and is being carried on accordingly in partnership as from 1st Day of October, 1958, as "Contractors" or any other business that the parties may think fit under the name and style of "Messrs. K. D. Kamat & Co., Engineers and Contractors, Hubli" and it is hereby agreed by and among, the parties to this Agreement as under

2.That the business of the partnership is running under the name and style of "Messrs K. D. Kamat & Co., Engineers & Contractors, Hubli" as from the 1st day of October 1958 and this agreement shall take retrospective effect and shall be deemed to have come into operation as from the commencement of 1st October, 1958.

3. That the duration of the partnership shall be at will.

4.That the business of the partnership is running at Hubli and shall run at Hubli or at such other place or places, as the case may be under the name and style, of "Messrs. K. D. Kamat & Co., Engineers & Contractors" or in such other name or names that the parties may from time to time decide and agree upon.

5.That the final accounts of the partnership firm shall be made up on the last day of each year of account, which shall generally be on 31st day of March every year of account and the accounts shall be taken upto that date of all the stock-in-trade and after providing for all the working expenses, the remaining net profits or losses, as the case may be, shall as shared by the parties hereto as under:-

Names of Partners	Extent of Individual Share
1.Shri Krishnarao Dadasaheb Kamat	5 shars
2.Shri Narayan Ganesh Kamat	2 shares
3.Shri Shri Dadarao Damodara Kamat	2 shares
4.Shri Dayanoba Jotiram Mohite	2 shares
5.Shri Shankar Govind Joshi	2 shares
6.Shri Yashavant Bhawoo Kate	2 shares
TOTAL	15 shares

6. That it is agreed among the partners that the party No. 1, i.e., Shri K. D. Kamat, shall be the principal and financing partner and the rest of the partners i.e. from 2 to 6 are admitted only as working partners contributing labour.

7. That the Good-will of the firm shall be wholly and solely belong to party No. 1 i.e. Shri K. D. Kamath.

8. That the party No. 1, i.e., Shri K. D. Kamat, who is the principal and financing partner and by virtue of his having the long standing experience.in the line of business together with the technical knowledge of Engineer, shall have full right of control and management of the firm's business and in the best interest of the firm, it is thus decided and agreed upon among all the partners that all the working partners from 2 to 6 shall always work according to the instructions and directions given from time to time by Shri K. D. Kamat, in the actual execution of works and in any other matter connecting thereof, pertaining to this partnership business. The decision of the principal partner on the aspect of taking any new business or giving Lenders for, new works, shall always vest with him, whose decision shall be final and 'binding upon all the working partners.

9. That it, is also agreed among the partners that no working partner or partners is/are authorised to raise a loan for and on behalf of the firm or pledge the firm's interest directly or indirectly and such an act shall not be binding on the firm, except under the written authority of the principal partner.

10. That it is further expressly agreed, that excepting the parties No. 1 and 2 i.e. Shri K. D. Kamat and Shri N. G. Kamat, the other Parties from 3 to 6 shall not do contract business, so long as they are partners in this firm and this clause is inserted in the betterment of the firm's business and with the object that the firm's business should not suffer and the works if taken or standing in the name of the said parties from 3 to 6, the same, shall be the business of the firm.

11. That it is also further agreed that the Managing Partner Shri K. D. Kamat shall alone operate the Bank accounts and in case of any need for convenience, the partner authorised by him in writing and so intimated to the Bank or Banks, shall operate, ,the Bank accounts.

12. That in the course of the business or during the existence of the firm's business, the principal partner has reason to believe that any working partner or partners is/are not working and conducting to the best interest of the firm, the principal partner shall have a right to remove such a working partner or partners from the "Partnership concern and in such an eventuality the out going working partner or-partners, shall have only right of the profit, or loss upto the date of his retirement, as may be decided by the principal partner in Jump sum either by paying or receiving. regard being had to the progress of the business or otherwise upto the date of retirement, only on the completed works..

13. That proper books of accounts shall be kept by the said parties and entries made therein of all such matters, transactions and things. as are usually entered in the books of accounts kept by the persons engaged in business of a similar nature; all books of accounts, documents, papers and things shall be kept at the principal place of business of the firm and each partner shall at all times, have free and equal access to them.

14. That each partner shall be just and faithful to the other or others in all matters relating to the business of the firm, shall attend deligently to the firm's business and give a true account and shall give information relating to the same without fail.

15. That each partner shall withdraw such sums as will be mutually determined by the partners from time to time, in anticipation of the Profit falling to-their individual share and in case of loss, the same shall be made good by the partners.

16. Thus subject to the provisions herein mentioned and laid ,down and made thoroughly known by each of the parties to this Agreement with sound mind and body, the firm's affairs be carried on for mutual gain and benefit and if any questions which may ..arise or occur touching to the conduct or management or liability of the firm, the same shall be amicably settled among the parties with the consent of principal partner, whose decision in the matter shall be final and binding on all partners.

In witness whereof the parties to this agreement have set their hands and seals to this Agreement as under:

1. Signed and Delivered by the within named Shri K. D. Kamat, himself Sd. K. D. Kamat

2. Signed & Delivered by the within named Shri N. G. Kamat, himself Sd. N. G. Kamat

3. Signed & Delivered by the within Sd.S. D. Kamat named Shri S. D. Kamat, himself Sd. V. D. Jituri in the presence of

4. Signed & Delivered by the within named Shri D. J. Mohite, himself Sd. D. J. Mohite

5. Signed & Delivered by the within named Shri S. G. Joshi, himself Sd. S. G. Joshi

6. Signed & Delivered by the within named Shri Y. B. Kate, himself Sd. Y. B. Kate.

Sd./ Certified to be the true copy of the original.

For K. K. D. KAMAT & CO."

The High Court, so far as we could see, has rested its decision On five circumstances for holding that there is no relationship of partners as between the parties inter se, created under the partnership deed. They are based on consideration in particular of cls. 8, 9 and 16. The following are the circumstances, which according to the learned Judges militate against holding in favour of the assessee; (1) The management as well as the control of the business is entirely left in the hands of the alleged first partner k. D. Kamath; (2) The other partners can merely work under his directions and share in the profits and losses in accordance with the proportion mentioned in cl. 5; (3). It is not within the power of the parties Nos. 2 to 6 to act as agent of other partners; (4) The said parties cannot accept any business except with the consent of K. D. Kamath; and (5) Those parties cannot raise any loan or pledge the, firm's interest, directly or indirectly, except under the written authority of K. D. Kamath. In view of all these circumstances, according to the High Court, one of the essential element to constitute partnership, namely, agency is lacking.

We will now refer to some of the provisions of the Income- tax Act as well as the Partnership Act.

Section 2 (6B) of the Income-tax Act provides that the expressions "firm", "partner" and "Partnership" have the same meaning respectively as in the Partnership Act. There is no doubt a proviso with which We are not concerned. Section 26A of the Income-tax Act lays down the procedure regarding registration of films. Section 59 authorises the Central Board of Revenue, subject to, the control of the Central Government, to make rules for carrying out the purpose of the Act. The relevant Income-tax Rules Jay down the details of the procedure for making an application for registration of a firm as contemplated under s. 26A. As there is no controversy that the application has been made by the appel- lant in accordance with s. 26A and the relevant Rules, it is 'unnecessary for us to quote the section and the relevant Rules.

Coming to the Partnership Act, s. 4 which defines "partner- ship" runs as follows :

> " 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."

Section 6 deals with the made of determining the existence of partnership. As per that section in determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm, regard is to be had to the real relation between the parties as shown by all relevant facts taken together. Section 11(1) provides that subject to the provisions of the Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners and such contract may be expressed or may be implied by a course of dealing. It further provides that such contract may be varied by consent of all the partners and such consent may be expressed or may be implied by a course of dealing. Sub-s. (2) clearly provides that notwithstanding anything contained in s. 27 of the Indian Contract Act, the contract between the partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner. Section 12 in cls.

(a) to (d) deals with the rights and duties of a partner, but that again is subject to contract between the partners. Section 14, on which some reliance has been placed by the counsel for the Revenue is as follows "Section 14 : The property of the firm :

Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired With money belonging to the firm are deemed to have been acquired for the firm." Section 18 provides that subject to the provisions of the Act, a partner, is the agent of the firm for the Purpose of the business of the firm. Section 19(1) provides that subject to the provisions of s. 22, the act of a partner which is done to carry on, in the usual way, the business of the kind carried on by the firm binds the firm. It further states that the authority of a partner to so bind the firm conferred by the said section is called his "implied autho- rity." Sub-section (2) enumerates the various matters, which a partner cannot do under the implied authority, in the absence of any usage or custom or trade to the contrary. Section 20 dealing with the extension and restriction of partner's implied authority runs as follows "Section 20. Extension and restriction of partner's implied authority :

The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless, the person with whom he is dealing, knows of the restriction or doesnot know or believe that partner to be a partner." From a perusal of the partnership deed one thing is clear, namely, under cl. (1) what was originally the sole proprietary concern of K. D. Kamath has been converted as partnership concern by admitting parties Nos. 2 to 6 as working partners, along with party No. 1, and party No. 1 is the main financing and managing partner of the business. That clause has to be read a-long with cl. (6) whereunder the partners have agreed that K. D. Kamath shall be the principal and financing partner and the rest of the partners, namely, parties Nos. 2 to 6 are admitted only as working partners contributing labour. Clause (4) deals with the running of the partnership business at Hubli as also other place or places or with such other name or names that the parties (which means partners Nos. 1 to 6) may from time to time decide and agree upon. From clauses (1), (2) and (3), it is clear that the business of the partnership is that of Engineers and Con-tractors. We are referring to this aspect because it will have a bearing regarding the control of the business agreed to be vested in K. D. Kamath. There does not appear to be any controversy that party No. 1 has been carrying on such business as a proprietary concern for a long time before the partnership was formed and as such he is considerably experienced in the said technical type of business. Clause" (5) provides that final accounting is to be taken as on March 31 of every year and the net profits and losses are to be shared by the parties thereto in the proportion of the shares specified in the said clause. Under clause 11, apart from the managing partner, K. D. Kamath operating the bank accounts, any other partner authorised by him isalsoeligibletooperatethebankaccounts. Clause,(12) entitles a partner, when he ceases to be a partner to be paid his share of profit or loss, upto the date of his so ceasing to be a partner. Clause (13) provides that books of accounts are to be properly maintained and each partner has a right at all times to have free and equal access to them. Clause (14) enjoins on each part-; ner to be just and faithful to the other partners in all matters relating to the business of the firm and each of them has got a duty to diligently attend to the business of the firm. Each of them has also an obligation to give a true account and information regarding the business of the firm. Clause (15) enables the partners to withdraw the amounts in anticipation of profits falling to their individual share; and in case of loss, each of them is also liable to make good the same in proportion to his share in the partnership. Clause (16) enjoins on the partners to carry on the affairs of the firm for mutual gain and benefit.

All the above clauses clearly, in our opinion, establish that the sole proprietary concern of K. D. Kamath has vanished. The above clauses also establish the right of each of the partners to share the profits and also to bear the losses in 'the proportion of their shares mentioned in cl. (5). Therefore, one of the essential ingredients to constitute partnership, namely, that there should be an agreement to share the profits and the losses of the business is more than amply satisfied in this case. Then the question is whether the circumstances pointed out by the High Court and referred to by us earlier, necessarily lead to the conclusion that no relationship of partners, as understood in law, has been created as between the parties under the partnership deed. For this purpose it is necessary to refer to certain decisions of this Court as well as of the High Courts, which may have a bearing on this aspect. In Steel Brothers & Co. Ltd. vs. Commissioner of Income-tax(1) one of the questions this Court had to consider was whether the fact that the control and manage'- ment of a business was in the hands of one person when there were (1) [1958] 33 I.T.R. 1.

three partners is destructive of the element of partnership. The facts were that A and B, two companies were carrying on trade in Burma rice. Later on, an agreement was entered into between A B and C for the working of the Burma rice business. It was, provided that the entire management of the business and the conduct of its affairs was to be done by A in its absolute discretion. The profit and loss was provided to be shared in the proportion mentioned under the agreement. There was a restriction on B and C against hiring the properties of the firm without the consent of At was held by this Court that notwithstanding the fact that the management and conduct or the business in its own discretion was vested with A, that circumstance is not destructive of the partnership relationship that exists between the parties to the agreement. In this decision two conditions have been laid down as essential to constitute a partnership in law: (1) sharing of profit or loss of the business; and (2) business being carried on by all the parties or any of them acting for all, in which is implicit the theory of agency.

In M. P. Davis v. Commissioner of Agricultural Income- tax(1), this Court had to consider whether the relationship as partners. had been created by the agreement of partnership relied on by the parties. From the relevant facts it is seen that it was an extreme case where two brothers ostensibly entered into a partnership arrangement. But the recitals in the document, as pointed out by this Court, clearly showed that the entire management was with one brother A and that B had no right to make any con- tribution towards capital. There was no provision as to how losses are to be dealt with and there was a very complicated manner for ascertaining the so called profits. Having due regard to the tenor of the document and the clauses contained therein, this Court held that there was no intention to bring about the, relationship of partners between the two brothers. On the other hand, it is the view of this Court that the document had been executed to continue under the cloak of a partnership the pre-existing and real relationship, namely, that of master and servant. It is to be noted that this Court did not hold that there was no relationship of partners created under the document only on the basis that the exclusive control and management was left in the hands of A. Such a conclusion was reached having due, regard to the various other clauses in the deed. lo fact this Court, has already held in the earlier decision referred to above. that the mere circumstance that the control and management are vested in One partner is not destructive of the existence of partnership. No doubt. the High Court in the case on hand, has placed some reliance upon the decision in M. P. Davis v. Commissioner of Agricultural Income-tax(1), in support of its conclusion that no partnership (1) [1959] 35 I.T. 803.

arrangement can be spelled out from the document before us. In our opinion, there has not been a proper appreciation by the High Court of the reasons which led to this Court for holding. in the said decision that there was no relationship of partners between the two brothers A and B. That was an extreme case where the clauses in the partnership deed were entirely different.

In Commissioner of Income-tax, Gujarat v. A. Abdul Rahim ,and Co.(1) this Court has held that it is the settled law that if a partnership is _genuine and valid one, the Income- tax Officer has no power to reject its registration, if the other provisions of s. 26A and the Rules made thereunder are complied with.

In Agarwal and Co. v. Commissioner of Income-tax, U.P.(2) this Court dealing with the conditions of registration prescribed in S. 26A and the relevant Rules observed as follows :

> "The conditions of registration prescribed in this section and the relevant rules are: (1) on behalf of the firm, an application should be made to the Income-tax Officer by such person and at such time and containing such particulars, being is such form and verified in such manner as are prescribed by the rules: (2) ;the firm should be constituted under an instrument of partner,ship. (3) the instrument must specify the individual snares of the partners, and (4) the partnership must be valid and genuine and must actually exist in the terms specified in the instrument. If all the above conditions are fulfilled, the Income-tax Officer is bound to register the firm unless the assessee has contravened section 23 (4) of the Act."

In certain decisions of the High Courts the two essential conditions necessary to form the relation of partnership have, been stated to be: (1) that there should be an agreement to share the profits and losses of the business, and (2) that each of the partners should,be acting as agent of all. Though, these two conditions, by and large, have to be satisfied when the, relationship of partners is created between the parties, we would emphasise that the legal requirements under s. 4 of the Partnership Act to constitute a partnership in law are: (1) there must be an agreement to share the profits or losses of the business; and (2) the, business must be carried on by all the partners or any of them acting for all. There is implicit in the second requirement the principle of agency.

The tests laid down by the High Courts have again been appli ed by the Bombay High Court in Balubhai Gulabdas Navlakhi (1) [1965] 55 I.T. R. 651.

(2) [1970] 77 I.T.R. 10.

v. Commissioner of Income-tax(1) to consider whether the document before them created a relationship of partners between the parties thereto. One of the main contention that was urged, as militating against theory of partnership was that very wide powers of control and management were given to one of the partners so much so that he is to be considered to be the owner or proprietor of the concern. This contention was rejected by the High Court. After a reference to the various clauses in the document, the Bombay High Court came to the conclusion that the two essential conditions necessary to form a relation of partnership, re- ferred to above-, were present in the document constituting the partnership. The High Court further held that the fact that some of the terms of the document gave enlarged powers of management and control to one of the partners, who has brought in all the finances, is not by itself sufficient to hold, having due regard to the other clauses that the real agree ment between the parties is not that of partners, but that of master and servant. We may also observe that most of the clauses in the document before the Bombay High Court were more or less similar to the clauses in the partnership deed before us.

In similar cases, where the control and management was vested in the hands of one partner and where it was also provided that only one partner can operate on the bank account and the others can do so, only if authorised by him, and that only one party can borrow on behalf of the firm for all, have been held not to militate against holding a particular document as creating the relationship of master and servant. Those decisions are of Kerala High Courts in Commissioner of Income-tax, Kerala v. Pathrose Rice & Oil MillS(2); by the Madras High Court in P.A C. Ratnaswamy Nadar & Sons v. Commissioner of Income-tax, Madras(3); by the Allahabad High Court in Commissioner of Income-tax V. R. S. Shoe Factory (4) ; by the Madhya Pradesh High Court in Murlidhar Kishangopal v. Commissioner of Income-tax, M.P. Nagpur and Bhandara(5) and by the Mysore High Court in City Tobacco Mart v. Commissioner Of Income-tax Mysore(,). We have already referred to the fact that the Bombay High Court in Balubhai Gulabdas Navlakhi vs. Commissioner of In- come-tax(1), has also taken the same view. In addition to the existence of clauses to the above effect in the partnership deed, we may mention that in the Allahabad decision. referred to above, in a partnership between A, B and C, there was a clause that C (1) [1962] 46 I.T.R. 492. (2) [1960] 40 I.T. R.

353. (3) [1962] 46 I.T.R. 1148. (4) [1963] 471.T.R.917. (5) [1963] 50 I.T.R. 628. (6) [1967] 64 I.T.R. 478. 119Sup CI/72 was not entitled to invest any capital and that the,business is to be carried on only by A and B and that C has no power to interfere with the management of the business. The Allahabad. High Court, in spite of all these clauses held that the document created a relationship of partners as the two essential conditions, referred to by us earlier, existed in that case.

We have already referred to the decision of this Court in Agarwal and Company v. Commissioner of Income-tax, U.P.(1) laying down the conditions, which if fulfilled makes it obligatory on the Income-tax Officer to register the firm, unless the assessee has contravened s. 23 (4) of the Act. It is not the case of the Revenue that the assessee before us has-contravened section 23 (4). There is also no controversy that the application has been made in accordance with S. 26A as well as the relevant Rules. The firm has been constituted under an instrument of partnership dated March 20, 1959. From the clauses of the partnership deed, extracted above, particularly cl. (5), the shares of the partners regarding the profit and loss have also been specified. Therefore, it follows that conditions Nos. 1, 2 and 3 specified in the above decision are fully satisfied. Regarding Condition No. 4 also there is no controversy that the partnership is genuine in the sense that it is not a fictitious document. Then the only other requirement referred to in condition No. 4 to be satisfied is whether the partnership is valid in the sense that it creates relationship of partners between the parties thereto. From our discussion in this judgment, according to us, the relationship of partners inter se has been created under the partnership deed and that such relationship had actually existed in accordance with the terms specified in the said document From a review of the above decisions, it is clear that the mere nomenclature given to a document is by itself not sufficient to hold that the document in question is one of partnership. Two essential conditions to be satisfied are : (1) that there should be an agreement to share the profits as well as the losses of the business, and (2) the business must be carried on by all or any of them acting for all, within the meaning of the definition of " partnership" under s. 4 of the Partnership Act. The fact that the exclusive power and control, by agreement of the parties is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier are satisfied.

In the light of the principles laid down by this Court in Steel Brothers & Co. Ltd. v. Commissioner of Income-tax (2) and in the decisions of the High Courts, referred to above, the reasons (1) [1970] 77 I.T.R. 10.

(2) [1958] 33 I.T.R. 1.

given by the High Court for holding that the relationship of partners has not been created under the deed of partnership before us, cannot be sustained. As the control and management of business can be left by agreement in the hands of one partner to be exercised on behalf of all the partners, the other consequence by way of restriction on the rights of the other partners lose all significance. In fact the clauses providing that the working partners are to work under the directions of the managing partner and the further clause restricting their right to accept 'business or raise any loans or pledge the firm's interest except with the consent of the managing partner K. D. Kamath, have all to be related with the agreement entered into by the partners regarding the management and control by K. D. Kamath. We are of the opinion that under the partnership deed the relationship which has been brought into existence between the six parties is a relationship of partners who have agreed to share the profits and losses of business carried on by all or any of them acting for all and it satisfies the definition of "Partnership under s. 4 of the Partnership Act. W.-. have already pointed out that there is a sharing of the profits or losses of the business by the partners in the ratio of the proportion mentioned in Cl. (5). That clause read with other clauses already discussed by us, clearly shows that the first condition, namely, all persons agreeing to share profits or losses is satisfied. Even on the basis that the entire control and management of the business is vested in K. D. Kamath, party No. 1 and that parties Nos. 2 to 6 as working partners have to work under his direction, from all the other circumstances it is clear that the conduct of business by party No. 1 is done by him acting for all the partners. There is no indication to the contrary in the partnership deed. Therefore, even without anything more, it is clear that as the partnership business is carried on by party No. 1, acting for all, the second condition of agency is also satisfied. This idea reinforced by cl.(16) which provides that the firm's affairs are to be carried on for mutual benefits. That clause is to the effect that the firm's affairs which are managed by party No. 1 is really for the mutual gain and benefits of all the partners.

It is no doubt, true that the second essential test of the business being carried on by all or any of the partners acting for all must be satisfied. The provisions in the partnership deed clearly establish that K. D. Kamath, the managing partner, carries on the business, acting for all the partners.

Much stress has been laid by the High Court on the fact that under Cl. (9) parties Nos. 2 to 6 have no Tight to raise loans for and on behalf of the firm or pledge the firm's interest. This circumstance, according to the High Court, is destructive of the element of partnership. We have already held that the management and control of the business done by party go. 1, is carrying on of the business on behalf of all the partners. No doubt under s. 18 of the Partnership Act, a partner is the agent of the firm for the purpose of the business of the firm. But that section itself clearly says that it is subject to the provisions of the Act. It is open to ,the- parties, under s. 11, to enter into_an agreement regarding their mutual rights and duties as partners of the firm and that can be done by contract, which in this case is evidenced by the deed of partnership. Further s. 18 will have to be read along with s. 4. If the relationship of partners is established as a "partnership" as defined in s. 4, and if the necessary ingredients referred to in that section are found to exist,' there is no escape from the conclusion that in law a partnership has come into exist- ence. lit is in the light of these provisions that s. 18, will have to be appreciated. Section 18 only emphasises the principle of agency which is already incorporated in the definition of "partnership" under s. 4.

It should be remembered that so far as the outside world is concerned, so long as the parties Nos. 2 to 6 are held out, as partners of this firm, as has been done under the partnership deed. their acts would bind the whole partner- ship. The provision in cl. (9) in our opinion, is only an inter se arrangement enter, into by the partners, in and by which the-working partners have agreed not to raise loans or pledge the firm's interest.

Mr. S. K. lyer, learned counsel for the Revenue placed some reliance on s. 14 of the Partnership Act. According to the counsel, there is no contract to the contrary in the partnership deed that the assets brought in by party No. 1, do not belong to the partnership. It is his further contention that under s. 14, those assets will belong to the partnership, in which case, it will be open to any partner, as agent of the other partners to pledge the firm's interest or raise loan for partnership purposes. This right, accor- ding to the counsel is restricted by cl. (9) and that clause negatives the theory of agency. In our opinion, this contention of the learned counsel cannot be accepted. Section 14 of the Partnership Act itself clearly shows- that the provisions contained therein are subject to the contract between the parties. We have already held that the provision regarding the control and management vesting in party No.1 is not itself destructive of the theory of partnership. Clause (9) in our opinion, itself shows that the theory of agency is recognised. But the parties, by mutual agreement, have placed a restriction on the working partners' right to borrow on behalf of the firm or pledge the firm's interest without the written authority of the principal partner.

Mr. Iyer placed considerable reliance as the High Court has also done, on the earlier decision of the Bombay High Court in Umarbhai Chandbhai v. Commissioner of Income-tax, Bombay City(1). That again, in our opinion, was a case of an extreme nature where, under a partnership deed, between the father and his two sons, the former had a right to exclude either or born his sons from the management of the firm, wholly or in part. There was also a provision to the effect that the father was entitled to entrust the management to any other person and also determine what quantum of profits should be distributed and what ,is to be done regarding the remaining profits. There were further provisions to the effect that the father could terminate the partnership and- on such termination, the share of the partner was to revert to the father. The Bombay High Court, having due regard to the clauses, referred to above, as well as other clauses of the partnership deed, held that the document offended against the two principles which were essential to constitute a partnership, namely, agreement to share the profits and losses and the business being carried on by all or any of them for all of them. The learned Judges held that there was no agreement to share the profits and loses of the business and even the business carried on by the father was not, on behalf of all the partners. In such circumstances, it was held, that the arrangement evidenced by the deed cannot be considered in law to be a partnership. In our opinion, reliance placed upon this decision by the High Court as well as by Mr. Iyer is misplaced. In fact, from a perusal of the clauses in the document which- the Bombay High Court had to consider, it is clear that the business continued to be the proprietary concern of one single individual namely, the father. Excepting that the two sons were styled as partners in the document, the essential requisites for constituting the relationship of partners inter se between the father and the two sons were 'totally absent. The clause in the case before us are totally different. We have already indicated that there is an agreement for sharing the profits and losses and that even though vast powers of control and management have been given to K. D. Kamath, the managing partner, the business was being carried on by the said managing partner, on behalf of all the partners. These conditions fully satisfy the requirements of the definition of "partnership" under s. 4 of the Partnership Act.

To conclude we are of the opinion that all the ingredients of partnership are satisfied under the partnership deed dated March 20, 1959 and that the view of the High Court that the appellant firm cannot be granted registration under s. 26A of the Incometax Act for the assessment year 1959-60, cannot be sustained.

(1) [1952] 22 I.T.R. 27.

In, the result, we answer the question of law in the affirmative in favour of the assessee. This answer given by, us to the question referred to the High Court by the Income-tax Appellate Tribunal will be substituted in the place of that given by the High Court. We accordingly reverse the Judgment and order of the High Court and-allow the appeal with costs.

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G. C.                Appeal allowed.
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