CHAPTER V
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REGISTRATION OF FIRM AND THE ATTAINMENT OF MAJORITY BY THE MINOR

In the foregoing Chapters the present Scholar has discussed and analysed the existing law and interpretations of different courts with regard to exposure of minor share in the event of loss incurred by the partnership firm in which the minor has been admitted to the benefit of partnership and the scholar also proposed certain changes in the existing law for the better safeguard of interest of the minor. In the present Chapter the scholar ventures to examine about the principle of the Registration of a Firm and the legal status of a minor on the Attainment of majority.

At the outset, it is worthwhile to first analyse regarding Registration of the Firm and the necessity of Registration as per Indian Partnership Act 1932 and Registration of firm as per Indian Income Tax Act 1961. Even though, according to the amended provisions of law of Income Tax, the registration of the partnership firm is no more a legal necessity but all those grounds for which a registration of firms were being denied are also applicable for the assessment of firm in the Status of a Partnership Firm even after amendment of Income Tax Act in the year 1992.
5.1 Registration of Firm as per Partnership Act 1932.

To know the importance of Registration under the Indian Partnership Act. 1932 a deep analysis of Sec. 69 i.e. effect of Non-registration is much essential. It reads as follows:-

(1) Firstly, no suit to enforce a right arising from a contract or conferred by this act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Registration of Firms as a partner in the firm.

(2) Secondly, no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of Firms as partners in the firm.

(3) Thirdly, the provisions of Subsection (1) and (2) shall apply also to a claim of set off or other proceedings to enforce a right arising from a contract, but shall not affect:
(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency Towns insolvency Act, 1909, or the Provincial Insolvency Act, 1920 to realise the property of an insolvent partner.

(4) Fourthly and lastly, this Section shall not apply:-

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under Section 56, this Chapter does not apply, or

(b) to any suit or claim or set-off not exceeding one hundred rupees in value which in the Presidency town is not of a kind specified in Section 19 of the Presidency Small Cause Courts Act, 1882 or outside the Presidency towns is not of a kind specified in the second schedule to the Provincial Small Cause Courts Act, 1887 or to any proceeding in execution or
other proceeding incidental to or arising from any such suit or claim.

In the opinion of the present Scholar this Section is the most important section in the whole subject relating to Registration of Firm. Because the bar to sue laid down under Section 69 hits at the very root of the case, that is to say, it bars the very institution of the suit. Any objection raised in that behalf therefore has only to be considered at the threshold of the first hearing and once that point is decided against the plaintiff the suit has to be dismissed. But such a decision can not bar a fresh suit.\textsuperscript{1} Provided the firm registered itself before the Registrar of Firm.

Again the operation of Sec. 69 extends to a suit in which a partner sues his co-partners or sues the firm to enforce any rights arising from partnership. Even a partner of an unregistered partnership firm can take recourse to this provisions.\textsuperscript{2} Of course in order to apply Sec. 69 there must be an agreement, though implied between the parties to share profits of the business\textsuperscript{3}.

Further, on the death of a partner, order 30 rule 4 of the \textit{Code of Civil Procedure} makes it clear that the heir of a deceased partner need not join in the suit. However the representative of the partner may apply to be made a party to the suit or to enforce any claim against the survivors. But if a minor who is admitted to the benefits of the partnership dies, then the claim remains to
the extent of minor's interest in the firm and nothing beyond that.

Added to this in view of few exceptional decisions, the question of registration becomes more complicated. The Lahore High Court has upheld in a case, that subsequent registration before decree validates proceedings by unregistered firm.

In an another case Madras High Court opined that when the registration has been carried out, the requirement of the legislature are fulfilled and there is no reason in equity as to why a suit proceedings filed should not be allowed to go as from the moment of registration.

Even A.P. High Court followed the above principle of Madras and Lahore High Court while giving its judgement in one of the case.

In the humble opinion of present Scholar it is respectfully submitted that the above view of Lahore, Madras and Andhra Pradesh High Courts do not appear to be correct. Because Registration is a statutory requirement and knowing fully well about its implication, it should not be violated.

By Registration, one makes public notice about the existence of firms and a third party will come to know about the same and they will deal with the firm accordingly. Section 63 of Partnership Act reads as follows:-
5.2 Recording of changes in and Dissolution of a Firm.

(1) When changes occur in the constitution of a registered firm, any incoming, continuing or outgoing partner, and when a registered firm is dissolved, any person who was a partner immediately before the dissolution or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of firms, and shall file the notice along with the statement relating to the firm filed under Section 59.

5.2a Recording of Withdrawal of a minor.

(1) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become partner, and the firm is then a registered firm, he or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner and Registrar shall deal with the notice in the manner provided in sub-section (1).

The above Section deals with the recording of changes in the constitution of the firm or dissolution of
the firm before the Registrar of Firm and if a minor attains majority within six months he must record his choice as to whether he elects to become or not to become a partner and this fact should be recorded before the Registrar of Firm under the Partnership Act.

5.3 Importance of Mentioning the Ratio of Profit and loss in the Partnership Deed & Registration under Indian Income Tax Act 1961.

Section 184 of Income Tax Act (Prior to 1992) lays down the necessity of making an application for registration for the purpose of the Act on behalf of any firm, if

(I) the partnership is evidenced by an instrument and
(II) the individual shares of the partners are specified in that instrument

Even the amended law of 1992 which continues till date also specifies the same.

The specification of the individual shares of the partners in the instrument is one of the condition precedent for Registration of the firm. It is worthwhile to mention here that the Income Tax Act is silent about the specification of profits or loss as it speaks only of a ‘share’ of a partner. However, there is difference of opinion on the question whether an instrument should expressly specify the shares in losses.
The Allahabad High Court\textsuperscript{7} on two occasions and the Mysore High Court\textsuperscript{8} have ruled that there is no need for the instrument to actually specify the shares in losses where as High Courts of Gujarat\textsuperscript{9}, Kerala\textsuperscript{10}, Andhra Pradesh\textsuperscript{11} have laid down that a valid instrument ought to specify the shares in losses.

The full Bench of the A.P. High Court\textsuperscript{12} held that the Section 184 of the \textit{Indian Income Tax Act} does not indicate the specification of the shares for distributing the profits and losses. But that is normally implied.

In this connection the Hon’ble Supreme Court\textsuperscript{13} observed that

“but, in none of these clauses it is stated what the shares of the partners in the profits and losses of the firm were to be and that in our opinion was requisite for registration of partnership under Income Tax Law”

On a different occasion\textsuperscript{14} Hon’ble Supreme Court in a more clear language opined that

“It is not, and it can not be disputed that the Income Tax Officer, before allowing the application for registration must be in a position to ascertain the shares of the partners in the losses even if Sec. 26 A of 1992 Act did not require the shares in the losses to be specified in the instrument of Partnership”
Therefore it is better and safer to specify the shares of profits as well as losses in the body of the Partnership Deed but if the lines had been omitted by changes than there should be some provision from where one should be able to find out the share of losses amongst the partners by a reasonable interpretation of the deed. This aspect plays an important role in the matter of granting registration or accepting the firm as valid before granting registration or accepting the firm as valid one on attainment of majority by minor because what the assessing officer has then to ascertain before granting registration or accepting the firm as legally contributed by all is whether there is a proper specification of both shares of profit and loss as the minor is only entitled to the benefits of partnership.

Again, the Full Bench of the Allahabad High Court sums up the above view while delivering its judgement in the following words as under-

“A minor is not liable to share in the losses though he is entitled to share in the profits. The share of the loss relatable to the share of the minor has to be provided for. The redistribution of the shares in loss on the minor’s attaining majority has also to be ascertained. If on a reasonable construction of the instrument of partnership the matters can not be ascertained, it will be a case where the
instrument of partnership does not evidence the change in the share”

The Full Bench of Andhra Pradesh High Court\textsuperscript{16} held that Registration of a Partnership couldn’t be refused as long as the shares of the partners in profit and loss can be worked out according to the specification made in the partnership deed.

Kerala High Court\textsuperscript{17} categorically denied registration and held that the firm was not entitled for renewal of registration as the clarification deed did not provide for sharing of 25\% of the loss and as the firm has been refused Registration for the earlier year.

But on the other hand Mysore High Court\textsuperscript{18} opined just on the opposite direction and held that, it is not proper for the Income Tax Officer to refuse registration under section 26A of Income Tax Act the instrument of partnership on the ground that, though the instrument of partnership specifies the individual share of the partners in the profit, it does not specify the share in the loss.

Further more, a minor’s liability who is admitted to the benefits of partnership is a limited one i.e. his liability is limited to his share in the partnership only. Thus, when a minor is admitted to the benefits of the Partnership, one ought to ascertain whether on attainment of majority his share in profits and loss can be determined from the instrument of partnership and the assessing officer has also to satisfy that the constitution as well as
the shares as specified and as evidenced by the instrument of partnership continue to be unchanged.

On the above point of law, the Punjab High Court\textsuperscript{19} further clarifies its stand in the following words:-

"The mere fact that the shares of some minors in a firm were shown collectively and the share of each one of them was not separately stated in express words is not a sufficient ground for refusing registration of the firm, if it is clear from the context beyond doubt that the minors took the shares allotted to them collectively, in equal shares"

Even, Sec. 2(23) of the \textit{Income Tax Act} while defining the word "partner" includes any person who, being a minor, has been admitted to the benefits of partnership and therefore, the individual shares of the minors admitted to the benefits of the partnership must be specified in the partnership deed. However the definition has been designed to confer equal benefits upon the minor treating him as a partner but it does not render a minor a competent and full partner. For that purpose the Law of Partnership must be considered apart from definition in the \textit{Income Tax Act}\textsuperscript{20}.

Therefore in view of the present scholar in the light of the above definition, in the absence of specification regarding the individual shares of the minor, the partnership deed is invalid one.
The same subsection (23) of Sec.2 of the *Income Tax Act* 1961, enlarges the expression “partner” to include a minor who has been admitted to the benefit of partnership although Sec.30 of the *Indian Partnership Act* does not designate a minor with the Status of Partner. However the same *Income Tax Act* provide that for Registration of Firm, the applications for Registration shall be signed by all partners (not being minors or their guardian – as the minors are not partners in the strict sense) personally. Here there is an inherent contradiction lies within the Income Tax Act. On the one hand Sec. 2(23) of Income Tax Act includes the minor as partner but in the same breath the provisions of registration denied the minor or its guardian from signing the Application for Registration.

Thus, in order to make a valid partnership there must be at least two major partners and there can be no partnership between one major and two minors even if under the Income Tax Law Minor is deemed to be a partner but he cannot be a full-fledged partner due to provisions of Sec. 30 of Indian Partnership Act.

In this regard the view of the Patna High Court\(^{21}\), which was subsequently confirmed by the Supreme Court in a landmark judgement\(^{22}\) held that the basic reason behind it is that a single major cannot enter into a partnership with a minor because of the latter’s incapacity to contract under the Indian Law\(^{23}\). So in this
Thus in the light of hordes of decision of different High Courts and Supreme Court, a minor partner cannot legally be a signatory to a partnership deed and become a full-fledged partner and if this provision is violated, the firm cannot be registered.

The Gujarat High Court\textsuperscript{24} refused registration on the ground that as on the date of execution of the deed, one partner was a minor, the partnership was not valid and whether a person was or was not a minor has to be determined with reference to the date of execution of the deed of partnership.

Another important decision in this regard is that of P & H High Court\textsuperscript{25} where all the partners were majors when the partnership deed was executed but given effect from a date when one of the partners was minor. The Court was of the view that in the above circumstances it could not be said that the deed was not valid.

Similarly Hon'ble Bombay High Court\textsuperscript{26} also endorsed the above view on the following facts where one partner was minor when the original deed was executed. An endorsement was, however made by all the three partners when the minor attained majority. All the three partners executed the deed for the subsequent year on the same lines. The Court was of the opinion that the defect in the original deed was no longer in existence when endorsement was made and a fresh deed was executed, as
all the partners were majors. So the firm was entitled for registration.

On this issue, Calcutta High Court\textsuperscript{27} went a step forward and relaxed the rules further and held that it is not necessary for every partner to sign the instrument of partnership and that, even though the instrument of partnership has been signed by only some of them, but if it had been assented by the others, who had not signed it and they had joined in putting it forward along with other partners for registration, it was admitted for registration under Income Tax Act.

According to Partnership Act, a deed of partnership is not necessary and a firm may come into existence by a verbal agreement. But under Sec. 185 of the Income Tax Act, 1961, a firm can be registered only if it is evidenced by an instrument of partnership. It was held by Supreme Court\textsuperscript{28} that the instrument of partnership should be in existence in the accounting year in respect of which the assessment is made, it left the above question open as whether the partnership deed should be in existence from the very inception of the partnership.

However Madras High Court\textsuperscript{29} while deliberating on the above question held that where an instrument puts down in writing, an earlier oral agreement, the agreement is effective from the date of the arrangement and if this arrangement was in existence at the commencement of the relevant accounting year, the subsequent execution of an agreement during the course of the accounting year, given the firm, the character of a
firm constituted under a deed of partnership throughout the accounting year. It must be, however, made clear that before the minor can be admitted to the benefits of partnership, the firm must be in existence. It is however, not necessary to execute two deeds, one recording the terms and conditions of Partnership and the other for admission of minor to the benefits of Partnership provided it is made clear in the recital of the deed that the partnership was in existence as per an valid agreement when the minor was admitted to the benefits of partnership.

Though the present judgement of the Madras High Court was already discussed in the previous chapter, the same is needed again in the context of the present chapter and therefore the repetition is essential in the context of both the chapter. As observed by Madras High Court, a widow of a Hindu Undivided Family cannot enter into a partnership on behalf of the minor son and daughter because under the Hindu Law the widow cannot become the ‘Karta’ of Hindu Undivided Family. But as per Hindu Law, the mother is entitled to the guardianship of her children next to the father. Even in a recent landmark case Supreme Court held that both the mother and father are natural guardians and mother can be accepted as a natural guardian even if the father is alive and active. Doubtless, she cannot appoint a testamentary guardian. In spite of the above clear provisions of Hindu Law and catena of decisions of different Courts holding a widow to be a natural guardian, how can the Hindu Law bar a widow to enter into a contract for partnership on behalf of her minor son and daughter.
It is submitted with respect by the present Scholar that the above decision of Madras High Court does not appear to be correct. And registration of firm in the above circumstances where a widow mother represented her minor sons and daughters in a firm should be granted.

In an interesting development, the guardian of a minor adopted a novel way. The Guardian became a partner in a firm by investing the property belong to his minor ward with a intension that the amount will ultimately transferred to minor. The said arrangement was absolutely evident from records. Income Tax Department on the above ground refused registration of the firm declaring the Deed as invalid one. Intervening on the above, Hon’ble Nagpur Bench of Bombay High Court went a step further and was held in this case that the rights of the minor vis-à-vis the guardian are not the concern of the Income Tax Department.

5.4 Whether fresh deed is necessary:

Another important question arose in the mind of the present Scholar as to whether a fresh Deed is necessary when a minor admitted to the benefits of Partnership becomes major and elects to become a full-fledged partner?
The above question was answered to some extent by the Full Bench of Allahabad High Court\textsuperscript{34}. The court held that:

"In view of the fact that \textit{Income Tax Act} deems a minor to be partner, there can be no change in the constitution of the firm by the mere fact of his attaining majority and electing to remain a partner. He was already a Partner, and he continues to remain a partner. The Court again held that where the instrument foresees the eventuality of a minor becoming a major and makes provisions for the distribution of the shares, execution of fresh deed is not required".

The shares here include both profit and loss. So where, there is a stipulation of sharing of both profit and loss before a minor attained majority, which continued to so remain after attaining majority, no fresh partnership deed is required.

On a writ to answer the above question, M.P. High Court\textsuperscript{35} while deliberating on the subject held that where a minor was admitted to the benefits of partnership and on attaining majority the minor elected to become partner but original partnership deed did not provide for such eventuality the court refused registration of the Firm on the ground that the firm is not a genuine one.
Gauhati High Court\textsuperscript{36} also held on the following facts that one of the partners was minor when the partnership was constituted orally. On the minor Partner attaining majority the partnership deed was executed. The Court's finding was that oral partnership was genuine and that minor has been admitted to benefit of partnership. So the firm is entitled to registration as a genuine one.

It is also note here that both Kerala\textsuperscript{37} and Andhra Pradesh High Court\textsuperscript{38} are unanimous on one point that when the partnership deed was made just after the attainment of majority by a minor and the minor who became major bears the losses made by the firm during his minority the Revenue refused the Registration but it was granted registration by High Courts on the ground that new Partnership deed was executed at a time when the minor attained majority and therefore, the new Partnership was valid and constituted in accordance with law.

Thus, in the opinion of the Scholar in the absence of any negative stipulation that a minor will have no right to continue as a partner if he fails to elect to become a Partner, the minor becomes full-fledged partner on attainment of his/her majority as per Sec. 30 (5) of the Partnership Act.
5.5 A minor's option to become partner on majority-
Whether amounts to change in constitution:-

The above view of the Kerala High Court and Andhra Pradesh High Court leads to another curious problem as to whether Minor's option to become partner on attaining majority amounts to change in constitution of the partnership firm? Under Sec. 184 (7) of the *Income Tax Act 1961*, where registration is granted to the firm for any assessment year it has effect for every subsequent assessment year provided there is no change in the constitution of the firm or the shares of the partners as evidenced by the partnership deed on the basis of which the registration was granted. In case of occurrence of any such change fresh registration of even a registered firm is required Under Section 184 (8) of the *Income Tax Act*.

The relevant provisions pertaining to the registration of a firm under the Indian Partnership Act reveals that no fresh registration is required when a minor, who has been admitted to the benefits of a partnership firm, attains majority and elects to become a partner. All that is required by sub-sec. 2 of sec. 63 of the Partnership Act, is to give a notice of such an election to the Registrar, who shall make a record of the notice in the entry relating to the firm in the register of firms, and shall file the notice along with the statement relating to the firm under section 59 of the Indian Partnership Act.
The position, however, seems to be quite vague under the *Income Tax Act*. Sub-Sec. (2) of Sec. 187, which specifically defines the concept of 'change in the constitution of the firm', is silent about the legal consequences flowing from minor becoming major and opting to become a partner. However, in view of the two circulars\textsuperscript{39} issued by the Central Board of Direct Taxes, it is necessary to draw up a fresh partnership deed in case a minor admitted to the benefit of the partnership attains majority. However, it will not be out of place to mention here that circulars are binding on the Revenue Officials and no others.

Allahabad High Court\textsuperscript{40} on two occasions held that there is a change in the constitution of the firm when a minor, who was admitted to the benefit of partnership, attains majority and elects to become a partner in the firm. But subsequently Full Bench of the Allahabad High Court\textsuperscript{41} while over ruling the above decision held that when a minor attains majority and opts to become a partner within the meaning of Indian Partnership Act, no change occurs in the constitution of the firm as, under section 2 (23) of the Income Tax Act, a minor admitted to the benefits of partnership is already deemed to a partner. The instrument of partnership evidenced the same number and identities of the partners are as before.
The distribution of the shares in loss on the minor's attaining majority has also to be ascertained. If, on a reasonable construction of the instrument of partnership, these matters cannot be ascertained, it will be a case where the instruments of partnership, does not evidence the change in the share and the firm will not be entitled to continuation of registration. But, such registration may be continued for a part of the year up to the date on which minor attained majority and elected to become partner.

However Bombay High Court created a controversy and held that if there is no change at all in the share of the partners with respect to profit but only with respect to losses on minor's opting to become full partner on attaining majority there is no change in the constitution of the firm within the meaning of the first proviso to Sec.184 (7), as in their view for the purpose of the Act, what is required to be shown in the instrument of partnership is the specification of individual shares of the partners in the profit alone and not the shares in losses.

It is submitted here that this decisions of the Bombay High Court is correct and with respect it is submitted that the decisions of the (Full Bench) Allahabad High Court does not appear to be correct due to the facts given here. The original instrument of partnership deed by
mutual agreement of partners clearly specifies the individual shares of other partners in the losses to the extent of 100% and when the major partners themselves had agreed to share the losses among them to the extent of 100%, the same shares shall continue even when minor on attaining majority became partner without any change in sharing of profits and losses. Therefore, the minor will not be liable to share the losses automatically until by mutual agreement of all the partners' change of shares in losses is made and he is compelled to share losses also with them in certain specified proportion. Neither the Indian Partnership Act nor the Income Tax Act provides that the minor on attaining majority will automatically become liable to share losses of the firm. This view can be justified from the following example.

In a partnership of three major persons, it is provided in the instrument that the profits will be shared by all the three partners in specified proportions but the entire loss, if any, will be shared equally by two partners only. And this partnership is valid in the eye of law. In the same way in case of two partners with a minor admitted to the benefits of partnership, the instrument of which provides for sharing in specified proportion of the profits by all the three person but the entire loss, if any, shall be shared by two major partner alone equally excluding the minor who is also deemed to be a partner under section 2
(23) of Income Tax Act for the purpose of Registration and in such case the partnership a perfectly valid document in the eye of law. On opting to become full-fledged partner after attaining majority the position remains the same and it is not obligatory that he should also share the losses u/s 30 (7) of the Partnership Act, he becomes liable to the third parties like all other partners without any change in share in profits and losses.

Further, an interesting point also emerges in view of Punjab High Court decision, which held that the omission by a partner, who becomes major on the date of making application for registration to sign the application, rendered the application defective and registration could be refused.

However this view of Punjab High Court was not accepted by M.P. High Court which took a contrary view and held that the application for renewal for registration was not liable to be rejected on the ground that the same was not signed by a person, who continued to remain a minor during the entire period of accounting year, but who had attained majority when the application for registration for the relevant assessment was made.

In the view of the Gujarat High Court a minor admitted to the benefits of partnership should not sign the partnership deed or the application for registration or renewal. But if the said minor admitted to the benefits of partnership has attained majority at the time when the application for registration or renewal is made he must also sign the application for registration.
The fact that under section 30 of the Indian Partnership Act such a minor has six months time after attaining majority to elect to become a partner or not, by giving public notice, does not render his signature unnecessary.

It is submitted here that unfortunately by operation of the above decision, the Income Tax Act curtails the rights of the minor who has just attained majority. Because as per Indian Partnership Act he has six months time to decide whether to join or not to join as a full fledged partner but due to the provision of Income Tax Act for the purpose of Registration of firm, the signature of all the major partner is a must and as the minor who has just attained majority is a major, without his signature the firm cannot be registered and the moment he signed the application for registration it is deemed that he accepted to became a full fledged partner and thereby lost the time to think about a lacuna which was subsequently rectified by the Government by abolition the provisions of registration.

A fresh deed should be executed as soon as a minor attains majority, as it is necessary that the instrument of partnership should bear the signature of all the partners.

Law develops with the interpretation of Courts and fresh thinking of legislatures and Jurist of high calibre and judgement of the M.P. High Court is definitely is in that direction. A Minor admitted to
benefits of partnership after becoming major can make an endorsement on Partnership Deed and elect to become a partner. Endorsement constitutes fresh partnership for the purpose of registration.

Even decision of P & H High Court\(^5\) is also no exception. A Minor had been admitted to benefits of Partnership and on attaining majority during accounting year, he was made a full-fledged partner but from an earlier date when he was still a minor. It was held by the Court that the Firm was entitled to Registration.

5.6 **Assessment proceeding after the amendment of the Income Tax Act on minor attaining majority:**

In view of the amendment of the *Income Tax Act* from the assessment year 93-94 relevant to the financial year 92-93, if a minor becomes a major at the time of filling of return by the firm then what will be the fate of assessment of that year made on the basis of that Return of Income?

The new Sec. 184 (1) of the *Income Tax Act* 1961, stipulate that the partnership has to be evidenced by an instrument and the Sub-Sec 184 (ii) of the same Act says that a certified copy of the instrument of the partnership should accompany the returns of income. Hence, the above view of Punjab High Court\(^5\) that omission of signature by minor partner in the application for Registration who attains majority at the time of application is a ground for refusal for registration will be
more appropriate. It is submitted respectfully by the present Scholar that the contrary view of M.P. High Court’s\textsuperscript{53} observation does not appear to be correct.

In the present analytical study a very interesting question emerges regarding the status of minor during the period of 6 months from the date of attainment of majority as provided under Sec. 30 (5) of \textit{Indian Partnership Act}. Regarding this question, Allahabad High Court\textsuperscript{54} opined that ‘during this period of 6 months, the minor continues to enjoy the same status in the firm which he held earlier before attaining majority”. So even during these 6 months of majority a previous minor partner will be treated as minor. And after the expiry of this 6 months, if the minor partner elects to become a full fledged partner (if he remain silent, also the assumption is that he elects to become a partner) and if the original partnership deed was inadequate in respect of spelling out the shares of the partners in profits and losses that it would be necessary to execute a fresh partnership deed indicating minor as a full fledged partner and the manner in which he would share the profits and losses. The Allahabad High Court\textsuperscript{55} in two other decisions also confirmed the above view.
On this issue, the Gauhati High Court\textsuperscript{56} held that for a period of 6 months from the date of attainment of majority the minor continues to remain such person and as such the original deed of partnership showing minor as having been admitted to the benefits of partnership will continue to hold good for said duration of 6 months.

Punjab and Haryana High Court in another interesting case\textsuperscript{57} held that Partnership deed can be given retrospective operation and in the instant case Partnership deed was executed on 20.07.1972 but given retrospective operation from 01.06.1972 and in the mean time the Minor who was admitted to the benefits of partnership attained majority on 13.06.1972 and continued as partner. It was held by the Court that the Firm is entitled to registration.

The views of several High Courts such as Calcutta High Court\textsuperscript{58} on two occasions, Kerala High Court\textsuperscript{59} in two decisions, P & H High Court\textsuperscript{60} on two occasions and J & K High Court\textsuperscript{61} in one such occasion are unanimously held that on attaining majority by a minor who was admitted to the benefits of partnership, a new partnership deed was drawn up which was brought into effect from stipulated back date when the said partner was minor. On application for registration, revenue refused the same on the ground that since the partnership deed was given retrospective effect, which purported to make a minor accountable for losses of the firm the
partnership was not genuine and hence, it was not entitled for registration. However, all the High Courts disapproved the above view of the revenue on the sole ground that since the minor had attained majority during the relevant accounting period, he could contract to share profit or losses of that period during which he was a minor.

Therefore in the opinion of the present Scholar for registration of a firm as per old Income Tax law and assessment of firm in the Status of Partnership Firm, in the new Income Tax Law, the interpretation of the Partnership Deed by the assessing officer is most vital.

The Golden cardinal rule of Interpretation is that clear and unambiguous words prevail over any intention, but if the words used are not clear, the intention will prevail. The law is anxious to save a deed as far as possible. This is sometime called "ut res Magis Valeat quam pereat" i.e. if by any reasonable construction the intention of the parties can be arrived at and intention if carried out consistently with the rules of law, the Court will take that course.

Keeping in mind the above cardinal principle the Hon'ble Supreme Court held that it is well established rule of construction that where two construction of a document are possible, one of which gives effect to all the clauses therein while, the other
renders one or more of them nugatory, it is the former that should be adopted on the above principles.

Further on another occasion, the Hon'ble Supreme Court\textsuperscript{63} also held that when ambiguous expressions are used, the Court may normally adopt the interpretation which upholds the deed, if the parties thereto have acted on the assumption of its validity.

In this connection the Calcutta High Court\textsuperscript{64} opined that a partnership deed should normally be constructed reasonably and fairly and in its entirety if two views are possible on the construction of the deed, the view which is to be preferred is the one which will make the deed valid and consistent with law.

It is submitted here that while interpreting the deed of partnership, the assessing officer should consider the view of the different Courts as mentioned above. As mentioned by the Gauhati High Court\textsuperscript{65} that the strictness imposed on registration is primarily to achieve the two-fold objects.

(a) To assert or preclude bogus and colourable firms reaping the benefits of registration.

(b) To enable the revenue to locate precisely the individual shares of the partners.

It was held that the discretion conferred on the authorities is a judicial one and ought not be exercised in
a capricious and impetuous way but in a disciplined and responsible manner.

In summing up this Chapter, all the above points on which partnership firm failed to get registration before the Income Tax Authorities are also applicable in the changed circumstances arising out of amendment of Income Tax Laws to the assessment of firm. In the view of the present Scholar if the above points are not fulfilled then the firm will be assessed in the Status of Association of persons to the disadvantages of the partners resulting in unwarranted higher Income Tax demand.

While concluding the present chapter, the present scholar propose the following rectification in the relevant provisions of law.

1. That Registration of Partnership Firm under the Partnership Act should be made mandatory because by registration, one makes public notice about the existence of the firms and its contributants and third party shall come to know about the same and they will deal with the said firms accordingly.

2. In the Partnership Act, a necessary provision should be inserted making a written Deed of partnership compulsory for formation of partnership firm for better safeguards of minor who has been admitted to the benefits of partnership.
3. The law should be suitably amended and the minor should share loss of the firm only after attaining majority and law should strictly prohibit the sharing of loss for the prior period when he was a minor even if he consented to it.
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