

## The Commissioner of Income-tax, Bombay v. M/s. Dwarkadas Khetan & Co.

Civil Appeal No. 328 of 1959 — Single Supreme Court civil appeal disposed of by the target judgment.

[1961] 2 SCR 821 | 1960-12-01

**A deed admitting a minor as a full partner could not be registered under section 26A; the tax authorities could not rewrite it as a partnership among the adults alone.**

1922 Act: 2(6-B) | 1922 Act: 26A

3 Judges | J. L. Kapur | M. Hidayatullah | J. C. Shah

### 01 FACTS OF THE CASE

A partnership deed executed on 27 March 1946 included three adults and a minor. The minor signed it, shared losses including capital losses, could manage the business and vote, and had to join written consents. He was therefore made a full partner, rather than merely admitted to partnership benefits. The Registrar of Firms issued a certificate naming all four partners. For assessment year 1947-48, the Income-tax Officer nevertheless refused registration under section 26A. The Tribunal upheld that refusal, but the Bombay High Court answered the reference in the firm's favour.

Source: [SCR 822-824; facts and procedural record](#)

### 02 DISCUSSION BY THE HON'BLE COURT

The Court separated the income-tax definition of partner from legal capacity under the Partnership Act. Section 2(6-B) extended tax benefits to a minor validly admitted to partnership benefits; it did not make him competent to contract as a full partner. Section 30 permitted benefits with the adult partners' consent, but prohibited full partnership. The registration rules also distinguished minors from partners required to sign the application. The Court preferred the Calcutta approach to the Madras view that an invalid full-partner clause could simply be read down. Registration concerned the particular instrument and its covenants. Removing the minor and registering a different partnership among the adults would create a new contract rather than register the deed submitted.

Source: [SCR 825-827; judicial reasoning; opinion boundaries preserved](#)

### 03 JUDICIAL DECISION

The instrument could not support the claimed registration. The Court vacated the High Court's affirmative answer to the first question and answered it in the negative. That conclusion made the second question about the proposed retrospective commencement unnecessary. Although the Court mentioned R. C. Mitter & Sons on that issue, it did not decide the appeal by determining a permissible retrospective registration date.

Source: [SCR 824-828; holding and expressed limits](#)

#### 04 OUTCOME / IN WHOSE FAVOUR

Revenue's appeal allowed. The firm's challenge to refusal of registration failed; the second referred question did not arise. Costs awarded in the Supreme Court and High Court.

Source: [SCR 828-828; operative disposition and costs](#)

#### 05 AKHB REVIEW POINT

Read the operative deed before relying on the label 'partner' or a Registrar's certificate. Loss liability, management and consent rights can establish that the instrument crosses the line between benefits and full partnership. This judgment concerns registration of the actual instrument under the historical section 26A scheme. It does not authorize the tax authority to reconstruct an otherwise valid commercial arrangement, nor determine later statutory requirements for assessment of firms.

Source: [SCR 823-827; editorial analysis based on the indicated reasoning](#)

#### ORIGINATING PROCEEDINGS

1.

**Case numbers:** Income-tax Reference No. 34 of 1955

**Relationship:** Bombay High Court originating reference; judgment 23 February 1956

#### SOURCE & VERIFICATION

##### Original reported Supreme Court judgment

8-page retained public-mirror SCR report. The complete report was read as text and page images. The acquisition URL is preserved provenance; current endpoint availability and authentication as a signed original are not newly verified. All eight physical pages/SCR821-828. Target caption begins p 1; judicial opinion p 2-8 ends after appeal allowed/costs above dividing rule on p 8. Khajoor Singh caption/headnote below rule on p 8 is separate and excluded from target holding.

##### Open cited source rendition

The second referred question on p 2 prints 26-3-1946, while the deed and narrative give 27 March 1946. The note uses the narrative deed date and preserves the discrepancy.

Khajoor Singh begins below the dividing rule on p 8 and is not part of this decision.

#### STATUTORY SCOPE

Indian Income-tax Act, 1922; 2(6-B), 26A

The Finance Act 2011 compilation retains a minor admitted to partnership benefits within the tax definition of partner. Its section 184 requires an instrument specifying individual shares for assessment as a firm and excludes minors from certifying that copy. This is a different post-1993 assessment scheme, not a revival of 1922 section 26A registration.

No corresponding 2025 provision was verified for the firm-assessment and minor-partner provisions; no renumbering or present-law equivalence is asserted.

The operative historical law is identified separately. Only the stated later statutory versions and passages were checked; comprehensive subsequent history and applicability to a particular later tax year remain unverified.

Other provisions addressed: Indian Partnership Act, 1932, section 30

## **LATER TREATMENT**

Source checked 2026-10-08. No specific later judicial treatment is adopted except where expressly stated.

Later Supreme Court treatment distinguishing a deed that only admits a minor to benefits was not checked in a bounded later primary source. No claim that this decision invalidates every instrument describing a minor as partner is made.

Earlier authorities discussed within the target judgment are not treated as later-use evidence.

## **IDENTIFIED SOURCE LINKS**

[Income-tax Act,1961: Sections 2\(23\)\(ii\)\(a\),184](#)

DOR-hosted Taxmann compilation, as amended by Finance Act 2011 Only identified statutory limbs on these pages, plus version page 42. Not a current consolidated text, Gazette-original authentication, whole-Act or image review. Only the named 2011 provisions are compared. Text pages read: 56-57, 780-781.

## **AI DISCLOSURE**

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