

Bihari Lal Jaiswal v. The Commissioner of Income Tax

Civil Appeal Nos. 1825–1828 of 1977

[1995] Supp.5 SCR 285 | 1995-11-16

Whether a partnership actually conducting licensed liquor business could obtain historical income-tax registration when the applicable statutory licence condition prohibited that partnership without written permission of the Collector and no such permission had been obtained.

184(1), historical firm-registration scheme | 185(1), historical firm-registration scheme | 256(1) | 256(2)

Two-judge bench | B.P. Jeevan Reddy, J. | B.N. Kirpal, J.

Assessment years: See the source-scope notes; no year inferred.

Historical registration; Revenue merits result despite appeals allowed

The Court formally allowed the appeals only to answer the withdrawn reference against the assessee. The result turns on the particular Madhya Pradesh requirement for written partnership permission; taxability survives denial of registration. The report contains a differently attributed deed extract and an unreconciled intimation date, and states no assessment years. Posetty's later distinction is specifically checked; comprehensive later treatment, current-law application and 2025 mapping remain unverified.

01 FACTS OF THE CASE

Biharilal Jaiswal obtained a Madhya Pradesh country-spirit retail licence in Form C.S. No. 3 for twenty-two out-stall shops in Tehsil Sarangarh, District Raigarh. The stated licence ran from 1 April 1968 to 31 March 1969. He entered a partnership with ten others under a deed dated 30 August 1968 and sought registration under sections 184 and 185. The partners' actual business activity and the truth of the instrument were not disputed, but the Collector's written permission for the partnership had not been obtained (physical pages 5 and 8 / SCR 289 and 292).

The ITO refused registration because statutory General Licence Condition VI prohibited entering a partnership to work the privilege without written permission endorsed on the licence. The AAC directed registration; the Tribunal reversed that decision, refused a section 256(1) reference, and the High Court rejected the section 256(2) applications on the strength of its earlier decisions. These four appeals challenged that refusal. The proposed question also referred to a written intimation dated 27 April 1967 and to the absence of licence-cancellation action; the report does not reconcile that date with the later licence and deed narrative (physical pages 4–5 / SCR 288–289).

The next page quotes a deed referring instead to Girdharilal Jaiswal, two Bhopal liquor shops, six named parties and a total excise contract price of Rs 4,55,000. The report does not expressly allocate that extract among the four appeals. Those details are therefore preserved as a separately attributed deed extract, not merged into Biharilal's twenty-two-shop facts. The report does not specify the assessment years or a tax demand (physical page 6 / SCR 290).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

Under the historical sections 184(1) and 185(1), an instrument specifying partners' shares was necessary, but registration also required a genuine firm with the specified constitution. The Court rejected the contention that actual trading and a truthful instrument compelled registration even though the governing excise law prohibited the agreement. The statutory licence conditions had to be considered when deciding whether a legally recognisable partnership existed (physical pages 7–9 and 13–15 / SCR 291–293 and 297–299).

The Court expressly confined its reasoning to partnerships concerning licences or permits under state excise enactments. It treated the Madhya Pradesh requirement for written permission as mandatory. An agreement working the licensed privilege through an unauthorised partnership would defeat the excise law and was unlawful and void under section 23 of the Contract Act. The possibility of obtaining permission, or the Collector's power to cancel the licence, did not make compliance optional. The fiscal benefit of registration could not validate an agreement prohibited by the applicable law (physical pages 13–15 / SCR 297–299).

The text of the particular restriction was critical. Jer and Company concerned a licence that prohibited transfer or subletting but did not prohibit entering a partnership; Umacharan Shaw did not decide the present illegality question. The Court rejected the quoted Nalli Venkataramana proposition that a partnership remained registrable despite a permission requirement, while expressly saying the correctness of the High Court's construction of its particular Rule 19(2) was not before it. This is not a holding that every liquor partnership is unlawful irrespective of its licence terms (physical pages 10–14 / SCR 294–298).

Finally, denial of registration did not exempt the income from tax. The Court said the illegal partnership remained taxable as an unregistered partnership firm or an association of persons. The issue adjudicated was the right to registration, not a quantified assessment or an order cancelling the excise licence (physical page 15 / SCR 299).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The Court formally allowed the four appeals and the assessee's section 256(2) applications, withdrew the consequent reference to itself, and answered the question affirmatively: registration could be refused, against the assessee and in favour of Revenue. Thus "appeals allowed" is not an assessee victory on the registration merits. No costs were ordered (physical page 15 / SCR 299).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on the registration merits

Civil Appeal Nos. 1825–1828 of 1977 and section 256(2) applications formally allowed; reference withdrawn to Supreme Court and answered against the assessee; no costs

Final reasoned reference answer, despite the formal appeal-allowed disposition

Historical firm registration under a specific statutory excise condition requiring written permission. Taxability of income survives, and other licence formulations or genuine separate financing sub-partnerships require distinct analysis.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Start with the actual licence, the applicable state rule, the partnership deed and the permission endorsement. Distinguish a restriction on transferring a licence from an express restriction on bringing partners into the licensed business. Actual trading, notification to an authority and the absence of cancellation are not substitutes for the written permission required by the condition considered here.

A bounded later primary-source check is important to the scope. In *Commissioner of Income Tax v. B. Posetty and Co.*, decided on 5 November 1996 by three judges, the Court distinguished *Bihari Lal's* broad Madhya Pradesh condition and declined to reconsider *Degaon Ganga Reddy* on the facts of a genuine, distinct financing sub-partnership. The sub-partners there did not become partners in the licensed main firm. That later distinction has been independently read at physical pages 10–12 / SCR 461–463 of S_1996_8_452_463; it is not a comprehensive later-treatment certification.

For publication and research, keep the substantive Revenue result next to the formal “appeals allowed” wording. Keep the unexplained *Girdharilal* deed extract separate from the lead facts and do not infer assessment years from the excise licence period. The historical registration scheme, state-specific condition and later amendments must be checked afresh before any present-law use.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Date, bench and four-appeal caption

Source url: [Open cited source](#)

Pdf pages: 1; 4

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: reported metadata and judicial text

2.

Topic: Lead facts, exact licence condition, different deed extract and chronology cautions

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

3.

Topic: Historical sections 184–185 and absence of written permission

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

4.

Topic: Licence-specific precedent distinctions

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12; 13

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

5.

Topic: Excise-law limit, section 23, denial of registration and continued taxability

Source url: [Open cited source](#)

Pdf pages: 13; 14; 15

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

6.

Topic: Formal appeals allowed but reference answered for Revenue; no costs

Source url: [Open cited source](#)

Pdf pages: 15

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note. Primary 1995 judicial text is unnumbered.

Source role: judicial text

7.

Topic: Bounded later three-judge distinction of Bihari Lal from separate financing sub-partnerships

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12

Paragraphs: Paragraph 8 and concluding unnumbered judicial discussion, physical pages 10–12 / SCR 461–463.

Source role: bounded later judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

B.P. Jeevan Reddy, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATIONHon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 15 PDF pages; SHA-256

a8c89f256677dc89ec886369a9f25161804d537ccae680803857dc1730d905a4. Original bytes preserved.

Complete judicial text physical pages 4–15 / SCR 288–299; editorial headnote pages 1–4 separated. Four-appeal group, differently attributed deed extract, historical registration text, quoted authorities and the formal appeals-allowed / substantive Revenue outcome distinguished.

Open cited source rendition

The printed caption supplies four appeals, Nos. 1825–1828 of 1977; ingestion metadata lists only No. 1825. The decision date is 16 November 1995.; The formal appeals-allowed label coexists with an affirmative reference answer against the assessee. It must not be indexed as registration granted.; The lead account concerns Biharilal, twenty-two Sarangarh shops and ten other partners; the next deed extract concerns Girdharilal, two Bhopal shops and parties numbered 1–6. The extract is not expressly allocated to one of the four appeals.; The proposed question prints intimation dated 27 April 1967; the lead licence and deed narrative concerns 1968. Neither date is silently repaired, and no assessment year is inferred.; Clause VI is the operative quoted condition; occasional prose labels “Central” and clause “IV” are inconsistent with the full quotation and repeated General Licence Condition VI references.; Physical page 3 is printed SCR 287; OCR misreads it as 237. Jer and Company is also misread as “fer” in the extracted text.; The later explanations to section 185 in the footnote were not in force for the assessment year concerned, as the Court itself states.; Posetty’s specific 1996 distinction is independently checked; comprehensive subsequent treatment, current law and 2025 mapping remain unverified.

The report states the excise licence period 1 April 1968–31 March 1969 but does not expressly enumerate the assessment years of the four appeals. No assessment year is inferred from that licence period.

Historical sections 184 and 185 govern registration and genuineness; sections 256(1)–(2) concern the reference route. Contract Act section 23 and Madhya Pradesh General Licence Condition VI are central. The 1971 and 1976 section 185 explanations appear in a footnote as later context, not as provisions in force for the assessment year concerned.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive subsequent-treatment search has been completed. Any specifically identified later primary passage is separately bounded and does not certify present law.

IDENTIFIED SOURCE LINKSreported judgment - PDF pages: 15

SHA-256: a8c89f256677dc89ec886369a9f25161804d537ccae680803857dc1730d905a4

bounded later judgment - PDF pages: 12

SHA-256: 21c8e603407d1b7d97c329476949532c893e5837086b31c04ae1edecdd7a2664

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