

Commissioner of Income Tax, Andhra Pradesh v. B. Posetty and Co.

Civil Appeal No. 1209 of 1978

[1996] Supp.8 SCR 452 | 1996-11-05

Whether a genuine sub-partnership formed to finance a partner's capital and share his income in a licensed main firm was ineligible for income-tax registration because it contravened section 14 of the Andhra Pradesh (Telangana Area) Abkari Act.

184, historical firm-registration scheme | 185(1), historical firm-registration procedure | 261

Three-judge bench | A.M. Ahmadi, C.J. | K.S. Paripoornan, J. | Sujata V. Manohar, J.

Assessment years: 1966-67

Historical registration; separate financing business and source discrepancies

The ruling concerns AY 1966-67 and a genuine, distinct financing sub-partnership on unchallenged Tribunal findings. It does not authorise unlicensed liquor trading or override differently worded licence restrictions. The PDF prints a return date predating the deed and conflicting partner counts. The earlier two-judge reference is not the final holding. Later treatment, current-law application and 2025 mapping remain unverified.

01 FACTS OF THE CASE

Nizamabad Group Sendhi Contractors, the main firm, was a registered partnership and an excise lessee as the highest auction bidder. B. Posetty held an 11 per cent share but had difficulty providing the required capital. He and others formed B. Posetty and Company to finance that contribution in return for agreed shares in his income from the main firm. Its deed, printed as dated 20 January 1965, specified the partners' shares. It applied for registration for AY 1966-67 (physical pages 6-7 / SCR 457-458).

The ITO refused registration under section 185 on 28 December 1970, treating the sub-partnership as illegal under section 14 of the Abkari Act. The AAC affirmed on 28 February 1972. The Tribunal on 31 December 1973 found that the sub-partnership's business differed from the main firm's and that the features of a valid partnership were present. It held the firm entitled to registration. The High Court answered the registration question for the assessee on 22 August 1977, following its earlier decision in D.G.G. Ramakrishna and Co., and later granted a section 261 certificate (physical pages 3-4 / SCR 454-455).

The Supreme Court had affirmed that earlier comparable decision in Degaon Ganga Reddy G. Ramakrishna and Co., (1995) 214 ITR 650. A two-judge Bench nevertheless referred this appeal to three judges after expressing concern, with reference to Bihari Lal, that sharing abkari profits might attract section 14. That tentative reference-order view is not the present final ruling. The source's account of this firm contains a return date of 30 September 1963, predating the printed deed, and gives inconsistent numbers of other sub-partners; neither detail is silently corrected (physical pages 4-7 and 11 / SCR 455-458 and 462).

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

02 DISCUSSION BY THE HON'BLE COURT

The Court quoted historical sections 184 and 185: an instrument specifying individual shares was required, and registration depended on the existence of a genuine firm with the stated constitution. Here the Tribunal had already found a valid sub-partnership engaged in a different business from the main partnership. Revenue had not challenged those findings before the High Court through an appropriate question. The case therefore did not reopen genuineness or establish that this sub-partnership itself sold liquor without a licence (physical pages 8–10 / SCR 459–461).

A sub-partnership makes its parties partners between themselves in relation to the participating partner's share; it does not, merely by that agreement, make them partners in the original firm. The Court drew on the earlier Degaon Ganga Reddy decision and the sub-partnership principle recognised in Murlidhar, as explained in the cited partnership treatise. Section 14 addressed the lessee's declaration of another person as its partner without the prescribed permission and licence. The excise lessee here was the main firm. It had not declared the sub-partnership or its members to be its partners. Financing Posetty's capital and sharing his income did not itself attract that restriction (physical pages 4–6 and 10–12 / SCR 455–457 and 461–463).

The distinction depended on both the business actually undertaken and the applicable licence terms. The quoted earlier reasoning expressly left unlicensed liquor trading by a sub-partnership outside the protected financing arrangement. Bihari Lal involved broader Madhya Pradesh licence conditions prohibiting transfer, sublease or formation of a partnership in relation to an individual's licence. Those conditions were materially different; the Court distinguished that decision and declined to reconsider Degaon Ganga Reddy on facts like the present ones (physical pages 5–6 and 9–12 / SCR 456–457 and 460–463).

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

03 JUDICIAL DECISION

The three-judge Bench held that section 14 of the Abkari Act did not invalidate this distinct financing sub-partnership. It upheld the High Court's affirmative answer that the assessee was entitled to registration for AY 1966-67 and dismissed Revenue's Civil Appeal No. 1209 of 1978. There was no order as to costs (physical page 12 / SCR 463).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Revenue appeal dismissed; affirmative registration answer upheld; no order as to costs

Final three-judge merits judgment following an earlier two-judge reference

Historical AY 1966-67 registration on unchallenged findings of a genuine, separate financing business. No blanket exemption from excise licensing for sub-partnerships that themselves trade in liquor or breach differently worded licence conditions.

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

05 AKHB REVIEW POINT

Begin with the documents and the business actually carried on: identify the excise lessee, the main partnership, the sub-partnership instrument, the capital contribution and the rights granted to the financiers. A right to share one partner's income is not automatically membership of the licensed main firm. That separation was decisive here, alongside the Tribunal's unchallenged genuineness and distinct-business findings.

Licence wording matters. The Court did not approve unlicensed liquor trading through a nominal sub-partnership or hold that every restriction can be avoided by calling an arrangement a financing agreement. A live file requires examination of the applicable state enactment, licence conditions, conduct and the relevant year's income-tax scheme. The old sections 184–185 registration framework should not be presented as a description of present partnership taxation.

Do not use the quoted two-judge reference-order doubt as the holding of this case. The three-judge judgment dismissed Revenue's appeal and upheld registration. Retain the source's chronology and partner-count cautions rather than inventing a corrected date or headcount; neither discrepancy changes the narrow legal basis on the findings accepted by the Court.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Caption, decision date, bench, single appeal and certificate route

Source url: [Open cited source](#)

Pdf pages: 1; 2; 3; 4

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: reported metadata and judicial text

2.

Topic: Historical registration refusal, Tribunal findings and High Court reference

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

3.

Topic: Earlier precedent and two-judge reference distinguished from final decision

Source url: [Open cited source](#)

Pdf pages: 4; 5; 6

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

4.

Topic: Posetty facts and printed chronology / partner-count discrepancies

Source url: [Open cited source](#)

Pdf pages: 7; 11

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

5.

Topic: Historical sections 184–185 and unchallenged factual findings

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

6.

Topic: Distinct sub-partnership, section 14 construction and Bihari Lal distinction

Source url: [Open cited source](#)

Pdf pages: 10; 11; 12

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

7.

Topic: Registration upheld, appeal dismissed and no costs order

Source url: [Open cited source](#)

Pdf pages: 12

Paragraphs: Exact physical PDF pages; SCR pagination stated in the note

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

K.S. Paripoornan, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961; Andhra Pradesh (Telangana Area) Abkari Act

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

Identified source rendition: 12 PDF pages; SHA-256

21c8e603407d1b7d97c329476949532c893e5837086b31c04ae1edecdd7a2664. Original bytes preserved.

Complete judicial text physical pages 3–12 / SCR 454–463. Editorial headnote and caption at pages 1–2 separated. Earlier 1995 merits decision, earlier two-judge reference order and present three-judge final judgment individually distinguished.

Open cited source rendition

The exact final judgment date is 5 November 1996 and the source covers one appeal, No. 1209 of 1978. The earlier two-judge reference discussed at physical page 6 is not the final operative order.; Physical page 7 / SCR 458 prints a deed dated 20.1.1965 but a return dated 30.9.1963. The latter is a source chronology anomaly, not an OCR-only correction to be silently repaired.; Physical page 7 says Posetty and nine others; physical page 11 / SCR 462 says Posetty and ten others. The note avoids choosing one unverified headcount.; Ganga Goud's 10 per cent share and eleven other sub-partners concern the comparator Degaon Ganga Reddy arrangement, not Posetty's own 11 per cent share.; The Tribunal's validity and separate-business findings were not challenged through an appropriate High Court question. The result does not validate actual unlicensed liquor trading.; Historical sections 184 and 185 are quoted by the judgment. Their exact amendment chronology and any current counterpart have not been independently checked.; The broad headnote summary must be read with the fact-specific judicial conclusion and the different Madhya Pradesh licence conditions distinguished in Bihari Lal.; Later judicial treatment, current-law application and Income-tax Act, 2025 mapping remain unverified.

Sections 184 and 185 are the historical registration provisions quoted and applied; section 261 supplied the certificate appeal route. The other operative enactment is section 14 of the Andhra Pradesh (Telangana Area) Abkari Act. Section 139(1) appears only inside the quoted section 184(7) continuation machinery, not as an independent disputed issue. No present-law equivalence is asserted.

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. Later judicial treatment has not been independently verified. Precedents discussed inside this judgment are distinguished from later treatment of this judgment.

IDENTIFIED SOURCE LINKSreported judgment - PDF pages: 12

SHA-256: 21c8e603407d1b7d97c329476949532c893e5837086b31c04ae1edecdd7a2664

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