

1949            *Present* :    **Wijewardene C.J. and Nagalingam J.**

**EBRAHIMJEE, Appellant, and COMMISSIONER OF INCOME TAX, Respondent**

**IN THE MATTER OF A CASE STATED UNDER SECTION 74 OF THE INCOME TAX ORDINANCE (CAP. 188)**

*S. C. 162—Income Tax Appeal*

*Income Tax Ordinance—Taxation of business—Father and sons in partnership—Minority of sons—No bar to partnership—Section 74.*

The minority of a partner is no bar to the existence of a partnership.

**C**ASE stated under section 74 of the Income Tax Ordinance.

*H. V. Perera, K.C., with Cyril E. S. Perera, for the appellant.*

*H. W. R. Weerasuriya, Crown Counsel, for the Crown.*

*Cur. adv. vult.*

January 17, 1949.    **WIJYEWARDENE C.J.—**

This is an appeal under section 74 of the Income Tax Ordinance.

The Board of Review upheld the finding of the Commissioner that the appellant was the sole proprietor of the business carried on under the name of A. M. Esufali & Co. and that there was no partnership existing between the appellant, his wife and sons in regard to that business.

The appellant relied on a number of circumstances to prove the existence of a partnership, to wit, the registration of the partners under the Business Names Ordinance, the institution of actions for and against the firm in the names of the partners, the fact that the account of A. M. Esufali & Co. in the Mercantile Bank was operated on by the alleged partners and that accounts had been opened in the books for the appellant's wife and sons and each year a certain share of the profits had been credited to each of these accounts.

The appellant's Counsel contended that the sole reason why the Board refused to "consider any of these factors conclusive as to the existence of a partnership" was the fact that the appellant's sons were minors, i.e., young men under the age of twenty-one years. The Crown Counsel who appeared for the Commissioner was unable to invite our attention to any other reason given by the Board.

The Board has misdirected itself on a question of law. The minority of a partner is no bar to the existence of a partnership. No doubt a minor is not bound by a contract of partnership made by him during his minority. But, if he agrees with adults to be their partner and subsequently on behalf of the partnership enters into contracts with third persons, those contracts bind his adult partners and they are entitled to insist that the partnership assets shall be applied in payment of the partnership liabilities before he receives anything. [Halsbury's Laws of England, Volume 22, Para 30; see also Lindley on Partnership (ninth edition), pages 96-98, and *Nagoor Meera v. Meera Saibo* <sup>1</sup>.]

I annul the assessment determined by the Board and direct the case to be remitted for an assessment to be made on the footing that there was a partnership as alleged by the appellant.

The appellant is awarded his costs in this Court and is declared entitled to receive the fee paid by him under section 74 (1).

NAGALINGAM J.—I agree.

*Appeal allowed.*

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