

PETITIONER:
THE COMMISSIONER OF INCOME TAX TRIVANDRUM

Vs.

RESPONDENT:
THE KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION, TRIVANDR

DATE OF JUDGMENT: 12/02/1998

BENCH:
B.N. KIRPAL, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:
THE 12TH DAY OF FEBRUARY, 1998

Present:

Hon'ble Mr. Justice B.N. Kirpal

Hon'ble Mr. Justice A.P. Misra

Mr. J. Ramamurthi, Sr. Advocate, Mr. Rajiv Nanda and Mr. B. Krishna Prasad, Advocates with him for the appellant.
Mr. Roy Abraham and Mr. M.M. Kashyap, Advocates for the respondent.

J U D G M E N T

The following Judgment of the court was delivered:
KIRPAL, J.

In these appeals by certificate granted by the Kerala High Court, the following question of law has been referred in respect of the assessment year 1978-79:-

"Whether, the Tribunal was right in law in holding that the statutory deduction under Section 36 (i) (viii) of the I.T. Act, 1961 should be calculated on the total income before deduction of the amount allowable under the section?"

The Kerala High Court came to the conclusion that in computing the total income for the purpose of Section 36 (1) (viii) of the Income Tax Act, 1961, the total income has to be computed in accordance with the provisions of Sections 30 to 43A except Section 36 (i) (viii). In arriving at this decision, the High Court relied upon the observations of this Court in *Cambay Electric Supply Industrial Co. Ltd. vs. Commissioner of Income Tax*, (1978) 113 ITR 84.

The view which was taken by the Kerala High Court was in consonance with the view taken by the Patna High Court in three decisions, Madhya Pradesh High Court in two decisions and Kerala High Court itself in an earlier decision. It is stated that subsequent to the decision under appeal, other High Courts have also taken the same view. The only dissenting view which has been expressed is by the Karnataka High Court in *Karnataka State Financial Corporation vs. Commissioner of Income Tax*, (1988) 174 ITR 203.

Having gone through the decisions cited at the cited at the Bar. We find that the decision the High Court following

its earlier decision in Commissioner of Income Tax vs. Kerala State Industrial Development Corporation Ltd. (No. 2). (1990) 182 ITR 67, is unexceptionable. The Karnataka High Court has tried to work out the sub-section the basis of a mathematical formula and has dissented from the decision of the Patna High Court in Commissioner of Income Tax, Bihar vs. Bihar State Financial Corporation (1983) 142 ITR 518. It may here be mentioned that Civil Appeal No. 3695 of 1982 against the aforesaid judgment reported in 142 ITR 518 was dismissed by this Court on 20th January, 1995 thereby affirming the view of the Patna High Court. It may here be noticed that not only the preponderance of the judicial opinion of the various High Courts is in line with the view expressed by the Kerala High Court but the relevant sub-clause (viii) of Section 36(1) has subsequently been amended so as to bring it in line with the view of the Patna and Kerala High Courts. The decision of the Karnataka High Court does not appear to be correct being contrary to the aforesaid decisions of the Patna High Court which stands affirmed by its affirmation by this Court on 20th January, 1995. The view of the other High Courts is in consonance with relevant provisions of the Act. We, therefore, agree with the decision of the High Court in answering the question of law in the affirmative and in favour of the assessee.

The appeals are dismissed. No order as to costs.