

PETITIONER:
COMMISSIONER OF INCOME TAX, BOMBAY

Vs.

RESPONDENT:
M/S KANJI SHIVJI & CO.

DATE OF JUDGMENT: 25/01/2000

BENCH:
S.P.Bharucha, A.P.Misra, N.Santosh Hegde

JUDGMENT:

Order

This appeal stands referred to a Bench of three Judges because it was found that a Bench of two learned Judges had taken the view that the conclusion of an earlier Bench of three learned Judges was difficult to accept. The issue relates to whether Explanation (2) to Section 40(b) of the Income Tax Act, 1961, introduced with effect from 1st April, 1985, is prospective in operation or only declaratory.

In Brij Mohan Das Laxman Das vs. Commissioner of Income Tax (223 I.T.R./825) two learned judges concluded that the said Explanation was declaratory. This view was accepted by a Bench of three learned judges in Suwalal Anandilal Jain vs. Commissioner of Income Tax (224 I.T.R. 753).

In the case of Rashik Lal & Co. vs. Commissioner of Income Tax (229 I.T.R.458) this view was doubted. A Bench of two learned Judges observed that it was difficult to accept the proposition that the said Explanation was only clarificatory for the reason that if what was contained in the said Explanation was already the law in force, then giving effect to the said Explanation from 1st April, 1985 did not make any sense. But the Bench immediately noted, "However, in the case before us, no question of payment of any interest is involved". In other words, the application of Section 40(b) and the said Explanation was not really in issue in Rashik Lal's case relative to the said Explanation must, therefore, be treated as obiter dicta.

The conclusion of the court in the earlier cases of Brij Mohan Das Laxman Das and Suwalal Anandilal Jain still represents the correct exposition of the law. Following these decisions, the civil appeal must be dismissed.

We are obliged to Mr. B.Sen, learned counsel, for his assistance at our request.

Appeal dismissed.

No order as to costs.