

COMMISSIONER OF INCOME-TAX, BOMBAY

v.

M/S. KANJI SHIVJI AND CO.

JANUARY 25, 2000

[S.P. BHARUCHA, A.P. MISRA AND N. SANTOSH HEGDE, JJ.]

Income Tax Act, 1961.

*Section 40(b)—Explanation (2)—Scope and interpretation of—Held :
Explanation is declaratory in nature.*

*Brij Mohan Das Laxman Das v. Commissioner of Income Tax, 223
I.T.R. 825 and Suwalal Anandilal Jain v. Commissioner of Income Tax, 224
I.T.R. 753, reiterated.*

*Rashik Lal & Co. v. Commissioner of Income Tax, 229 I.T.R. 458,
explained. (Observation's therein pertaining to explanation 2 to section
40(b) of Income Tax Act, 1961 held obiter dicta)*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9777 of
1995.

From the Judgment and Order dated 8.9.88 of the Bombay High
Court in I.T.A. No. 112 of 1988.

H.N. Salve, Solicitor General, Harish Chandra, K.N. Shukla, B. Sen,
(A.C.), S. Rajappa, Ms. Sushma Suri, Shail Kumar Dwivedi, A.V. Rangam,
B. Krishna Prasad, Ms. Renu George, B. Gupta, Ms. Bina Gupta, Mrs.
Rakhi Ray, Mrs. T. Sudha, Ganpathi Iyer, Gopalkrishnan, Raghavendra
Gopal Krishnan and M.B. Rao for the appearing parties.

The following Order of the Court was delivered :

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.

A In *Brij Mohan Das Laxman Das v. 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 v. Commissioner of Income Tax*, (224 I.T.R. 753).

B In the case of *Rashik Lal & Co. v. 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. The observations in *Rashik Lal's* case relative to the said Explanation must, therefore, be treated as obiter dicta.

D 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.

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

Appeal dismissed.

No order as to costs.

T.N.A.

Appeal dismissed.