

Rashik Lal and Co. v. Commissioner of Income Tax, Orissa

Civil Appeal Nos. 4589–4590 of 1992

[1997] Supp 6 SCR 331 | 1997-12-09

Whether a firm could deduct commission paid to its partner on the theory that he represented an HUF and received the commission in a different capacity.

40(b) (historical) | 184 (historical registration discussion) | 256(1)

Two-judge bench | Suhas C. Sen, J. | S. Saghir Ahmad, J.

Assessment years: 1980-81

Old commission rule; interest remarks later treated as obiter

The firm's AY 1980-81 commission claim failed. Kanji Shivji later expressly treated this judgment's contrary interest-explanation observations as obiter; that does not erase its commission holding. Section 40(b) was materially substituted from 1 April 1993, so this is not a present-day absolute prohibition on all authorised working-partner remuneration. The headnote misidentifies the appellant's role; comprehensive later treatment and current limits remain unverified.

01 FACTS OF THE CASE

The firm conducted several businesses, including mining. Rashiklal P. Rathor was a partner and karta of a smaller HUF whose funds remained invested after a family partition. Under an agreement of 17 October 1978, he received 37 paise per tonne of minerals sold, resulting in commission of Rs 28,579 in AY 1980-81. The firm claimed the deduction (physical pages 3–4).

The ITO disallowed it. The Appellate Assistant Commissioner accepted the individual-versus-HUF distinction, but the Tribunal and High Court rejected that reasoning. The firm, not the partner in an individual assessment, brought the appeals on the historical section 40(b) disallowance (physical pages 3–5).

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

02 DISCUSSION BY THE HON'BLE COURT

Under the wording applicable to this year, commission paid by a firm to any partner was not deductible. The person who contracted as partner remained the partner in relation to the firm even if accountable to an HUF or another beneficiary for what he received. The HUF itself did not thereby become the contracting partner. A side obligation to account to the family could not reclassify the firm's commission payment as one to a non-partner (physical pages 5–9 and 11–13).

The Partnership Act permitted contrary contractual arrangements for partner remuneration, but that did not displace the then tax disallowance. The judgment also discussed decisions on interest paid to a partner acting in a representative capacity and doubted whether historical Explanation II to section 40(b) was merely declaratory. It immediately acknowledged that no interest payment was in issue here. The actual claim was commission for the partner's services (physical page 10).

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

03 JUDICIAL DECISION

Both appeals were dismissed without costs. The Rs 28,579 commission deduction failed in computing the firm's income for AY 1980-81. No separate determination of the recipient's HUF-versus-individual assessment, new penalty or decision on an actual interest deduction was made (physical pages 13–14).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Firm's two appeals dismissed; no costs

Final historical commission-disallowance ruling

Not a present-day absolute ban on all working-partner remuneration, not a determination of the recipient's personal assessment and not an operative interest-explanation ruling.

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

05 AKHB REVIEW POINT

Keep the firm's contractual counterparty distinct from the partner's obligation to an HUF. That distinction resolved this commission claim under the old wording. It does not justify ignoring later statutory conditions that may govern authorised working-partner remuneration in a different year.

The three-judge Kanji Shivji order of 25 January 2000, fully checked in its two-page source, expressly treated Rashik Lal's remarks about the prospective character of historical Explanation II as obiter. It affirmed the earlier declaratory interpretation. This is a specific limitation of the interest discussion, not an overruling of the entire commission decision.

The checked 2011 compilation records substitution of section 40(b) from 1 April 1993 and contains conditions for working partners, deed authorisation, remuneration limits and interest. Its numbering of the explanations differs from the older provision. Do not quote the AY 1980-81 blanket disallowance or the 2011 numerical limits as today's rule; further amendments and comprehensive later treatment remain unverified.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Firm identity, appeal numbers, year and commission claim

Source url: [Open cited source](#)

Pdf pages: 1; 3; 4; 5

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: HUF nominee and partnership relationship

Source url: [Open cited source](#)

Pdf pages: 5; 6; 7; 8; 9

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Interest-explanation observations and express no-interest boundary

Source url: [Open cited source](#)

Pdf pages: 10

Paragraphs: Unnumbered judicial text

Source role: judicial text

4.

Topic: Firm-level reasoning and two-appeal dismissal

Source url: [Open cited source](#)

Pdf pages: 11; 12; 13; 14

Paragraphs: Unnumbered judicial text

Source role: judicial text

5.

Topic: Direct later qualification of interest obiter

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: Complete Court order

Source role: later judicial treatment

6.

Topic: Later substituted partner-payment regime

Source url: [Open cited source](#)

Pdf pages: 298; 299; 300

Paragraphs: Section 40(b), explanations 1–4 and footnote 33

Source role: bounded historical statutory text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Suhas C. Sen, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 14 PDF pages; SHA-256

be0551d50ac89f2b20716fb7544ca471c5b6e9d40312f278bf3c31cf0f89ee8f. Original bytes preserved.

Complete unnumbered judicial text physical pages 3–14/SCR 333–344; firm-level commission deduction distinguished from the incidental interest-explanation discussion.

[Open cited source rendition](#)

The headnote calls the appellant the karta, but the judicial text and referred question identify the assessee and appellant as the partnership firm. This note preserves the firm-level deduction issue.; The page 3 appeal range and year, obscured in cached text, are legible in the image as CA4589–4590/1992. The High Court date is partly damaged and is not reconstructed.; The agreement's 37 paise-per-tonne rate and Rs 28,579 commission are historical facts, not statutory remuneration limits.; The doubtful interest-explanation observations were expressly incidental to a commission case and were later treated as obiter in Kanji Shivji. They are not presented as prevailing law on retrospective operation.; Historical partnership registration provisions are part of the reasoning; no current registration process or dissolution consequence for every deed is certified.; The post-1993 section 40(b) structure in the 2011 compilation differs materially from the provision applied. The note does not compute an allowance under that later version or certify current limits.

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. Comprehensive later treatment remains unverified. The complete two-page Kanji Shivji order of 25 January 2000 was directly checked and its specific obiter qualification is stated; the later statutory comparison is limited to the identified 2011 compilation pages.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 14](#)

SHA-256: be0551d50ac89f2b20716fb7544ca471c5b6e9d40312f278bf3c31cf0f89ee8f

[later reported judgment direct treatment - PDF pages: 2](#)

SHA-256: df2a5146f975242a88e3ba35b224db954860eb2f3fee36628f7c2fdb2a9b3ae

[official department hosted historical statutory compilation - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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