

Commissioner of Income Tax, Bombay v. M/s Kanji Shivji and Co.

Civil Appeal No. 9777 of 1995

[2000] 1 SCR 365 | 2000-01-25

Whether historical Explanation 2 to section 40(b), introduced from 1 April 1985, was merely prospective or declaratory, following doubt expressed by a smaller bench.

40(b), Explanation 2 (version introduced from 1 April 1985)

Three-judge bench | S.P. Bharucha, J. | A.P. Misra, J. | N. Santosh Hegde, J.

Assessment years: See the source-scope notes; no year inferred.

Historical Explanation and narrow precedent ruling

This three-judge order confirms the declaratory character of the Explanation introduced from 1 April 1985. It treats only Rashik Lal's observations on that absent interest issue as obiter. It does not make all partner-interest payments deductible or overrule that case wholesale. The assessment year and transaction facts are not stated, and later section 40(b) Explanation numbering differs. Comprehensive later treatment remains unverified.

01 FACTS OF THE CASE

Revenue's appeal was referred to a three-judge Bench because a two-judge decision had doubted the conclusion of an earlier three-judge Bench. The question concerned the temporal character of the historical Explanation 2 to section 40(b) (physical page 1).

The short order does not state the assessment year, amount of interest, deposit history or precise capacity of this firm's partners. Those facts are not supplied from the cited cases or inferred from the title.

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

02 DISCUSSION BY THE HON'BLE COURT

Brij Mohan Das Laxman Das had treated the Explanation as declaratory, and the three-judge decision in Suwalal Anandilal Jain had accepted that view. Rashik Lal expressed doubt but immediately acknowledged that no question of payment of interest arose in its case. The present Bench therefore classified Rashik Lal's observations about that Explanation as obiter, rather than a competing binding decision of the interest issue (physical page 2).

The Court reaffirmed the earlier decisions as the correct exposition and followed them to dispose of this appeal. Its reasoning addresses this historical Explanation and the precedential status of the particular observations; it does not overrule Rashik Lal wholesale or declare every explanation retrospectively effective.

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

03 JUDICIAL DECISION

Revenue's civil appeal was dismissed, without costs. The case was finally disposed of after the reference; it was not left awaiting another bench (physical page 2).

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

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee firm

Revenue appeal dismissed; no costs

Final ruling that the identified historical Explanation is declaratory

No invented assessment-year facts, no universal partner-interest deduction, no wholesale rejection of Rashik Lal on its own issues.

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

05 AKHB REVIEW POINT

Check what issue the earlier bench actually had to decide, its size and the statutory version it considered. A statement on an interest question expressly absent from that case was treated as obiter here. That does not erase an earlier judgment's unrelated holdings.

Version control is particularly important. The official-hosted 2011 compilation records section 40(b)'s substitution from 1 April 1993 and shows different Explanation numbering within the substituted scheme (pages 298–299). Do not mechanically substitute its Explanation 2 for the pre-1993 Explanation discussed in this order or infer that every payment satisfying the historical capacity distinction is deductible under later law. The case's missing transactional facts remain unknown.

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

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, actual three-judge bench and referred issue

Source url: [Open cited source](#)

Pdf pages: 1

Paragraphs: Unnumbered judicial text

Source role: reported metadata and judicial text

2.

Topic: Declaratory character, obiter distinction and final dismissal

Source url: [Open cited source](#)

Pdf pages: 2

Paragraphs: Unnumbered judicial text

Source role: judicial text

3.

Topic: Substituted section and numbering boundary

Source url: [Open cited source](#)

Pdf pages: 298; 299

Paragraphs: Section 40(b), Explanations and footnote 33

Source role: bounded historical statutory text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Order of the Court; no individual author identified

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

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

Identified source rendition: 2 PDF pages; SHA-256

df2a5146f975242a88e3ba35b224db954860eb2f3ffee36628f7c2fdb2a9b3ae. Original bytes preserved.

Entire two-page Court order, including opening at physical page 1/SCR 365 and final disposal at page 2/SCR 366.

[Open cited source rendition](#)

The frozen metadata describes two judges and omits A.P. Misra; the actual cover lists three judges and the opening expressly describes a three-judge Bench. The source image controls.; No assessment year, interest amount or detailed taxpayer facts are printed. Facts from Brij Mohan, Suwalal or Rashik Lal are not imported into this case.; The order's historical Explanation 2 must not be equated by number alone with Explanation 2 in the substituted post-1993 section 40(b).; Rashik Lal's observations about this Explanation were held obiter; the Court did not say every holding in that judgment was overruled.

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 subsequent judicial and statutory treatment has not been verified. Only the expressly identified bounded comparisons have been checked. No current-law or Income-tax Act, 2025 mapping is certified.

IDENTIFIED SOURCE LINKS

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

SHA-256: df2a5146f975242a88e3ba35b224db954860eb2f3ffee36628f7c2fdb2a9b3ae

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

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

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