

COMMISSIONER OF INCOME TAX
v.
KERELA STATE INDUSTRIAL DEVELOPMENT

FEBRUARY 12, 1998

[B.N. KIRPAL AND A.P. MISHRA, JJ.]

Income Tax Act, 1961, Section 36(1)(viii)—Deduction—AY 1978-79—Held, the statutory deduction under this section should be calculated on the total income before deduction of the amount allowable under the section.

On a reference as to whether the Tribunal was right in holding that the statutory deduction under Section 36(1)(viii) of the Income Tax Act should be calculated on the total income before deduction of the amount allowable under the section, the Kerala High Court answered the question in the affirmative relying upon the observation of this Court in *Cambay Electric**. The view was also in consonance with the view taken by the Patna High Court in three decisions the Madhya Pradesh High Court in two decisions and the Kerela High Court in an earlier decision. Only the Karnataka High Court had expressed a dissenting view. Revenue has preferred the present appeal.

Dismissing the appeal, this Court

HELD : The impugned decision of the High Court following its earlier decision in *CIT v. Kerela State Industrial Development Corporation Ltd.*, is unexceptionable. Karnataka High Court has tried to work out the sub-section on the basis of a mathematical formula and has dissented from the decision of the Patna High Court in *CIT v. Bihar State Financial Corporation*. It may here be mentioned that the appeal against the aforesaid judgment reported in *Bihar State Financial Corporation*, was dismissed by this Court on 20.1.1995 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 Kerela High Court but the relevant sub-section (viii) of Section 36(1) of the Income Tax Act 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 decision of the Patna High Court which stands affirmed by its affirmation by this Court on

A 20-1-1995. The view of the other High Court is in consonance with relevant provisions of the Act. This Court, therefore, agrees with the decision of the High Court in answering the question of law in affirmative and in favour of the assessee. [873-C-F]

CIT v. Kerela State Industrial Development Corporation Ltd., (1990) **B** 182 ITR 67 (Ker.); *CIT v. Bihar State Financial Corporation*, (1983) 142 ITR 518 (Pat.), approved.

Karnataka State Financial Corporation v. CIT, (1988) 174 ITR 296 (Kant), overruled.

C **Cambay Electric Supply Industrial Company Ltd v. CIT*, (1978) 113 ITR 84, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3315-16 of 1993.

D From the Judgment and Order dated 29th Sept., 1989 of the Kerala High Court in ITR Nos. 571 & 572/85.

J. Ramamurthi, Rajiv Nanda and B. Krishna Prasad for the Appellant.

Roy Abraham and M.M. Kashyap for the Respondent.

E The Judgment of the Court was delivered by

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

F “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?”

G 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*

H *Supply Industrial Co. Ltd. v. 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 v. Commissioner of Income Tax*, (1988) 174 ITR 206. A B

Having gone through the decisions cited at the Bar, we find that the decision of the High Court following its earlier decision in *Commissioner of Income Tax v. 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 on the basis of a mathematical formula and has dissented from the decision of the Patna High Court in *Commissioner of Income Tax, Bihar v. 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 decision 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. C D E F

The appeals are dismissed. No order as to costs.

R.K.S.

Appeal dismissed.