

**SUPREME COURT OF INDIA**

Deputy Commissioner, Income Tax, Baroda

Vs.

Gujarat Alkalies & Chemicals Ltd

Civil Appeal Nos.3957-3958 OF 2002

(S.H. Kapadia and B. Sudershan Reddy)

08/02/2008

**JUDGMENT**

**KAPADIA, J.**

1. These civil appeals are filed by the Department against decision dated 25.4.01 in Tax Appeal Nos.39 and 40 of 2001 delivered by Gujarat High Court.

2. Two questions of law arise for determination in these civil appeals which are as follow:

(1) Whether "commitment charges" can be allowed as deduction under Section 36(1)(iii) of the Income-tax Act, 1961?

(2) Whether "charges" paid to COFACE is similar to payment of interest under Section 36(1)(iii) of

the Income-tax Act, 1961 and, therefore, has to be allowed as deduction?

3. Regarding question No.(1), we may state that assessee had borrowed Rs.30 crores (approximately) from IDBI which in turn was refinanced by COFACE which foreign company had charged interest, commitment charges and insurance charges payable by the assessee. The said "commitment charges" was upfront payment. We have also examined the contract between IDBI and the assessee. In the case of Addl. Commr. of Income-tax v. Akkamamba Textiles Ltd. (1997) 227 ITR 464, this Court has held that commission paid by the assessee to the banker and the insurance company was admissible deduction under Section 37 of the Income-tax Act, 1961. To the same effect is the judgment of this Court in the case Commr. of Income-tax v. Sivakami Mills Ltd. (1997) 227 ITR 465. For the aforesaid reasons, we answer question No.(1) in favour of the assessee and against the Department. We may clarify that both the above judgments allows deductions under Section 37 of the 1961 Act and not under Section 36(1)(iii) of the 1961 Act. In this case, the Tribunal has allowed the claim under Section 37 and not only Section 36(1)(iii), hence there is no infirmity therein.

4. As regards question No.(2) is concerned it may be stated that the assessee established phosphoric Acid Project as an extension to its present business activities and for that purpose obtained foreign currency loan from IDBI which in turn was refinanced by COFACE subject to the assessee paying finance charges to COFACE which according to the assessee was similar to payment of interest. The Department disallowed the said item on the ground that finance charges paid to COFACE on foreign currency loan was in the nature of interest and commitment charges and since the charges have been paid in relation to the project of manufacturing phosphoric acid which did not commence production during the assessment year under consideration, the expenses incurred were capital in nature. The Department also placed reliance in this connection on Explanation 8 to Section 43(1) of the Income-tax Act, 1961. On facts and circumstances of this case, once the Department equated the charges payable to COFACE with interest, our judgment in the case of Dy. Commr. of Income Tax, Ahmedabad v. M/s. Core Health Care Ltd. in Civil Appeal Nos.3952-55 of 2002 comes in. Accordingly, the said question No.(2) is also answered in favour of the assessee and against the Department.

5. Before concluding, we may also mention that in this case the finance charges paid by the assessee to COFACE have also been equated by the Department with commitment charges which, as stated above, are held to be revenue expenditure and deductible under Section 37 of the Income-tax Act, 1961 [See: Akkamamba Textiles Ltd. (supra) and Sivakami Mills Ltd. (supra)]. Therefore, on either counts the above question No.(2) is answered in favour of the assessee and against the

Department.

6. For the aforesaid reasons, the Department's civil appeals are accordingly dismissed with no order as to costs.