
Modi Industries Ltd. Vs Commissioner of Income Tax

Miscellaneous Income Tax Reference No. 48 of 1973

Court: Allahabad High Court

Date of Decision: April 22, 1976

Acts Referred:

Income Tax Act, 1961 " Section 37

Citation: (1977) 110 ITR 855

Hon'ble Judges: R.M. Sahai, J; C.S.P. Singh, J

Bench: Division Bench

Advocate: Ashok Gupta, for the Appellant; Deokinandan, for the Respondent

Final Decision: Dismissed

Judgement

1. The Income Tax Appellate Tribunal, Delhi Bench "A", has u/s 256(1) of the Act referred the following two questions for our opinion :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally right in holding that the sum of Rs. 6,525 was not

expenditure of allowable nature ?

2. Whether, on the facts and in the circumstances of the case, any part of the expenditure amounting to Rs. 32,477 was inadmissible as deduction

u/s 37 of the Income Tax Act, 1961 ?

2. The facts necessary for answering these two questions may now be stated. The petitioner-company and one Modi Supply Corporation Ltd.

were amalgamated under a scheme sanctioned by the Punjab High Court on May 25, 1956. The amalgamation, however, actually took place on

25th August, 1956. Subsequently, assessment was made of Modi Supply Corporation Ltd. for the assessment year 1952-53, on a total income of

Rs. 3,97,644. Subsequently, a demand for an amount of Rs. 61,537 including taxes and penalty was raised, and the amount was recovered by the

department from the assessee some time before September 30, 1959. The assessee's appeal in respect of this amount to the Appellate Assistant

Commissioner and the Tribunal were unsuccessful. In 1961, a suit was filed against the Union of India in the Court of II Civil Judge, Meerut, for

the recovery of the amount of tax, realised from them on account of the demand on Modi Supply Corporation. This suit was dismissed on May 23,

1962. Expenses to the tune of Rs. 6,025 had been incurred by the assessee in connection with this litigation, and this was claimed as a deduction.

The Income Tax Officer held that the amount was not allowable because it related to recovery of Income Tax. The Appellate Assistant

Commissioner also disallowed the claim. The Tribunal on appeal did not accept the assessee's contention and disallowed the claim.

3. In this very assessment year, i.e., 1959-60, an amount of Rs. 32,477 had been incurred as travelling expenses by Sri G.M. Modi, the chairman.

The expenses had been incurred on tour undertaken by the chairman of several places like Rome, Paris, Berlin, New York, Stockholm, London,

Tokyo, etc. The chairman was accompanied by his wife on this tour and the expenditure claimed include expenditure on his wife also. The Income

Tax Officer disallowed the expenditure on the ground that it was not necessary for the chairman to have taken his wife and that the purpose of the

tour was mainly for setting up two new projects. The Appellate Assistant Commissioner on appeal upheld the Income Tax Officer's order. The

Tribunal on further appeal by the assessee allowed an amount of Rs. 6,000 towards this claim, and disallowed the balance.

4. We propose to deal with the questions referred in seriatim. It has been seen that the claim for deduction of Rs. 6,525 was based on the ground

that this amount had been spent by the assessee in connection with a suit to recover amounts paid by it on behalf of Modi Supply Corporation Ltd.

The question is whether it is an allowable revenue expenditure.

5. The principle on which legal expenses are allowable as "business expenditure" are more or less now settled by a catena of decisions. Normally

speaking, legal costs incurred in the course of the normal carrying on of a business is an allowable deduction. The general test, so far as legal

expenses are concerned, is as to whether the assessee incurred the expenses in its character as a trader and the liability fell on him as a trader, and

whether the transaction in respect of which the proceedings are taken out, arose out of and was incidental to the assessee's business. The

deducibility of such expenditure is not dependent on the merits of the case, or the result of the proceedings (See Shree Meenakshi Mills Ltd.,

Madurai Vs. Commissioner of Income Tax, Madras, . The question is whether the expenditure incurred by the assessee can, on these principles,

be allowed as a business expenditure. In this connection, it is now necessary to refer to cases relied upon by the counsel for the assessee in order

to substantiate the claim of the assessee for deduction.

6. To begin with, counsel drew our attention to a decision of this court in the case of Modi Sugar Mills Ltd. Vs. Commissioner of Income Tax, . In

that case, the assessee had made several payments in respect of legal proceedings taken on behalf of the two companies which were amalgamated

with it as also in respect of expenses incurred in connection with Income Tax proceedings. The assessee had spent these amounts in connection

with settlement of Income Tax matters. These proceedings included appellate proceedings taken before the authorities under the Income Tax Act,

writ petitions filed in the High Court and legal opinion obtained in connection with those proceedings. The claim was rejected by the Income Tax

Officer, as in the present case, in view of the decision of this court in" the case of J.K. COTTON MANUFACTURERS LTD. Vs.

COMMISSIONER OF Income Tax, U.P. and V.P., . Following the decision of their Lordships of the Supreme Court in the case of

Commissioner of Income Tax, West Bengal I Vs. Birla Cotton Spinning and Weaving Mills Ltd., , it was held that inasmuch as the proceedings

were taken by the assessee for escaping tax liability or reducing the tax liability the amounts were allowable as business expenditure.

7. Counsel for the revenue, on the contrary, has laid stress on the decision in the case of J.K. COTTON MANUFACTURERS LTD. Vs.

COMMISSIONER OF Income Tax, U.P. and V.P., as also on the decision of the Supreme Court .in the case of Commissioner of Income Tax,

Kerala Vs. Malayalam Plantation Ltd., . In J.K. COTTON MANUFACTURERS LTD. Vs. COMMISSIONER OF Income Tax, U.P. and

V.P., , the assessee had claimed an amount of Rs. 8,600 as fees of lawyers who appeared before the Income Tax Investigation Commission. The

Tribunal had refused deduction on two grounds, namely, firstly, that the expenditure was not a permissible deduction u/s 10(2)(xv) of the Indian

Income Tax Act, 1922, and, secondly, that the payment for services rendered in connection with preparation of accounts for the Income Tax,

were not allowable as they did not relate to the year in question, but of earlier years. This court, after referring to some of the decisions of the

English courts and a decision of the Bombay High Court, held that the expenditure was not allowable. Now, if the principle J.K. COTTON

MANUFACTURERS LTD. Vs. COMMISSIONER OF Income Tax, U.P. and V.P., is still good law, it would be difficult to allow the

expenditure claimed as a permissible deduction. We are of the view that after the pronouncement of the Supreme Court in the case of

Commissioner of Income Tax, West Bengal I Vs. Birla Cotton Spinning and Weaving Mills Ltd., , it is not possible to subscribe to the view taken

in the case of J.K. COTTON MANUFACTURERS LTD. Vs. COMMISSIONER OF Income Tax, U.P. and V.P., . In Commissioner of

Income Tax v. Birla Cotton Spinning & Weaving Mills [1971] 81 ITR 166, the assessee had incurred expenses in engaging eminent lawyers for

conducting appropriate proceedings before the Investigation Commission, and also in courts where the vires of the statute under which the

commission was constituted were challenged. The expenses claimed were allowed by the Supreme Court and the following tests were laid down

for allowability (pages 171, 172):

The essential test which has to be applied is whether the expenses were incurred for the preservation and protection of the assessee's business

from any such process or proceedings which might have resulted in the reduction of its income and profits and whether the same were actually and

honestly incurred. It is not possible to understand how the expenditure on the proceedings in respect of the Investigation Commission by the

assessee will not fall within the above rule. Even otherwise, the expenditure was incidental to the business and was necessitated or justified by

commercial expediency. It must be remembered that the earning of profits and the payment of taxes are not isolated and independent activities of a

business. . These activities are continuous and take place from year to year during the whole period for which the business continues. If the

assessee takes any steps for reducing its liability to tax which result in more funds being left for the purpose of carrying on the business there is

always a possibility of higher profits; To give an illustration, if an assessee can, by an appropriate proceeding, succeed in getting its tax liability for

gains and profits reduced by a sum of Rs. 1,00,000, that amount will essentially become available for the purpose of business with a reasonable

expectation of more profits. As was observed by Viscount Simon in COMMISSIONER OF Income Tax AND EXCESS PROFITS TAX,

MADRAS Vs. MESSRS. CHARI AND RAM, MADURA., , if the trader considers that the revenue seeks to take too large a share and to leave

him with too little the expenditure which the trader incurred in endeavouring to correct this mistake is a disbursement laid out for the purposes of his

trade. If he succeeds, he will have more money with which to earn profits next year.

8. In view of this observation of the Supreme Court, it is not possible to follow the decision in J.K. COTTON MANUFACTURERS LTD. Vs.

COMMISSIONER OF Income Tax, U.P. and V.P., . In the case of Modi Sugar Mills Ltd. Vs. Commissioner of Income Tax, , this court noticed

the decision in J.K. COTTON MANUFACTURERS LTD. Vs. COMMISSIONER OF Income Tax, U.P. and V.P., , but felt rightly bound by

the decision of their Lordships of the Supreme Court in Commissioner of Income Tax, West Bengal I Vs. Birla Cotton Spinning and Weaving Mills

Ltd., . The decision in the case of Commissioner of Income Tax, Kerala Vs. Malayalam Plantation Ltd., is not relevant for deciding the present

controversy. In that case, certain amounts were paid by way of estate duty by a resident company incorporated outside India, on the death of the

shareholders not domiciled in India. Claim for allowing it as a business expenditure was disallowed. It was held that even though the company was

under a statutory duty u/s 84 of the Estate Duty Act, 1953, to pay the amount in question, it had no connection with the carrying on of its business.

Payment of liabilities of shareholders, statutory or otherwise, can obviously not be said to be incurred by an assessee in his character as a trader,

or necessary for the purposes of carrying on the business. In the present case, the assessee had incurred the expenditure in connection with filing of

a suit to recover tax which had been assessed against a company other than itself, and which had been recovered from the assessee. The suit had

been filed in order to recover sums of money which according to the assessee had been wrongly realised from it by the tax department. In our

view, applying the principle of Commissioner of Income Tax, West Bengal I Vs. Birla Cotton Spinning and Weaving Mills Ltd., and the decision in

Modi Sugar Mills Ltd. Vs. Commissioner of Income Tax, , the amount in question should have been allowed as a business expenditure, as it was

incurred bona fide, and for recovering exactions of tax which the assessee thought were wrongly realised.

9. We now come to the second question. Before referring to a large number of decisions which have been cited by the parties, it is necessary to

state clearly findings of fact recorded by the Tribunal in respect of this question.

10. The amount in question, i.e., Rs. 32,477, had been incurred as travelling expenses by the chairman of the company in his tour to foreign

countries. The Income Tax Officer found that the tour had been undertaken mainly in connection with setting up of a new factory for the

manufacture of electrodes and also a new steel factory. The chairman's wife also accompanied him during the foreign tour and part of the expenses

incurred were for the travelling expenses of the chairman's wife. The Income Tax Officer, on a consideration of various circumstances, held that

the tour was mainly for the purposes of setting up a new business, and, therefore, it was in the "nature of a preliminary expense, and, as such,

disallowed the claim. The Appellate Assistant Commissioner found that the chairman had visited various foreign countries in connection with setting

up of new plants for the manufacture of electrodes and a steel factory. The manufacture of electrodes became necessary to push up the sales of

oxygen and acetylene gases, which the assessee was manufacturing. The assessee also had a long-standing plan to set up a factory to manufacture

different items of steel and had been in communication with certain firms in Japan for collaboration to set up a composite steel plant, including a

rolling mill and wire drawing unit. He also found that as the foreign tour of the assessee-chairman was mainly in connection with setting up new units

for the manufacture of electrodes and a new, steel factory, the expenditure incurred as such could not be allowed. The Tribunal found that the bulk

of the expenditure incurred was either inadmissible or on capital account or expenditure of a preliminary nature. It held that so far as the

expenditure on the wife of the chairman is concerned, it was not justified on commercial grounds. It took the view that the expenditure incurred by

the chairman in taking his wife was a perquisite extended to him by the company, and that the perquisite was not justified by reference to the

legitimate business needs of the company, or by services rendered by the wife on tour. It found that the dominant purpose of the visit was to set up

new projects, viz., one for the manufacture of the electrodes, and the other for setting up of a steel plant. Some visits undoubtedly related to

matters connected with existing business but were of subsidiary character. It held that an amount of Rs. 6,000 should be allowed as permissible

expenditure in respect of expenditure incurred in relation to the existing business. As regards the remaining expenditure, the Tribunal permitted the

assessee to claim the expenditure in respect of assets comprised in the project to be set up. In this reference, we have thus to proceed on the

footing that the amount that has been disallowed related firstly to expenditure incurred for setting up new projects, viz., one for the manufacture of

electrodes and another for setting up a steel plant, and that a part of it also related to expenses incurred on the tour expenses of the wife. The

Tribunal has given a finding that the chairman was allowed to take his wife as a perquisite but it was not justified by reference to any legitimate

business needs. There is no finding that the wife rendered any service in connection with the business of the assessee. This being so and in view of

the finding that the expenses incurred on the wife were not for the legitimate business needs of the company, it is not possible to see how the

expenditure can be allowed. We now come to the expenditure disallowed on the ground that it had been incurred for setting up two new plants,

one an electrode factory and the other a steel plant.

11. We now propose to consider the cases cited at the bar. Counsel for the assessee relied upon the decision of the Andhra Pradesh High Court

in Commissioner of Income Tax Vs. S. Krishna Rao, , the decision of the Allahabad High Court in Security Printers of India (P.) Ltd. Vs.

Commissioner of Income Tax, and the decision of the Gujarat High Court in the case of Commissioner of Income Tax v. Saurashtra Cement &

Chemical Industries Ltd, [1973] 91 ITR 176. The facts of the Andhra Pradesh decision in Commissioner of Income Tax Vs. S. Krishna Rao,

were these. The assessee was the owner of a printing press and attended the International Printers Conference at Amsterdam, representing the

Andhra Pradesh Printers Association. Besides attending the conference at Amsterdam, he visited various countries in Europe and utilised his time,

for studying various types of printing and machinery. The assessee claimed deduction of a sum of Rs. 7,160 which he had incurred on foreign tour,

on the ground that the tour was actuated by business considerations and that it had helped him to get acquainted with development in printing

equipment and techniques. The claim was disallowed by the Income Tax Officer on the ground that the assessee had gone as a delegate of the

association, though the association was not willing to contribute the expenditure, and that the benefit he drew out of his trip was only incidental. The

Appellate Assistant Commissioner allowed a part of the expenditure and disallowed the remaining part on the ground that it was incurred purely for

his personal visit. The Tribunal upheld the order of the Appellate Assistant Commissioner. The Andhra Pradesh High Court took the view that

inasmuch as the assessee had incurred an expenditure in keeping himself abreast with the latest techniques of his business, and modern

development made in printing machines, and to gain experience with a view to improve his own business, the assessee should be deemed to have

incurred the expenditure for the purposes of Ms-own business, although, incidentally, he had benefited the other members of the association also.

In *Security Printers of India (P.) Ltd. Vs. Commissioner of Income Tax*, , the assessee-company had been incorporated on the 6th April, 1957,

with a view to execute jobs of security printing such as printing of cheques, drafts, fixed deposit receipts and like papers for Indian, banks. The

printing of these forms was never before done in India in printing presses. The managing director of a press in India conceived the idea of executing

these printing jobs in India, in collaboration with a London company, and; accordingly, he entered into an agreement with the London company to

float a private company in India. The assessee-company was as such incorporated in India. It was agreed that a representative of the London

company would be appointed a director of the assessee-company to look after the security printing. One Mr. H was appointed as the director for

representing the London company, and Mr. M.C.K. was the director of the assessee-company representing the Indian group of shareholders. In

the assessment for the assessment year 1958-59, the assessee-company claimed deduction of a sum of Rs. 70,437 being the total of, (1) travelling

expenses of Mr. H to explore possibilities of business with Indian banks, (2) travelling expenses incurred by Mr. M.C.K. for procuring import

licence of fugitive papers, (3) travelling expenses of Mr. H to collect details of actual orders and quantity to be supplied and expenditure for joining

the company as a director, and (4) expenses incurred by Mr. M.C.K. for a trip to England to study techniques of security printing, director"s

remuneration, and rent of fiat. These claims were disallowed by the Income Tax Officer on the ground that these were pre-incorporation expenses

of the company and were of a capital nature. The Appellate Assistant Commissioner held that the expenses were all of a revenue nature, and they

had been incurred by the promoters of the assessee-company in connection with business which was subsequently taken over by the company on

its incorporation and were allowable as business expenditure. The Tribunal found that before the assessee-company was incorporated, its

promoters had not only made preliminary arrangements for obtaining orders for security printing, but they had also actually commenced trading

operations, and that, inasmuch as receipts resulting from these transactions which had taken place before the incorporation of the assessee-

company had been included in its first assessment for the year 1958-59, the revenue expenses attributable to those receipts should also be allowed

in that assessment. The Tribunal held, however, that a part of the sum of Rs. 23,549 incurred by Mr. H as travelling expenses and also a part of

Rs. 15,455 spent by Mr. M.C.K. in connection with his trip to England should be regarded as capital in nature, as the assessee-company derived,

more or less, an enduring benefit thereby. The Tribunal estimated the amount at Rs. 20,000 and, while setting aside the order of the Appellate

Assistant Commissioner, directed that the disallowance should be restricted to this amount in place of Rs. 70,437 disallowed by the Income Tax

Officer. This court on reference held that the expenditure incurred by a director of the company to secure orders for the purpose of carrying on the

business of the company is entirely of a revenue nature. As regards the expenses incurred by Mr. M.C.K. in connection with his trip to England to

study the techniques of security printing, it held that, as it was incurred after the company had started its business, the expenditure was allowable as

an expenditure incurred by a businessman or his agent in foreign tours to acquaint himself with new and modern techniques, and was a revenue

expenditure. It took the view that such an expenditure was incurred only with a view to earn greater profit in a competitive market and not to

acquire a new asset. Taking the same view, it allowed the expenditure incurred by Mr. H to the tune of Rs. 22,549. This court also approved of

the decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. S. Krishna Rao, . It also held that though expenses to the tune

of Rs. 23,549 had been incurred before the incorporation of the company, yet as business receipts arising out of these transactions had been

entered in the accounts for the relevant years and included in its first assessment for the year 1958-59 and were assessable in the hands of the

company, the expenditure incurred to earn the profits must also be allowed to the assessee. As respects the expenditure of Rs. 15,455 incurred by

Mr. M.C.K. in connection with his trip to England to study the techniques of security printing, it held that there was nothing on the record to show

that the study tour was to acquire knowledge of some new techniques in security printing. It found that at that time jobs in security printing were not

executed by any printers in India, and the purpose of the visit was to learn methods of security printing which were then in vogue in England. It as

such held that it could not be said that Mr. M.C.K. came back with the knowledge of new methods of security printing which enured to the

permanent and enduring benefit of the company. Following an unreported decision of the Bombay High Court in the case of Chemical Industries

and Pharmaceutical Laboratories Ltd. v. Commissioner of Income Tax (ITR No. 14 of 1951 decided by the Bombay High Court on 31-8-1951),

where the test laid down was that in such cases one has to find out whether the expenditure was a part of the process of profiting, it held that the

expenditure incurred was a business expenditure. The view of the Tribunal that it was an expenditure to bring into existence a new asset was not

accepted. In the case of Commissioner of Income Tax, Gujrat I Vs. Saurashtra Cement and Chemical Industries Ltd., , a company was formed in

1956 for the manufacture and sale of cement. As part of its business, the assessee obtained a mining lease for quarrying limestone and started the

mining operations in 1958. The expenditure was claimed by the assessee-company for sums spent on extracting limestone as also depreciation and

development rebate for the machinery installed for that purpose. The Gujarat High Court held that the activities which constituted the business of

the assessee were divisible into three categories. The first category consisted of the activity of extraction of limestone by quarrying the leased area

of land. This activity was necessary for the purpose of acquiring raw material to be utilised in the manufacture of cement; (2) manufacture of

cement by the use of the plant and machinery set up for that purpose; and (3) selling the manufactured cement. All the three activities were

combined in the business of the assessee. It held that the activity of quarrying the leased area and extracting limestone from it was as much an

activity in the course of carrying on the business, as the other two activities of manufacture of cement and sale of cement. The quarrying of

limestone came first in point of time, and laid the foundation for the second activity and the second activity when completed laid the foundation for

the third activity. Thus, the assessee commenced its business when it started the activity of extraction of limestone. As the assessee was carrying on

business in 1958, when the extraction of limestone started, the expenditure incurred for extraction as also depreciation allowance and development

rebate in respect of machinery employed in extracting limestone contributed to the trade profits of the assessee and were allowable.

12. Counsel for the department has placed reliance on another decision of the Gujarat High Court for the contention that the expenditure should

not be allowed, that being the case of *Ambica Mills Ltd., Ahmedabad Vs. Commissioner of Income Tax Gujarat, Ahmedabad*, . In that case, the

assessee-company which carried on textile manufacture authorised a tour by its director and superintendent of the company"s mills for two

purposes, viz., (1) in order to make an on-the-spot study of the latest developments in the manufacture, designing and processing of cloth in the

United, Kingdom and other countries ; and (2) to make a report on their return on the work done by them as to the latest developments in the

manufacturing, designing and processing of textiles seen by the representatives, and to recommend as to whether the latest developments should be

adopted and, for that purpose, to purchase new machinery which would bring about a change in the methods of manufacturing, designing and

processing. After their visit, the assessee-company imported new improved and modern machinery for the purpose of being used in running its

textile mills. The Tribunal found that "" the object "" of this tour was to replace the old and out-of-date or obsolete machinery used in the textile mills

of the assessee-company, by the more modern ones, and that the expenditure incurred in these circumstances related to the fixed framework of the

profit-making apparatus of the assessee-company, and not to its carrying on of the business, and was, therefore, a capital expenditure. After

accepting the finding of the Tribunal, the High Court held that the tour had been undertaken for the purpose of a preliminary survey of new

methods of manufacturing, designing and processing and inspecting new machinery with a view to purchase them, even if not immediately, but at a

later stage. It held that the tour was undertaken for the purpose of bringing into existence a capital asset and such expenditure would, therefore, be

capital expenditure.

13. Before we comment on these cases, it would be useful to refer to the decision of the Supreme Court in Assam Bengal Cement Co. Ltd. Vs.

The Commissioner of Income Tax, West Bengal, . Their Lordships of the Supreme Court after considering a large number of cases decided by the

English courts referred to the Full Bench decision of the Lahore High Court in (1947) 15 ITR 185 Lahore and accepted the test laid down by the

Full Bench for determining as to whether a particular expenditure was a capital expenditure or a revenue expenditure. The Lahore High Court (in

the case of (1947) 15 ITR 185 Lahore laid down the following tests :

1. Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of

equipment.

2. Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into

existence an asset or an advantage for the enduring benefit of a trade.

3. Whether for the purpose of the expenditure, any capital was withdrawn or, in other words, whether the object of incurring the expenditure was

to employ what was taken in as capital of the business. Again it is to be seen whether the expenditure incurred was part of the fixed capital of the

business or part of its circulating capital. Fixed capital is what the owner turns to profit by keeping it in his own possession. Circulating or floating

capital is what he makes profit of by parting with it or letting it change-masters.

14. Their Lordships also held that once it is found that the expenditure is made for capital outlay or for extension of business or for replacement of

the equipment, then whatever the source from which it is drawn, whether it be capital or income of the concern, it is in the nature of capital

expenditure.

15. We will now consider the applicability of the cases cited at the Bar to the circumstances of the present case. We have already noticed that the

Tribunal has found that the dominant purpose of the visit was to arrange for the setting up of the two new factories, one for the manufacture of

electrodes and another for setting up of a steel plant. On these findings, it is clear that the purpose of the business was either initiation of a new

business or extension of the already existing business, and this being so, the expenditure incurred would definitely be of a capital nature as has been

laid down in Assam Bengal Cement Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal, . The dicta of the Gujarat High Court in the

case of Commissioner of Income Tax, Gujrat I Vs. Saurashtra Cement and Chemical Industries Ltd., would also apply. The cases cited by counsel

for the assessee, in our view, cannot be appropriately applied to the facts of the present case. In the Andhra Pradesh case of Commissioner of

Income Tax Vs. S. Krishna Rao, the trip had not been undertaken for the purpose of setting up any new business or purchasing any new

equipment. It had been undertaken only to help the assessee to get acquainted with various developments in printing equipment and technology.

Thus, the Andhra Pradesh decision cannot be appropriately applied to the present case. In Security Printers of India (P.) Ltd. Vs. Commissioner

of Income Tax, the expenses of Mr. H were allowed on the ground that business receipts arising out of the transaction which he entered into were

Included in the assessment year and further that the expenditure was incurred by Mr. H for procuring orders of considerable value and import

licence for indent of fugitive papers for the purpose of security printing. Now, expenses incurred for securing orders would clearly be business

expenditure, as also would be expenses incurred for obtaining import licence for indent of fugitive papers, for, in case, fugitive papers, which were

a rare commodity were not available with the assessee, there would have been an impediment in carrying on its business of security printing. The

expenses amounting to Rs. 15,455 incurred by Mr. M.C.K. in connection with his trip to England to study techniques, of security printing was also

clearly allowable as business expenditure, as it had been incurred to learn method of security printing which would be helpful to the carrying on of

the business of the assessee. It will also be noticed that, in that case, it was found that Mr. M.C.K. had not come back with the knowledge of new

methods of security printing which enured to the permanent benefit of the company. Thus, the ratio of this case cannot also be appropriately

applied to the case in hand. The decision of the Gujarat High Court in Commissioner of Income Tax, Gujrat I Vs. Saurashtra Cement and

Chemical Industries Ltd., is hardly to the point. In that case, the expenses incurred in quarrying limestone was held to be deductible as business

expenditure, as also depreciation and development rebate for machinery installed for that purpose, as it was found that the business of the

company was of manufacture of cement and sale of it. This being so, the expenditure incurred for extracting raw material for carrying on its

business would obviously be business expenditure.

16. We are thus of the view that on the findings recorded by the Tribunal, inasmuch as the expenditure had been incurred for either setting up the

new project or for extending the business of the concern, the amounts in question were not allowable as a business expenditure. We, therefore,

answer the first question in the negative, in favour of the assessee and against the department. The second question is answered in the affirmative in

favour of the department and against the assessee. In view of partial success and failure of the parties, there shall be no order as to costs. Counsel

fee is assessed at Rs. 200.