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Saurashtra Cement and Chemical Industries Ltd. Vs Commissioner of Income Tax

Court: Gujarat High Court

Date of Decision: Nov. 19, 1991

Acts Referred: Income Tax Act, 1961 â€" Section 30, 37, 80VV

Citation: (1992) 103 CTR 286 : (1992) 196 ITR 237

Hon'ble Judges: R.C. Mankad, Acting C.J.; J.N. Bhatt, J

Bench: Division Bench

Judgement

R.C. Mankad, Actg. C.J.

1. The assessee is a public limited company and the assessment year under consideration is 1973-74, the accounting year being the year ending on

June 30, 1972. The assessee manufactures cement as well as industrial salts. These industrial salts are utilised in manufacturing other chemicals and

salts. The assessee had plans to manufacture soda ash from industrial salts and, for that purpose, it obtained a techno-economic feasibility report

from Industrial Consulting Bureau Private Limited, whom it paid a fee of Rs. 15,000. It also consulted Dr. G. M. Pandya for the manufacture of

soda ash and paid him a fee of Rs. 500. In the course of Income Tax assessment for the assessment year 1973-74, the assessee claimed

deduction of the aforesaid two amounts, namely, Rs. 15,000 and Rs. 500, as revenue expenditure. The Income Tax Officer prepared a draft

assessment order and called upon the assessee, by his letter dated February 12, 1976, to show cause why the aforesaid two amounts should not

be disallowed as capital expenditure. The assessee, by its reply dated March 6, 1976, explained as to why the said expenditure was a revenue

expenditure. The submission of the assessee was that it had established Singach Salt Works at Singach, near Jamnager, in 1963 with a view to

manufacturing certain chemicals like soda ash and caustic soda eventually at a later stage, in which the basic raw material is industrial salt.

Therefore, according to the assessee, the expenditure which it had incurred in obtaining the techno-economic feasibility report of soda ash and in

payment of consulting fees to Dr. Pandya, was in furtherance of its business which was already carried on prior to the date the expenditure was

incurred. It was submitted that the soda ash project which the assessee proposed to establish had to be regarded only as part of the existing

business and not a new and separate business. The Income Tax Officer, in his assessment order, held that he did not propose to disallow the

aforesaid expenditure totaling to Rs. 15,500 as preliminary expenditure. The techno-economic feasibility report and consultation fees paid for the

soda ash plant were for the purpose of expanding the business either by putting up a plant similar to the plant already in existence or launching upon

a new activity. The Income Tax Officer, therefore, held that the expenditure which the assessee had incurred for the techno-economic feasibility

report and consultation was nothing but capital expenditure even if they new activity would not be a separate business but part of the same

business carried on by the assessee. This view taken by the Income Tax Officer was confirmed in appeal by the Appellate Assistant

Commissioner. In the further appeal to the Income Tax Appellate Tribunal (""the Tribunal"" for short), it was urged on behalf of the assessee that the

assessee was already manufacturing industrial salts and it merely wanted to expand its activities by manufacturing soda ash in which industrial salts

would be used. Therefore, according to the assessee, the establishment of a new unit would not constitute a new business as such. On the other

hand, it was urged on behalf of the Revenue that it was unnecessary to consider whether the new soda ash plant contemplated was a new business

or part of the old business. According to the Revenue, the very fact that the assessee was going to set up a new unit meant that the aforesaid

expenditure incurred for establishing this new unit would be capital expenditure. The Tribunal accepted the statements made on behalf of the

Revenue and held that what was material was whether the establishment of the soda ash plant amounted to establishing a new unit or not.

According to the Tribunal, even if establishment of the soda ash plant amounted to expansion of the existing plant, the expansion of the new unit

would mean acquisition or establishment of a new asset. Therefore, according to the Tribunal, any initial expenditure incurred for feasibility report

or for consulation would constitute capital expenditure. In the result, the Tribunal upheld the view taken by the authorities below. The assessee,

being aggrieved by the view taken by the Tribunal, the following question has been referred to us for our opinion, at its instance, u/s 256(1) of the

Income Tax Act, 1961 (""the Act"" for short) :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the sums of Rs. 15,000 and Rs. 500 paid

for obtaining techno-economic feasibility report and consulation for soda ash plant were rightly disallowed as being capital expenditure ?

2. In order that an expenditure can be allowed as business expenditure u/s 37 of the Act, the following essential conditions have to be satisfied :

(i) It must be expenditure in the nature of revenue expenditure and not in the nature of capital expenditure.

(ii) It must be laid out or expended wholly and exclusively for the purpose of the business or profession.

(iii) It must not be of the nature described in section 30 to 36 and section 80VV of the Act (vide Commissioner of Income Tax, Baroda Vs.

Navsari Cotton and Silk Mills Ltd., .

3. In the instant case, the finding of the Tribunal is that the assessee proposed to establish a new unit for the manufacture or production of soda ash

and it was for the purpose of establishment of this new unit that it has incurred expenditure for obtaining a techno-economic feasibility report and

also consulted Dr. Pandya. The Tribunal has found that the expenditure was incurred for acquiring a new asset and, consequently, it was an

expenditure capital in nature. We do not see any reason to disturb this finding. Once it is found that the expenditure in question was incurred for

acquiring a capital asset, the expenditure would be capital in nature. Deduction of expenditure which is capital in nature cannot be allowed u/s 37.

In the view which we are taking, the decisions of the Supreme Court in India Cements Ltd. Vs. Commissioner of Income Tax, Madras, and

Alembic Chemical Works Co. Ltd. v. CIT : [1989]177ITR377(SC) and the decisions of the Gujarat High Court in Sayaji Iron and Engineering

Works Pvt. Ltd. Vs. Commissioner of Income Tax, Gujarat II, and Commissioner of Income Tax, Gujarat II Vs. Alembic Glass Industries Ltd.,

cannot be of any assistance to the assessee. In our opinion, the expenditure in question being capital expenditure, its deduction was rightly

disallowed by the Tribunal. We, therefore, answer the question which is referred to us in the affirmative and against the assessee.

4. Reference answered accordingly with no order as to costs.