

(1992) 03 GUJ CK 0035

In the Gujarat High Court

Case No : Income-tax Reference No. 190 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Aavaram Ltd.

RESPONDENT

Date of Decision : 24-03-1992

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1992) 197 ITR 22

Hon'ble Judges : J.M. Panchal, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : B.J. Shelat, instructed by R.P. Bhatt and Co, for the Appellant; K.H. Kaji, for the Respondent

Judgement

G.T. Nanavati, J.—This reference is made by the Tribunal u/s 256 of the Income Tax Act, 1961, at the instance of the Revenue. The

question referred to this court is as under :

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that Rs. 20,131

being expenses of revenue nature incurred after June 9, 1973 (the date on which the first raw materials were purchased) is allowable as revenue

expenditure ?

2. The assessee-company is engaged in business of manufacturing plastic containers. After the machinery and plant were set up, the assessee-

company purchased raw materials on June 9, 1973, and started production on November 23, 1973. For the assessment years 1974-75, the

assessee-company claimed deduction of Rs. 30,962 as revenue expenditure. The Income Tax Officer disallowed the same, as the same was

incurred prior to the date of production. The assessee filed an appeal before the

Appellate Assistant Commissioner who allowed the same.

Aggrieved by that order, the Revenue preferred an appeal to the Income Tax Appellate Tribunal. The Tribunal held that the assessee-company can

be said to have commenced business when it purchased raw materials on June 9, 1973, and before November 23, 1973, were deductible revenue

expenditure and that the expenses incurred by the assessee before June 9, 1973, did not qualify for deduction. Accordingly, the appeal was partly

allowed. The Revenue was not satisfied with that order and, therefore, it moved the Tribunal for referring the above-stated question to this court.

3. What is contended by learned counsel for the Revenue is that the assessee-company cannot be said to have commenced its business on June 9,

1973, i.e., the date on which the first raw materials were purchased, as the actual production has started only from November 23, 1973. He

submitted that the time gap was itself suggestive of the fact that raw materials were not purchased on June 9, 1973, with a view to commence the

business. No explanation was given by the assessee as to why it had not commenced production earlier if it was otherwise ready to commence the

business.

4. In support of his submissions, learned counsel for the Revenue has relied upon the decisions in Commissioner of Income Tax Vs. Sarabhai Sons

Pvt. Ltd., , Commissioner of Income Tax, Gujrat I Vs. Saurashtra Cement and Chemical Industries Ltd., , Addl. Commr. of Income Tax Gujarat

Vs. Speciality Paper Ltd., and Alembic Chemical Works Co. Ltd. v. CIT : [1989]177ITR377(SC) .

5. The facts are very few in this case and there is no dispute regarding the fact that the first raw materials were purchased on June 9, 1973, and

production started on November 23, 1973. There is also no dispute on the point that, if the assessee-company can be said to have commenced its

business on June 9, 1973, then the amount of Rs. 20,131 would be deductible from the total income of the assessee. Therefore, the only question

to be considered is whether, in the facts and circumstances of the case, it can be said that the assessee-company had commenced its business on

June 9, 1973, or not.

6. As pointed out in the aforesaid decisions, the question whether the assessee can be said to have commenced business or not is always a

question of fact. In this case, it has been found as a matter of fact that purchase of raw materials on June 9, 1973, was not a mere pretext. It is

further recorded that they were genuinely purchased for production. Once it was found as a matter of fact that the assessee had purchased the raw

materials for the purpose of production, the further finding of fact, viz., that the assessee had commenced business on June 9, 1973, necessarily

followed. As pointed out by this court in the case of Commissioner of Income Tax, Gujrat I Vs. Saurashtra Cement and Chemical Industries Ltd., ,

in such matters, a common sense approach has to be adopted in order to find out whether the assessee can be said to have commenced business.

The assessee would not have purchased raw materials and blocked his monies unless he really wanted to commence his business of producing

plastic containers. Thus, by making purchases of raw materials, it did commence its business though the actual manufacture had not started soon

after the purchase of raw materials, but had taken some time. As pointed out earlier in this case, it has been found, as a matter of fact, that

purchase of raw materials was not a mere pretext and that they were genuinely purchased for producing containers. The Tribunal was, therefore,

right in holding that the assessee commenced his business from June 9, 1973, and, therefore, the expenditure which was incurred by it under

various heads, the details of which need not be given because they are not relevant, did qualify as revenue expenditure and that the assessee was

entitled to deduction thereof from its total income.

7. In the result, the question referred to us is answered in the affirmative, i.e., against the Revenue and in favour of the assessee. No order as to

costs.