

(2002) 11 GUJ CK 0003

In the Gujarat High Court

Case No : IT Ref. No. 74 of 1992 20 November 2002

Packart (P) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 28, 36(1)(iii), 37

Citation : (2003) 131 TAXMAN 239

Hon'ble Judges : K.M. Mehta, J;A.R. Dave, J

Bench : Full Bench

Advocate : B.D. Karia, for the Assessee, B.B. Naik and Manish R. Bhatt, for the Revenue, for the Appellant;

Judgement

A.R. Dave, J.

At the instance of the applicant-assessee the following question has been referred to this court for its opinion under the provisions of section 256(1) of the Income Tax Act by the Income Tax Appellate Tribunal, Ahmedabad Bench-B :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the disallowance of interest amounting to Rs. 40,352 claimed u/s 28, 36(1)(iii) or section 37 of the Income Tax Act, 1961?"

2. Learned advocate Shri B.D. Karia has appeared for the applicant-assessee whereas learned senior Central Government standing counsel Shri B.B. Naik has appeared for the revenue.

3. The assessee is a limited Company which had paid interest on the amount which was borrowed for the purpose of payment of Income Tax. The amount of interest paid by the assessee was disallowed by the assessing officer. Being aggrieved by the disallowance the assessee filed an appeal before the Commissioner (Appeals) but the appeal had been dismissed. The appeal filed before the Tribunal had also been dismissed. In the circumstances, the question referred to hereinabove is to be decided by this court.

4. The learned advocates have fairly submitted that the question which has been referred to this court has been answered by this court in the judgment delivered in the case of *Saraspur Mills Ltd. Vs. Commissioner of Income Tax*, . Moreover, it has been submitted that in principle, the Supreme Court has also decided in the case of *M/s. East India Pharmaceutical Works Ltd. Vs. Commissioner of Income Tax, West Bengal*, that such interest paid by the assessee would not amount to business expenditure and, therefore, such an expenditure cannot be allowed.

5. Looking to the law laid down by the Supreme Court as well as by this court, in our opinion, the Tribunal was not in error in confirming the views expressed by the revenue authorities.

In the circumstances, we are also of the opinion that the Tribunal was justified in disallowing the amount of expenditure which was in the nature of interest which was paid on the amount which was borrowed for the purpose of paying Income Tax. We therefore answer the question in the affirmative, i.e., in favour of the revenue and against the assessee.

6. The Reference thus stands disposed of with no order as to costs.