

Alembic Chemical Works Co. Ltd. v. Commissioner of Income Tax, Gujarat

Civil Appeal No. 43(NT) of 1975

[1989] 2 SCR 302 | 1989-03-31

Whether the lump-sum payment for improved penicillin strains, technical information and associated assistance improved an existing business on revenue account, and whether any material supported the Tribunal's premise that the agreement required an entirely new plant and process.

37 | 256(1) | 256(2)

Two-judge bench | R.S. Pathak, C.J. | M.N. Venkatachaliah, J.

Assessment years: 1964-65

Existing-business result; contract duration and later statutory regimes matter

For AY 1964-65 this payment improved an existing penicillin business on the facts found; no material supported an entirely new plant or fresh venture. The two-year clause limited technical advice, not demonstrably all know-how use. Lump-sum payment, enduring benefit and confidentiality are not conclusive tests. Later sections 35AB and 32 require their own statutory analysis. Comprehensive later treatment and current-law/2025 mapping remain unverified.

01 FACTS OF THE CASE

The company was already manufacturing penicillin under a licence granted on 8 June 1961. Its initial strains produced about 5,000 units per millilitre of culture medium. To improve that yield, it concluded an agreement with the Japanese enterprise Meiji on 9 October 1963 for a once-for-all payment of US\$50,000, then equivalent to Rs.2,39,625. The contemplated improved performance exceeded 10,000 units per millilitre; the judgment does not report that figure as a separately verified achieved output (physical page 5, paragraph 2).

The technical package included suitable penicillin-producing subcultures, fermentation know-how and written process descriptions, a pilot-plant flow sheet and main-equipment designs and specifications. Meiji would arrange training of the assessee's technical representatives at the assessee's expense and provide advice on applying the material to large-scale manufacture. The quoted advice obligation lasted until two years from the agreement's effective date. The subcultures and information were restricted to the assessee's Penicillin G plant in India, were confidential, could not be disclosed to others, and could not be the subject of patent applications by the assessee. Precautions against escape of the strains were also required (physical pages 5–6 and 16–17).

For AY 1964-65 the assessee claimed the rupee payment as revenue expenditure. The assessing and appellate authorities rejected the claim. The Tribunal treated the arrangement as acquiring a new plant, process and capital asset; the High Court answered the deduction reference against the assessee. A separate appeal concerning the refusal to call a supplementary evidentiary question was formally disposed of on 24 February 1987 with directions for a supplementary statement, leaving that question for decision in this appeal (physical pages 6–9, paragraphs 3–6).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court began with the section 37 requirement that a business outlay must also escape the capital-expenditure exclusion. Expenditure wholly and exclusively for business is not deductible merely for that reason. The acquisition of a profit-earning structure and expenditure in operating it are useful starting distinctions, but no single test decides every case. A one-time payment and an enduring advantage are indicators to be assessed with all the commercial circumstances, not statutory conditions mechanically converting an outlay into capital (physical pages 9–12, paragraphs 7–9).

The decisive factual premise used below lacked material support. The business before and after the agreement remained manufacture of penicillin. Nothing established that the existing plant and manufacturing infrastructure had become obsolete, that the new strains could be exploited only through a wholly different plant, or that the agreement created a fresh venture outside the existing line of business. Improved fermentation technology and a higher-yielding biological source could supplement the continuing operation. The Court therefore rejected the inference of necessary replacement of the profit-earning apparatus (physical pages 14–17, paragraphs 11–13).

The Court also treated technological durability in its actual setting. Rapid advances in antibiotic microbiology cautioned against assuming that this know-how was sufficiently permanent to be a capital asset merely because its benefit might continue. Restrictions on disclosure, transfer and patenting inclined the Court toward use of know-how rather than exclusive acquisition. The two-year clause covered Meiji's advisory assistance; the Court did not identify a two-year expiry of every right to use the strains or information. Nor did it hold that all restricted or non-exclusive know-how arrangements must be revenue (physical pages 16–17, paragraph 13).

Reading the payment, advice and confidentiality clauses together, the Court found that the Tribunal's assumption of a compulsory larger new plant did not follow from the agreement. The process improvement concerned the same existing product and improved operating efficiency and profitability. The commercial object and effect were better conduct of the existing business. CIBA of India and the commercial-character reasoning reproduced from Associated Cement, including its reference to Empire Jute, supported that analysis; those are cited authorities, not additional decisions rendered in this appeal (physical pages 17–18, paragraphs 13–14).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The Court allowed the assessee's appeal, set aside the High Court judgment and answered the principal reference in the affirmative, against the Revenue: the Rs.2,39,625 outlay was revenue expenditure. It separately answered the supplementary question about evidentiary support for the new-plant/new-process premise in the negative, also against the Revenue. There was no order as to costs (physical page 18, paragraph 15).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

Appeal allowed; High Court judgment set aside; main question answered affirmatively and supplementary evidentiary question negatively; no order as to costs

Final reasoned determination of the two referred questions

Fact-bound section 37 characterisation for AY 1964-65; no universal deduction for technical know-how, no finding that all contractual rights expired after two years, and no adjudication of later know-how amortisation or intangible-asset depreciation regimes.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Read the contract as a package and test the factual foundation for any claim that it creates a new profit-earning structure. Here the same product, continuing plant, operating improvement and constrained rights of use mattered together. A lump sum, possible lasting benefit or availability of technical drawings is not by itself decisive. Conversely, the decision does not establish that technology expenditure can never be capital or that a confidentiality clause alone settles the classification.

Keep duration precise: the quoted two-year limit concerns advice, while use is plant-specific and subject to confidentiality and patent restrictions. Do not recast the arrangement as a simple two-year licence that automatically expired in all respects. The Court's rejection of the unsupported new-plant premise is central to its result.

Later statutory regimes require separate analysis. The bounded 2011 compilation records section 35AB's insertion effective 1 April 1986 and its later AY cut-off, and the separate section 32(1)(ii) treatment of qualifying intangible assets acquired on or after 1 April 1998 (physical pages 258 and 206; amendment-history footnotes 43-44 and 89). These checks explain why a 1964-65 section 37 result is not an automatic answer for later know-how payments. No fresh transaction's eligibility, current-law position, 2025 mapping or comprehensive later judicial treatment is certified.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, case number and judicial opening

Source url: [Open cited source](#)

Pdf pages: 1; 4; 5

Paragraphs: Cover and appeal metadata; judicial opening and paragraph 2

Source role: reported metadata and judicial text

2.

Topic: Existing penicillin business, contract consideration and supplied technical package

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: Judicial paragraphs 2–3

Source role: judicial text

3.

Topic: Reference history and connected appeal already disposed of

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9

Paragraphs: Judicial paragraphs 4–6

Source role: judicial text

4.

Topic: Section 37 capital/revenue tests and rejection of a single mechanical criterion

Source url: [Open cited source](#)

Pdf pages: 9; 10; 11; 12

Paragraphs: Judicial paragraphs 7–9

Source role: judicial text

5.

Topic: No evidentiary basis for entirely new plant or fresh venture

Source url: [Open cited source](#)

Pdf pages: 14; 15; 16

Paragraphs: Judicial paragraphs 11–13

Source role: judicial text

6.

Topic: Two-year advice clause; plant-specific use, secrecy and no-patent terms

Source url: [Open cited source](#)

Pdf pages: 16; 17

Paragraphs: Judicial paragraph 13; reproduced agreement clauses 2, 4 and 6

Source role: judicial text

7.

Topic: Revenue character, both answers and operative disposition

Source url: [Open cited source](#)

Pdf pages: 18

Paragraphs: Judicial paragraphs 14–15

Source role: judicial text

8.

Topic: Later statutory know-how and intangible-asset regimes, bounded context only

Source url: [Open cited source](#)

PDF pages: 206; 258

Paragraphs: Section 32(1)(ii) opening/footnote 89; section 35AB(1)–(2)/footnotes 43–44

Source role: historical statutory context

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

M.N. Venkatachaliah, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 18 PDF pages; SHA-256

9aaabab9a95e8d95a8f9344d87ce5c978d8c9f1c0328ce9fb1c0e213f9c6ab21. Original bytes preserved.

Judicial opening and numbered paragraphs 2–15 on physical pages 5–18 / SCR 306–319; headnotes, cited-authority list and appeal metadata on pages 1–4 separately identified; no adjacent judgment.

[Open cited source rendition](#)

The complete report contains editorial headnotes on physical pages 1–4; the Court's own numbered reasons begin on page 5. Paragraph numbers in pinpoints are judicial paragraph numbers.; The two-year limitation in clause 4 governs advice. The quoted agreement does not establish that every right to use the know-how or subcultures ended then.; The principal disposed appeal is Civil Appeal No. 43(NT) of 1975. Civil Appeal No. 44 of 1975 had been formally disposed of in 1987 to obtain a supplementary reference; it is procedural history, not a second newly disposed appeal in this report.; The Tribunal and High Court passages asserting a new plant or fresh venture are quoted positions rejected by the Court, not its factual findings.; The supplied source is unchanged despite typographical/OCR variants in the company name and cited-authority references. Only the verified SCR citation is used; no unverified parallel citation is added.; The 2011 statutory compilation is later historical context, not a current statute, a 2025 crosswalk or a fully reviewed compilation. Its amendment-history footnotes are editorial metadata, not words spoken by the Court.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or present-law certification. Apply the statutory text for the relevant year.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive later-treatment search is certified. Any actually checked later judgment or statute is expressly identified in this note.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 18](#)

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