

Deputy Commissioner, Income Tax, Baroda v. Gujarat Alkalies & Chemicals Ltd.

Civil Appeal No. 3957 of 2002 / Civil Appeal No. 3958 of 2002

[2008] 2 SCR 654 | 2008-02-08

Were upfront commitment charges deductible, and were the COFACE finance charges deductible despite the financed extension project not yet producing during the relevant year?

36(1)(iii) | 37 | 43(1), Explanation 8

Two judges | S.H. Kapadia, J. | B. Sudershan Reddy, J.

Assessment years: See the source-scope notes; no year inferred.

Historical statutory setting: verify the applicable version

The interest answer applies Core Health Care, whose paragraph 11 expressly addresses law before 1 April 2004. The later proviso and the verified Finance Act, 2015 amendment must be considered separately; no assessment year is supplied in this primary. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not_verified. Commitment charges were allowed under section 37, not section 36(1)(iii); the finance-charge reasoning does not create a blanket capitalization rule.

01 FACTS OF THE CASE

The Department brought Civil Appeal Nos. 3957 and 3958 of 2002 against Gujarat High Court's decision of 25 April 2001 in Tax Appeal Nos. 39 and 40 of 2001. The Supreme Court framed two questions: whether commitment charges could be deducted under section 36(1)(iii), and whether charges paid to COFACE were comparable to interest and deductible on that basis (physical 2-3/SCR 655-656, paragraphs 1-2).

For the first question, the assessee had borrowed approximately Rs. 30 crores from IDBI, which was refinanced by COFACE. The judgment describes COFACE as a foreign company and records interest, commitment charges and insurance charges payable by the assessee. The commitment charges were an upfront payment. The Tribunal had allowed that claim under section 37 (physical 3/SCR 656 C-G, paragraph 3).

For the second question, the assessee had established a phosphoric acid project as an extension of its existing business. Its IDBI foreign-currency borrowing was refinanced by COFACE, subject to finance charges. The assessee compared those charges to interest. Revenue treated them as interest and commitment charges, but disallowed them as capital expenditure because the project had not begun production in the assessment year under consideration, relying also on Explanation 8 to section 43(1) (physical 3-4/SCR 656 H-657 C, paragraph 4). No numerical assessment year or amount of the disputed charges is printed.

Source: [reported judgment / paragraphs Paragraphs 1-4 / PDF pages 2, 3, 4 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court kept the statutory routes distinct. On question 1, it examined the IDBI-assessee contract and relied on Additional CIT v. Akkamamba Textiles Ltd., (1997) 227 ITR 464, and CIT v. Sivakami Mills Ltd., (1997) 227 ITR 465, as supporting deduction of commission paid to bankers and insurers under section 37. It expressly clarified that those authorities and the Tribunal's allowance in this case rested on section 37, not section 36(1)(iii). It found no infirmity in the Tribunal's decision (physical 3/SCR 656 D-G, paragraph 3).

On question 2, Revenue's own characterization of the COFACE charges as interest brought in Core Health Care. The Court applied that decision on the facts before it and answered the question for the assessee. Core's freshly read reasoning rejects use of Explanation 8's actual-cost concept to deny the historical section 36(1)(iii) deduction for borrowing in a running business; it also identifies its pre-1 April 2004 limit (Gujarat Alkalies, physical 4/SCR 657 A-D, paragraph 4; Core, physical 9-13, paragraphs 8-14).

Paragraph 5 supplies a second basis. Since Revenue had also equated the finance charges with commitment charges, the section 37 revenue-expenditure conclusion supported deduction on that characterization as well. The two grounds are alternatives supporting the same finance-charge result. They do not establish that every finance-related payment is interest, or that every expenditure connected with a capital project must be deductible (physical 4/SCR 657 D-F).

Source: [reported judgment / paragraphs Paragraphs 3-5 / PDF pages 3, 4 / judicial text](#); [bounded cited primary judgment / paragraphs Paragraphs 8-14, bounded incorporated interest reasoning / PDF pages 9, 10, 11, 12, 13 / judicial text](#)

03 JUDICIAL DECISION

Both questions were answered in favour of the assessee and against the Department. The commitment-charge claim stood allowed under section 37. The finance-charge question succeeded through Core Health Care's interest reasoning and alternatively through section 37. Both Revenue appeals were dismissed with no order as to costs (physical 3-4/SCR 656-657, paragraphs 3-6).

Source: [reported judgment / paragraphs Paragraphs 3-6 / PDF pages 3, 4 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee, Gujarat Alkalies & Chemicals Ltd., on both questions

Both Revenue appeals dismissed

Two substantive deduction questions decided; no remand

No blanket capitalization or universal financing-charge rule. The character of the actual payments and governing statutory version remain material.

Source: [reported judgment / paragraphs Conclusion of paragraph 4 and paragraphs 5-6 / PDF pages 4 / judicial text](#)

05 AKHB REVIEW POINT

Begin with the charge and the contract. A loan's capital purpose does not by itself answer which deduction provision governs a particular fee. This judgment deliberately corrects the section 36 framing for commitment charges and sustains section 37 treatment; the finance-charge issue then has two case-specific routes. Do not merge these into a rule that all pre-production expenditure is revenue expenditure. Insurance charges are narrated, but no separate third question or separately quantified insurance allowance is decided.

The incorporated interest route must retain Core's boundary: paragraph 11 confines that ruling to law before 1 April 2004 and leaves application of the later proviso outside those appeal years. The freshly reopened official Finance Act, 2015 section 13(a) separately records removal, from 1 April 2016, of the proviso's restriction to extension of an existing business or profession. These limits require a fresh statutory analysis for another period; they do not mechanically decide the section 37 characterization of every later fee.

For research use, obtain the agreement, distinguish interest from each fee, identify the assessment year and first-use/commencement facts, and test the conditions of the relevant section. The approximately Rs. 30-crore figure is the borrowing, not the allowed deduction. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain not_verified.

Source: [reported judgment / paragraphs Paragraphs 3-5, separate routes / PDF pages 3, 4 / judicial text; bounded cited primary judgment / paragraphs Paragraph 11, historical limit / PDF pages 11, 12 / judicial text; official statutory html / paragraphs Finance Act, 2015, section 13\(a\) / official statutory text](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 3957 of 2002

Outcome: Dismissed by common paragraph 6; no separate question allocation stated

2.

Case number: Civil Appeal No. 3958 of 2002

Outcome: Dismissed by common paragraph 6; no separate question allocation stated

Issue outcomes

1.

Issue: Upfront commitment charges

Result: Tribunal's allowance under section 37 upheld; expressly not an allowance under section 36(1)(iii)

2.

Issue: COFACE finance charges

Result: Allowed through the interest analogy to Core Health Care and alternatively the section 37 commitment-charge reasoning

Costs: No order as to costs

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

Two distinct expenditure questions: upfront commitment charges allowed under section 37, and COFACE finance charges accepted on the interest analogy and alternatively as commitment charges under section 37. Revenue's Explanation 8 capitalization argument is rejected in this setting.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED LATER TREATMENT CHECKS AND THEIR LIMITS

1.

Authority: Finance Act, 2015, section 13(a)

Relationship: subsequent statutory amendment not judicial overruling

Result: Official enacted text states removal of the existing-business-extension restriction in the section 36(1)(iii) proviso from 1 April 2016.

Source pinpoints

1.

Source url: [Open cited source](#)

Paragraphs: Section 13 heading, Finance Acts/2015 identity, section 13(a)

Source role: official statutory text

Limit: Does not certify the complete amendment chain, present law, treatment of a particular later borrowing or any 2025-Act mapping.

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Section 36(1)(iii) proviso: bounded Core Health Care comparison; Finance Act, 2015, section 13(a): separately verified subsequent statutory limit

DATED OFFICIAL STATUTORY HTML COMPARISONS AND READING LIMITS

1.

Kind: official statutory html

Title: Income Tax Department Finance Act 2015, section 13: Amendment of section 36

Url: [Open cited source](#)

Accessed at: 2026-10-05T17:13:24+00:00

Review scope: Freshly reopened official HTML; page identity Finance Acts/2015, section 13 heading and enacted section 13(a) text with the stated 1 April 2016 commencement read. No PDF bytes/hash, full-Act authentication or complete current-law consolidation claimed.

SOURCE & VERIFICATION

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

Identified source rendition: 4 PDF pages; SHA-256

9ec244e5aff42d0337c670cd33665c93e4f6f322e647413097ad4d50147e188e. Original bytes preserved.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; all listed proceedings accounted for: True; comprehensive later treatment verified: False; current law verified: False; mapping 2025 verified: False; independent QA complete: True; parent full prose approval: True

Printed SCR citation, date, bench and proceedings verified from the primary text and all primary images. Frozen catalogue INSC identifiers not independently authenticated in this review.

The report's headnote describes refinancing by a foreign bank; judicial paragraph 3 calls COFACE a foreign company. This note follows the judicial description without making a fresh finding about COFACE's legal status.; The only amount printed is approximately Rs. 30 crores borrowed from IDBI. Neither the charges nor the assessment year are quantified.; Question 1 is framed under section 36(1)(iii), but paragraph 3 expressly upholds allowance under section 37, not section 36(1)(iii).; Question 2 has two alternative grounds in paragraphs 4 and 5. Revenue's characterization and project-nonproduction objection must be distinguished from the Court's conclusion.; The actual IDBI agreement and separate originals of Akkamamba Textiles and Sivakami Mills were not independently reviewed; their treatment is reported only as this judicial opinion states.; No independent third insurance-charge ruling, blanket capitalization principle, or current-law outcome is inferred.

No assessment year is printed in this primary. Years appearing in Core Health Care or other comparison authorities are not imported.

One common opinion in two Revenue appeals from Gujarat High Court's decision dated 25 April 2001 in Tax Appeal Nos. 39 and 40 of 2001. No appeal-by-appeal allocation of the two questions or separate facts is supplied.

STATUTORY SCOPE

No Income-tax Act, 2025 crosswalk or automatic carryover. Complete amendment history, commencement, savings and present applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-05. Only specifically described primary comparisons and statutory limits are verified. Comprehensive later treatment, present applicability and 2025 mapping remain not_verified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 4](#)

SHA-256: 9ec244e5aff42d0337c670cd33665c93e4f6f322e647413097ad4d50147e188e

[bounded cited primary judgment - PDF pages: 14](#)

SHA-256: 252bbaadb5d29aa197dba2dbe92cda751c4bdb4158c168ca37fa1cab9313654b

[Income Tax Department Finance Act 2015, section 13: Amendment of section 36](#)

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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