SUPREME COURT OF INDIA

Prashanti Medical Services & Research Foundation

Vs.

Union of India

C.A.No.5849 of 2019

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

25.07.2019

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C) No.34287 of 2017

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 14.09.2017 passed by the High Court of Gujarat at Ahmedabad in SCA No.7558 of 2017 whereby the High Court dismissed the petition filed by the appellant herein.

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

4. The appellant herein is the petitioner and the respondents herein are the respondents in the petition out of which this appeal arises.

5. The appellant is a Charitable Trust registered under the provisions of the Bombay Public Trust Act, 1950. The appellant has set up a Heart Hospital in Ahmadabad. The commencement of the project of the appellant's hospital began in the year 2014 (05.05.2014).

6. On 27.09.2014, the appellant filed an application under Section 35AC of the Income Tax Act, 1961 (hereinafter referred to as "the Act) to the National Committee for Promotion of Social and Economic Welfare, Department of Revenue, North Block, New Delhi (hereinafter referred to as "the Committee") for grant of approval to their hospital project as specified in Section 35AC of the Act so as to enable any "assessee" to incur expenditure by way of making payment of any amount to the appellant for construction of their approved hospital project and accordingly claim appropriate deduction of such

payment from his total income during the previous year. Like the appellant, several persons, as specified in Section 35AC of the Act, also made applications to the Committee for grant of approval to their hospital projects.

7. A notification was issued by the Government of India on 07.12.2015 mentioning therein that the Committee has approved 28 projects as "eligible projects" under Section 35AC of the Act. The name of the appellant appears at serial No. 10 in the notification dated 07.12.2015. It reads as under:

S.No.	Name of the Institution	Project or scheme and estimated cost thereof	Maximum amount of cost to be allowed as deduction under Section 35AC and period of approval
10.	Prashanti Medical Research Foundation, Sri Satya Sai Heart Hospital, Kashindra Village, Ahmedabad-Dholka Road(Gujarat)	Prashanti Medical Services & Reasearch Foundation, Ahmedabad RS.250.00 Crore	The Committee recommended approval for the project at the estimated cost of Rs.250.00 crore for three financial years commencing with financial year, 2015-16,i.e., 2015-16, 2016-17 and 2017-18

8. According to the appellant, they received amount by way of donation from several assesses during the years 2015-2016 and 2016-2017. These assesses then claimed deduction of the amount, which they had donated to the appellant for their hospital project, from their total income. As per the appellant, they received donations in three financial years from several assesses for their hospital project as detailed below:

Financialyear	Rs.
2015-16	10.97 crores
2016-17	20.55 crores
2017-18	3.84 crores

9. The benefit of claiming deduction was, however, discontinued from the assessment year 2018-2019 by insertion of sub-section(7) in Section 35AC of the Act by the Finance Act, 2016 with effect from 01.04.2017.

10. It is this insertion of sub-section(7) in Section 35AC of the Act, which gave rise to filing of the petition by the appellant in the Gujarat High Court. The appellant in the petition questioned the constitutional validity of sub-section(7) of Section 35AC of the Act inter alia on the ground that once the Committee granted an approval to the appellant's hospital project for a period of three financial years, the same could not be withdrawn qua the appellant on the strength of insertion of sub-section (7) in Section 35AC of the Act. In other words, the challenge was on the ground that sub-section (7) of Section 35AC is essentially prospective in nature and, therefore, it will have no application to those projects which were approved by the Committee prior to insertion of sub-section(7), i.e., 01.04.2017. The challenge was also on the ground that the Revenue cannot apply sub-section (7) retrospectively and withdraw the benefits, whether fully or partially, which were approved to the appellant. It was, therefore, contended that the appellant and the assessees should be held entitled to avail of the full benefit for the three financial years in terms of the notification dated 07.12.2015.

11. The respondent (Revenue) supported insertion of sub-section (7) in Section 35AC and inter alia contended that, firstly, insertion of sub-section (7) is prospective in nature; secondly, it operates qua every person alike the appellant irrespective of the approval granted by the Committee; Thirdly, sub¬section (7), in clear terms, provides discontinuance of deduction only from the assessment year 2018¬2019 onwards; Fourthly, this intention of the legislature is clear from the perusal of the budget speech of the Minister of Finance, notes on clauses and memorandum explaining the amended provisions in the Finance Bill, 2016; Fifthly, the appellant not being an assessee under Section 35AC of the Act has no locus to raise the issue in question and nor they are, in any way, affected due to insertion of sub-section (7); Sixthly, the appellant neither has any vested right in such matters nor has any right to set up a plea of promissory estoppel against the exercise of any legislative power such as the one exercised by the Parliament while inserting sub-section(7); and lastly, the appellant has already received substantial donations from several assessees for their hospital project during the two financial years (2015-2016 and 2016-2017) and, therefore, there is neither any hardship nor any prejudice caused to the appellant due to insertion of sub-section (7) in Section 35AC of the Act.

12. The High Court, in the impugned order, repelled the challenge and while upholding the pleas raised by the respondent(Revenue) dismissed the appellant's petition, which has given rise to filing of this appeal by the appellant after obtaining special leave from this Court.

13. Heard Mr. Arvind Datar, learned senior counsel for the appellant and Mr. K. Radhakrishnan, learned senior counsel for the respondents.

14. Mr. Arvind Datar, learned senior counsel appearing for the appellant reiterated the

aforementioned submissions, which were urged in High Court, and while elaborating contended that the appellant so also the assesses, who made payment to the appellant in the financial year 2017¬2018 should have been allowed to claim deduction during the financial year 2017-2018 (Assessment Year 2018-2019) also notwithstanding insertion of sub-section (7) in Section 35AC of the Act with effect from 01.04.2017.

15. In support of his submissions, learned counsel placed reliance on the decisions of this Court in S.*L. Srinivasa Jute Twine Mills (P) Ltd. vs. Union of India & Anr*[1]*., Sangam Spinners vs. Regional Provident Fund Commissioner I*[2]*, and Commissioner of Income Tax(Central)-I, New Delhi vs. Vatika Township Pvt. Ltd*[3]*.,*.

16. In reply, learned counsel for the respondent (Revenue) supported the reasoning and the conclusion arrived at by the High Court and prayed for dismissal of the appeal. Learned counsel placed reliance on the decisions in *State of Kerala & Anr. vs. Gwalior Rayon Silk Manufacturing (WVG.) Co. Ltd. Etc*[4]*., , Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P. & Ors*[5]*., R.K. Garg vs. Union of India & Ors*[6]*., Kasinka Trading & Anr. vs. Union of India & Anr*[7]*., Bannari Amman Sugars Ltd. vs. Commercial Tax Officer & Ors*[8]*., Shree Sidhbali Steels Ltd. & Ors. vs. State of U.P. & Ors*[9]*., Bajaj Hindustan Ltd. vs. Sir Shadi Lal Enterprises Ltd. & Anr*[10]*., and Kothari Industrial Corporation Ltd. vs. Tamil Nadu Electricity Board & Anr*[11].

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we are not inclined to interfere with the impugned order of the High Court.

18. Section 35AC was inserted in the Act with effect from 01.04.1992 whereas sub-section (7), which is subject matter of this appeal, was inserted in Section 35AC with effect from 01.04.2017, which reads as under:

> "35AC. (1) Where an assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme, the assessee
> shall, subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year :
> Provided that a company may, for claiming the deduction under this sub¬section, incur expenditure either by way of payment of any sum as aforesaid or directly on the eligible project or scheme.
> (2) The deduction under sub-section (1) shall not be allowed unless the assessee furnishes along with his return of income a certificate
> (a) where the payment is to a public sector company or a local authority or an association or institution referred to in sub¬section (1), from such public sector company or local authority or, as the case may be, association or institution;
> (b) in any other case, from an accountant, as defined in the Explanation below sub-section
> (2) of section 288,

in such form, manner and containing such particulars (including particulars relating to the progress in the work relating to the eligible project or scheme during the previous year) as may be prescribed.
Explanation.—The deduction, to which the assessee is entitled in respect of any sum paid to a public sector company or a local authority or to an association or institution for carrying out the eligible project or scheme referred to in this section applies, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee,—

(a) the approval granted to such association or institution has been withdrawn; or

(b) the notification notifying the eligible project or scheme carried out by the public sector company or local authority or association or institution has been withdrawn.

(3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.

(4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently—

(t) that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted; or

(tt) such association or institution, to which approval has been granted, has not furnished to the National Committee, after the end of each financial year, a report in such form and setting forth such particulars and within such time as may be prescribed, the National Committee may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval:

Provided that a copy of the order withdrawing the approval shall be forwarded by the National Committee to the Assessing Officer having jurisdiction over the concerned association or institution.

(5)Where any project or scheme has been notified as an eligible project or scheme under clause (b) of the Explanation, and subsequently—

(i) the National Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which such project or scheme was notified; or

(ii) a report in respect of such eligible project or scheme has not been furnished

after the end of each financial year, in such form and setting forth such particulars and within such time as may be prescribed, such notification may be withdrawn in the same manner in which it was issued:

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or local authority, as the case may be:

Provided further that a copy of the notification by which the notification of the eligible project or scheme is withdrawn shall be forwarded to the Assessing Officer having jurisdiction over the concerned association, institution, public sector company or local authority, as the case may be, carrying on such eligible project or scheme.

(6) Notwithstanding anything contained in any other provision of this Act, where— (t) the approval of the National Committee, granted to an association or institution, is withdrawn under sub-section (4) or the notification in respect of eligible project or scheme is withdrawn in the case of a public sector company or local authority or an association or institution under sub-section (5); or (tt) a company has claimed deduction under the proviso to sub-section (1) in respect of any expenditure incurred directly on the eligible project or scheme and the approval for such project or scheme is withdrawn by the National Committee under sub-section (5), the total amount of the payment received by the public sector company or the local authority or the association or the institution, as the case may be, in respect of which such company or authority or association or institution has furnished a certificate referred to in clause (a) of sub¬section (2) or the deduction claimed by a company under the proviso to sub-section (1) shall be deemed to be the income of such company or authority or association or institution, as the case may be, for the previous year in which such approval or notification is withdrawn and tax shall be charged on such income at the maximum marginal rate in force for that year.

(7) No deduction under this section shall be allowed in respect of any assessment year commencing on or after the 1st day of April, 2018. Explanation.—For the purposes of this section,—

(a) "National Committee" means the Committee constituted by the Central Government, from amongst persons of eminence in public life, in accordance with the rules made under this Act;

(b) "eligible project or scheme" means such project or scheme for promoting the social and economic welfare of, or the uplift of, the public as the Central Government may, by notification in the Official Gazette, specify in this behalf on the recommendations of the National Committee."

19. It is not in dispute that 28 projects were approved by the Committee by notification

dated 07.12.2015 but none of them (27) has come forward to question the constitutional validity of sub-section (7) except the appellant herein. In other words, out of 28 projects owners whose projects were approved by the Committee by notification dated 07.12.2015, only the appellant herein has felt aggrieved and filed the petition in the High Court.

20. Be that as it may, as rightly argued by the learned counsel for the respondent (Revenue), the real aggrieved parties, which should have felt aggrieved by insertion of sub-section (7) in Section 35AC of the Act, were those assesses, i.e., Donors who despite paying the donation to the appellant were not allowed to claim deduction of the said amount from their total income during the financial year 2017-2018.

21. In other words, one of the main objects for which Section 35AC was enacted was to allow the assessees to claim deduction of the amount paid by them to the appellant for their project.

22. As mentioned above, none of the assessees (Donee), who claimed to have paid amount to any eligible projects came forward complaining that despite their donating the amount to the appellant for their project, they were denied the benefit of claiming deduction of such amount from their total income by virtue of sub-section (7) of Section 35AC of the Act during the financial year 2017-2018.

23. It is not in dispute that the benefit of the deduction available under Section 35AC of the Act was duly availed of by all the assessees for two financial years, namely, 2015-2016 and 2016-2017.

24. The dispute is now confined only to third financial year, i.e., 2017-2018 because for this year, the assessees were not allowed to claim deduction of the amount paid by them to the appellant on account of insertion of sub-section(7) in Section 35AC of the Act with effect from 01.04.2017.

25. We are of the view that sub-section (7) is prospective in its operation and, therefore, all the assessees were rightly allowed to claim deduction of the amount paid by them to eligible projects from their total income during two financial years, namely, 2015-2016 and 2016-2017. If sub-section (7) had been retrospective in its operation then the deduction for 2015-2016 and 2016-2017 too would have been disallowed. Admittedly, such is not the case here.

26. As rightly argued by the learned counsel for the respondent (Revenue), a plea of promissory estoppel is not available to an assessee against the exercise of legislative power and nor any vested right accrues to an assessee in the matter of grant of any tax concession to him. In other words, neither the appellant nor the assessee has any right to set up a plea of promissory estoppel against the exercise of legislative power such as the one exercised while inserting sub-section (7) in Section 35AC of the Act (see-M/s Motilal Padampat Sugar Mills Co. Ltd. (supra) and other cases relied on by the learned counsel for the respondent-Revenue). It is more so when we find that this sub-section was made applicable

uniformly to all alike the appellant prospectively.

27. It is not in dispute that now time to donate the amount to eligible projects for claiming deduction from the total income for the year 2017-2018 has expired. It is now no longer available due to efflux of time. In this view of the matter, even if the appellant received any amount from any assessee for their project, no deduction could be allowed to such assessee either for the period 2017-2018 or for any subsequent period.

28. It was, however, stated by the learned counsel for the appellant that the appellant has received 3.84 crores during the year 2017-2018 from various assessees. It was also stated that if sub-section(7) had been held not applicable to the appellant's project then the appellant would have received much more amount than Rs.3.84 crores during the financial year 2017-2018, which is clear from the amount received by the appellant in earlier two years prior to insertion of sub-section(7), i.e., Rs. 10.97 crores during the financial year 2015-2016 and Rs. 20.55 crores during the financial year 2016-2017.

29. We find no merit in this submission. In a taxing statute, a plea based on equity or/and hardship is not legally sustainable. The constitutional validity of any provision and especially taxing provision cannot be struck down on such reasoning.

30. Learned counsel for the appellant then urged that having regard to the fact that the appellant has set up a charitable hospital and that they were not able to receive more amount by way of donation for their project in the third financial year 2017-2018, this Court may consider appropriate to invoke powers under Article 142 of the Constitution and allow the appellant to receive donation even for the third financial year in terms of the notification dated 07.12.2015 from their donors.

31. We are afraid, we cannot accept this submission for more than one reason. First, as held above, in tax matter, neither any equity nor hardship has any role to play while deciding the rights of any taxpayer qua the Revenue; Second, once the action is held in accordance with law and especially in tax matters, the question of invoking powers under Article 142 of the Constitution does not arise; and third, the appellant's Donors were admittedly allowed to claim deduction of the amount paid by them to the appellant under Section 35AC during the two financial years 2015¬2016 and 2016-2017. It is for all these reasons, the matter must rest there.

32. Learned counsel for the appellant placed reliance on the decision of S.L. Srinivasa Jute Twine Mills (P) Ltd. (supra), Sangam Spinners (supra) and CIT vs. Vatika Township Pvt. Ltd., (supra). In our view, in the light of the foregoing discussion and the findings recorded, the arguments based on the principle laid down in these decisions cannot be accepted. We, therefore, need not deal with this issue any more.

33. In view of the foregoing discussion, we find no merit in the appeal. It is accordingly dismissed.

Judgment Referred.