
Jaintia Alloys P. Ltd. and Others and Premier Cryogenics Ltd. Vs Union of India (UOI) and Others

None

Court: Gauhati High Court

Date of Decision: March 26, 2009

Acts Referred:

Income Tax Act, 1961 – Section 115JA, 115JB, 154, 80IB

Citation: (2010) 235 CTR 201 : (2010) 320 ITR 442

Hon'ble Judges: Ranjan Gogoi, J; C.R. Sharma, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Both the writ petitions having raised common questions of law were heard together and are being disposed of by this common order.

2. We have heard Dr. A. K. Saraf, learned senior counsel for the petitioners in both the cases and Shri U. Bhuyan, learned standing counsel,

Income Tax Department.

3. The challenge in the writ petitions is against the notices issued by the respondents u/s 154 of the Income Tax Act for rectification of the

assessments of the petitioners for the assessment year 2001-02. The writ petitioners have also challenged the validity of the provision of Section

115JB of the Income Tax Act of 1961 in so far as it seeks to impose tax on the industrial units owned by the petitioners. The challenge made in the

writ petition lies within a short compass. According to the petitioners, u/s 80IB of the Act, industrial undertakings located in a industrially backward

State specified in Eighth Schedule to the Act are eligible for 100 per cent deduction of the profits and gains derived from such undertakings for five

assessment years and, thereafter, to deduction of 30 per cent of the profits and gains for a further period of five years. According to the petitioners,

their units are entitled to the aforesaid deductions. The petitioners further contend that Section 115JB of the Act which seeks to impose tax at the

rate of 7.5 per cent of the book profit of an industrial unit like the petitioners which are situated in a notified industrially backward area is illegal and

unconstitutional as it seeks to override the benefits granted u/s 80IB. In this regard the petitioner also contends that prior to the introduction of

Section 115JB of the Act, the provisions of Section 115JA were in force under which, particularly clause (v) of Explanation to Section 115JA(2),

the amount of profit derived by an industrial undertaking located in an industrially backward State and District, as referred to in Sub-sections (4)

and (5) of Section 80IB, were eligible to claim deduction of 100 per cent of such profits and gains.

4. A reading of the writ petitions would indicate that the challenge therein has been structured on the basis that the units of the petitioners had been

set up pursuant to what the petitioners comprehend to be a promise contained in Section 80IB of the Act. There are clear and categorical

averments made in the writ petitions that had it not been for the aforesaid promise of tax exemption conferred by Section 80IB made with a view

to foster industrial growth in the North-Eastern region, the petitioners would not have set up their industrial units. As the promise contained in

Section 80IB has been sought to be breached by the introduction of Section 115JB of the Act, the petitioners contend that the aforesaid provision

of the Act in so far as the units covered by Section 80IB is concerned, would be unconstitutional and the actions taken on that basis including the

impugned notices issued u/s 154 of the Act would be void and inoperative in law.

5. Having noticed the pleadings made in the writ petitions and the contentions advanced in support of the challenge made, the court can only

observe that the contentions on the basis of which the writ petitions have been structured are wholly unacceptable in law. The doctrine of

promissory estoppel cannot be made applicable to nullify legislative exercise inasmuch as the Legislature cannot be estopped from exercising its

powers so long as such exercise is in conformity with the provisions of the Seventh Schedule to the Constitution and the same does not transgress

the fundamental rights guaranteed by Part III of the Constitution. A reading of the provisions of Sections 80IB, 115JA and 115JB of the Act make

it amply clear that initially the benefit of deduction was contemplated by Section 80IB(4) and (5) and clause (v) to Explanation contained in Section

115JA(2). By enacting the provisions of Section 115JB, the Legislature had restricted the said benefits by making the industrial units like those of

the petitioners liable to tax at the rate of 7.5 per cent of the book profit.

6. The Legislature cannot be denied the power to curtail benefits earlier granted, as has been done in the present case, so long as the subject-

matter of the legislative exercise lies within the domain of the legislative power conferred by the Constitution, which position is admitted in the

present writ petitions. Curtailment of the benefit earlier granted by a legislative act cannot be invalidated on the principles of promissory estoppel.

7. For the aforesaid reasons, we do not find any merit whatsoever in any of the writ petitions under consideration. Both the writ petitions are,

therefore, dismissed. The interim orders passed therein are vacated.