



In Prashanti Medical Services & Research Foundation Union of India, a writ petition was filed challenging:-

- The constitutional validity of sub-section(7) of Section 35AC of the Income Tax Act inter alia on the ground that once National Committee for Promotion of Social and Economic Welfare granted approval to the petitioner's hospital project for a period of three financial years, the same could not be withdrawn qua them on the strength of insertion of sub-section (7) in Section 35AC of the Act.
- The High Court turned down the plea and the matter was taken up before the Apex Court.

Facts of the Case/Trail of events

1.	<ul style="list-style-type: none">✓ The assessee is a registered Charitable Trust.✓ It has set up a Heart Hospital in Ahmedabad. The commencement of the project of the assessee's hospital began in the year 2014 (5-5-2014).
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	<p>It applied to the National Committee for Promotion of Social and Economic Welfare for grant of approval to their hospital project as specified in section 35AC so as to enable any donor to incur expenditure by way of making payment of any amount to the assessee for construction of their approved hospital project and accordingly claim an appropriate deduction of such payment from his total income during the previous year which was granted for a period of three financial years.</p> <p>✓ 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.</p>
2.	<p>✓ According to the assessee, they received amount by way of donation from several donors during the years 2015-16 and 2016-17. These donors then claimed deduction of the amount, which they had donated to the assessee for their hospital project, from their total income.</p> <p>✓ The benefit of claiming deduction was, however, discontinued from the assessment year 2018-19 by insertion of sub-section(7) in section 35AC by the Finance Act, 2016 with effect from 1-4-2017.</p>
3.	<p>✓ 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 approval to the appellant's hospital project for a period of three financial years.</p> <p>✓ The same could not be withdrawn qua the appellant on the strength of the insertion of sub-section (7) in Section 35AC of the Act. In other words, the challenge was on the ground that subsection (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.</p> <p>✓ 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 assessee should be held entitled to avail of the full benefit for the three financial years in terms of the notification dated 07.12.2015</p>

Observations by Hon'ble Apex Court

1.	<p>Excerpts of paras ranging between 22-33</p> <ul style="list-style-type: none">✓ Section 35AC was inserted in the Act with effect from 1-4-1992.✓ Sub-section (7), which is the subject matter of this appeal, was inserted in section 35AC with effect from 1-4-2017.✓ The Fact is not in dispute that, 28 projects were approved by the Committee by Notification dated 7-12-2015 but none of them (27) has come forward to question the constitutional validity of sub-section (7) except the assessee herein.✓ In other words, out of 28 project owners whose projects were approved by the Committee by Notification dated 7-12-2015, only the assessee herein has felt aggrieved and filed the petition in the High Court.✓ Be that as it may, as rightly argued by the respondent (revenue), the real aggrieved parties, which should have felt aggrieved by insertion of sub-section (7) in section 35AC, were those assesses, i.e., Donors who despite paying the donation to the assessee were not allowed to claim a deduction of the said amount from their total income during the financial year 2017-18.✓ In other words, one of the main objects for which section 35AC was enacted was to allow the donors to claim a deduction of the amount paid by them to the assessee for their project.✓ As mentioned above, none of the donors, who claimed to have paid amount to any eligible projects came forward complaining that despite their donating the amount to the assessee 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 during the financial year 2017-18.✓ It is not in dispute that the benefit of the deduction available under section 35AC was duly availed of by all the donors for two financial years, namely, 2015-16 and 2016-17.✓ The dispute is now confined only to the third financial year, i.e., 2017-18 because for this year, the donors were not allowed to claim a deduction of the amount paid by them to the assessee on account of insertion of sub-section (7) in section 35AC with effect from 1-4-2017.✓ It is viewed that sub-section (7) is prospective in its operation and, therefore, all the assesseees were rightly allowed to claim a deduction of the amount paid by them to eligible projects from their total income during two financial years, namely, 2015-16 and 2016-17. If sub-section (7) had been retrospective in its operation then the deduction for 2015-16 and 2016-17 too would have been disallowed. Admittedly, such is not
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the case here.

- ✓ As rightly argued by 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 assessee nor the donor 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.
- ✓ It is more so when we find that this sub-section was made applicable uniformly to all alike the assessee prospectively.
- ✓ 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 2017-18 has expired.
- ✓ It is now no longer available due to the efflux of time. In this view of the matter, even if the assessee received any amount from any donor for their project, no deduction could be allowed to such assessee either for the period 2017-18 or for any subsequent period.
- ✓ It was, however, stated by the assessee that it has received Rs. 3.84 crores during the year 2017-18 from various donors. It was also stated that if sub-section (7) had been held not applicable to the assessee's project then the assessee would have received much more amount than Rs.3.84 crores during the financial year 2017-18, which is clear from the amount received by the assessee in earlier two years prior to insertion of sub-section(7), i.e., Rs. 10.97 crores during the financial year 2015-16 and Rs. 20.55 crores during the financial year 2016-17.
- ✓ **There is 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.**
- ✓ The assessee then urged that having regard to the fact that the assessee 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 2017-18, this Court may consider appropriate to invoke powers under article 142 of the Constitution and allow the assessee to receive donation even for the third financial year in terms of the Notification dated 7-12-2015 from their donors.
- ✓ The appellant then pleaded before the bench to invoke powers under Article 142 of the Constitution and allow them to receive donations even for the third financial year in terms of the notification dated 07.12.2015 from their donors. However, this submission is not acceptable for more than one reason:-

	<p>1. As held above, in a tax matter, neither any equity nor hardship has any role to play while deciding the rights of any taxpayer qua the revenue;</p> <p>2. Once the action is held in accordance with the 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 a deduction of the amount paid by them to the assessee under section 35AC during the two financial years 2015-16 and 2016-17. It is for all these reasons, the matter must rest there.</p>
2.	In view of the foregoing discussion, there is no merit in the appeal. It is accordingly dismissed.

A. Court Pronouncements relied upon by the Apex Court (Cited in para 16/17)

- a) *S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India* [2006] 2 SCC 740.
- b) *Sangam Spinners v. Regional Provident Fund Commissioner* [2008] 1 SCC 391.
- c) *CIT v. Vatika Township (P.) Ltd.* [2014] 49 taxmann.com 249/227 Taxman 121/367 ITR 466 (SC)
- d) *State of Kerala v. Gwalior Rayon Silk Manufacturing (WVG) Ltd.* [1973] 2 SCC 713.
- e) *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P* 1979 210 (SC).
- f) *R.K. Garg v. Union of India* [1981] 753/[1982] 133 ITR 239 (SC)
- g) *Kalinka Trading v. Union of India* 1995 906 (SC).
- h) *Bannari Amman Sugars Ltd. v. Commercial Tax Officer* 2005 taxmann.com 1509 (SC).
- i) *Shree Sidhballi Steels Ltd. v. State of U.P.* [2011] 3 SCC 193.
- j) *Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.* [2011] 1 SCC 640.
- k) *Kothari Industrial Corporation Ltd. v. Tamil Nadu Electricity Board* [2016] 4 SCC 134.

B. In our view, below-mentioned points are needed to be read carefully that, when the court cited that:-

- i) ***The Supreme Court held that sub-section (7) is prospective in its operation and, therefore, all assesseees were rightly allowed to claim a deduction of the amount paid for eligible projects during two previous years, namely, 2015-16 and 2016-17.***
- ii) ***If sub-section (7) had been retrospective in its operation then the deduction for 2015-16 and 2016-17 too would have been disallowed. Admittedly, such was not the case here.***
- iii) ***In tax matters, neither equity nor hardship has any role to play while deciding the rights of any taxpayer qua the revenue. In a taxing statute, a plea based on equity or/and hardship is not legally sustainable.***
- iv) ***The constitutional validity of any provision and especially taxing provision could not be struck down on such reasoning.***

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