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+ **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**WRIT PETITION (CIVIL) NOS. 13825/2009 &**  
**7699/2010**

% **Reserved on: 22<sup>nd</sup> November, 2011**  
**Date of Decision: 24<sup>th</sup> January, 2012**

REGENCY SORAJ INFRASTRUCTURES ...Petitioner  
Through Mr. Porus F. Kaka, Sr. Advocate  
with Mr. Divesh Chawla, Mr. Arvind  
Gupta and Ms. Shiny Varghese,  
Advocates.

**VERSUS**

UNION OF INDIA & OTHERS .....Respondents  
Through Mr. A.S. Chandhiok, ASG with Ms.  
Sonia Mathur and Ms. Riya Kaul,  
Advocates for UOI.  
Mr. Kiran Babu, Sr. Standing  
Counsel for respondent Nos.3 and  
4.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE R.V. EASWAR**

**SANJIV KHANNA, J.:**

The petitioner- Regency Soraj Infrastructures is a joint venture between M/s Flower Valley Properties and Buildcon and M/s L.K. Corporation. Pursuant to permission granted by the District Industrial Centre vide letter dated 3<sup>rd</sup> January, 2005 and the commencement certificate dated 7<sup>th</sup> January, 2005 issued by the Pune Municipal Corporation, they have constructed

Information Technology Park named Metropolitan in Shivaji Nagar, Pune-Mumbai Road.

2. On 23<sup>rd</sup> September, 2006, they filed an application with the Ministry of Commerce and Industries for registration of the industrial park under the Industrial Park Scheme, 2002 (2002, Scheme, for short) to avail of benefits/exemption under Section 80IA of the Income Tax Act, 1961 (Act, for short). Thereafter, some correspondence was exchanged and information/details were furnished. The petitioner was required and furnished vide letter dated 29<sup>th</sup> August, 2007 first and final completion certificate issued by Pune Municipal Corporation dated 29<sup>th</sup> August, 2007. By letter dated 21<sup>st</sup>/22<sup>nd</sup> May, 2009, the petitioner was informed that their case was considered by the Empowered Committee in their meeting held on 18<sup>th</sup> September, 2008 and since the date of commencement of park was after 31<sup>st</sup> March, 2006, their application was not covered under the 2002, Scheme. The petitioner was asked to explain why the application should not be treated as closed being ineligible under the 2002, Scheme. Attention of the petitioner was drawn to the Industrial Park Scheme, 2008 (2008, Scheme) notified by the Central Board of Direct Taxes, Department of Revenue on

8<sup>th</sup> January, 2008 in respect of parks which had come up on or after 1<sup>st</sup> April, 2006.

3. The petitioner submitted their justification dated 22<sup>nd</sup> June, 2009. However, vide letter dated 28<sup>th</sup> July, 2009, the petitioner was informed that the 2002, Scheme which was administered by the Ministry of Commerce and Industries had ended on 31<sup>st</sup> March, 2006. Thereafter, the 2008, Scheme was notified on 8<sup>th</sup> January, 2008 and parks set up on or after 1<sup>st</sup> April, 2006 but not later than 31<sup>st</sup> March, 2009 were covered by the said scheme. The 2008, Scheme was notified by Central Board of Direct Taxes (CBDT). Therefore, the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industries did not have mandate and was not the administering agency of the 2008, Scheme and the application of the petitioner was returned.

4. The petitioner thereafter moved an application before the CBDT dated 26<sup>th</sup> June, 2009. The said application has been rejected vide letter dated 8<sup>th</sup> October, 2009 on the ground that the park developed by the petitioner did not fulfil the requirements of 2008, Scheme on the following two accounts:

- (i) The minimum requirement of constructed area in an industrial park under 2008, Scheme was 15000 square meters but the constructed area in the park of the petitioner was 10287.50 square metres.
- (ii) The petitioner's park had only five units as against thirty units postulated and required under the 2008, Scheme. The term "industrial unit" as defined under 2008, Scheme means a separate and distinct entity assessable to tax having a separate PAN.

5. The petitioner herein has challenged the order/letter dated 28<sup>th</sup> July, 2009 returning/rejecting their application under the 2002, Scheme and the order dated 8<sup>th</sup> October, 2009. It is submitted that the petitioner is entitled to registration under the 2002, Scheme and, therefore, eligible for exemption under Section 80 IA of the Act. In Writ Petition (Civil) No. 7699/2010, the petitioner has also challenged the assessment order dated 22<sup>nd</sup> October, 2010 passed by Income Tax Officer, Pune denying exemption under Section 80 IA(4)(iii).

6. In brief the contentions raised by the petitioner are as under:

(1) On reading of Section 80 IA(4)(iii) read with the proviso, the 2002, Scheme is applicable.

(2) The 2008, Scheme was introduced and implemented with effect from 1<sup>st</sup> January, 2008 and being delegated legislation cannot be given retrospective effect. Section 80 IA does not permit retrospective delegated legislation.

(3) There is conflict between Section 80 IA(4)(iii) read with proviso, by which the date was extended upto 31<sup>st</sup> March, 2009; and the 2008, Scheme as the said scheme postulates that it would be applicable to all industrial parks set up with effect from the date of commencement as defined in clause 2(f) i.e. the date when the completion certificate was issued. The mandate of the Act prevails.

(4) Principle of promissory estoppel applies as the respondents had accepted that the 2002, Scheme would be applicable to the petitioner.

7. In order to appreciate and decide the contentions, we are required to notice and consider Section 80 IA(4)(iii) and the proviso thereto. Section 80 IA(4)(iii) reads as under:

**“Section 80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.**

X X X

(4) This section applies to—

x x x

(iii) any undertaking which develops, develops and operates or maintains and operates an industrial park or special economic zone] notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006:

**Provided** that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 or a special economic zone on or after the 1st day of April, 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, to another undertaking (hereafter in this section referred to as the transferee undertaking), the deduction under sub-section (1), shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking:

Provided further that in the case of any undertaking which develops, develops and operates or maintains and operates an industrial park, the provisions of this clause shall have effect as if for the figures, letters and words “31st day of March, 2006”, the figures, letters and words “[the 31st day of March, 2011]” had been *substituted*”

8. Section 80 IA was substituted by Finance Act, 1999. Section 80 IA(1) provides that where gross total income of an assessee includes profits and gains derived by an undertaking or an enterprise from a business referred to in sub-Section 4, it would be allowed a deduction of an amount equal to 100% of

profits and gains derived from the specified business for the period stipulated. An undertaking which fulfils the requirements of clause (iii) of sub-section 4 to Section 80 IA is entitled to the said deduction. Clause (iii) stipulates that the undertaking which develops; develops and operates; or maintains and operates an industrial park or special economic zone qualifies for the said deduction provided it is notified by the Central Government in accordance with the scheme framed and notified by the Central Government for the period beginning 1<sup>st</sup> April, 1997 and ending on 31<sup>st</sup> March, 2006. For the sake of completeness, we may record that the date 31<sup>st</sup> March, 2006 was substituted for the date 31<sup>st</sup> March, 2002 by Finance Act, 2001 with effect from 1<sup>st</sup> April, 2001.

9. The second proviso to the clause (iii) was incorporated/introduced by Finance Act, 2006 with effect from 1<sup>st</sup> April, 2007 and the said proviso at the time when it was introduced was as under:

“Provided further that in the case of any undertaking which develops, develops and operates or maintains and operates an industrial park, the provisions of this clause shall have effect as if for the figures, letters and words “31st day of March, 2006”, the figures, letters and words “31st day of March, 2009” had been *substituted*”

10. We may note here that the words “31<sup>st</sup> Day of March, 2009” were substituted with the words “31<sup>st</sup> Day of March, 2011” vide Finance Act No. 2 of 2009 with retrospective effect from 1<sup>st</sup> April, 2009.

11. In exercise of powers conferred under sub-section 4 to Section 80 IA, Ministry of Commerce and Industry had framed 2002, Scheme which was duly published in the Gazette of India Extraordinary being S.O. No. 354(E). The 2002, Scheme postulated two modes of grant of approval; (i) automatic approval and (ii) non-automatic approval. The petitioner’s case was not covered by automatic approval under the 2002, Scheme and no such claim is made in the petition. As noticed above, the petitioner had filed an application dated 23<sup>rd</sup> September, 2006 under non-automatic approval mode. Non automatic application under the 2002, Scheme was to be examined by the Empowered Committee constituted under clause 7 of the 2002, Scheme. Such applications were to be decided on case to case basis.

12. It may be relevant to notice and reproduce clauses 3 and 9.1 of the 2002, Scheme, as these are relevant:

“3. *Period of operation of the scheme:-* This scheme shall be applicable for any undertaking which develops, develops and operates or maintains and operates an Industrial park for the period beginning on the 1<sup>st</sup> day of April, 1997 and ending on the 31<sup>st</sup> day of March, 2006. In a case, where an undertaking develops an Industrial Park on or after the 1<sup>st</sup> day of April, 1999 and transfers the operation and maintenance of such Industrial Park to another undertaking (transferee undertaking), the benefits shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking.

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9. *General conditions:* (1) In case the commencing of the Industrial Model Town or Industrial Park or Growth Centre gets delayed by more than 1 year from the date indicated in the application, fresh approval may have to be obtained to get the benefits under the Act. This condition also applies to the existing approvals under the Industrial Park Scheme, which envisages commissioning of the Parks, latest by March, 31, 2002.

(2) The tax benefits under the Act can be availed only after the number of units indicated in the application, are located in the Industrial Park.”

13. The 2008, Scheme was published in the Gazette of India Extraordinary and is dated 8<sup>th</sup> January, 2008. By another Gazette Notification also dated 8<sup>th</sup> January, 2008, CBDT substituted the existing Rule 18C of the Income Tax Rules, 1962, (1962, Rules) by a new Rule in exercise of powers under Section 295 read with Section 80 IA(4)(iii) of the Act. The new Rule 18C reads as under:

**“18C.(1)** The undertaking shall begin to develop, develop and operate or maintain and operate an industrial park any time during the period beginning on the 1<sup>st</sup> day of April, 2006, and ending on the 31<sup>st</sup> day of March, 2009.

(2) The undertaking and the Industrial Park shall be notified by the Central Government under the Industrial Park Scheme, 2008.

(3) The undertaking shall continue to fulfil the conditions envisaged in the Industrial Park Scheme, 2008.”

14. The 2008, Scheme was formulated by the Ministry of Finance, Department of Revenue, CBDT. The relevant clauses of the said scheme, read as under:

**“1. Short title, commencement and application.-**

**x x x**

(2) It shall come into force on the date of its publication in the Official Gazette.

**2. Definitions.-**

**x x x**

(f) “date of commencement” means the date of obtaining the completion certificate or occupation certificate, as the case may be, from the relevant local authority, certifying thereby that all the required development activities for the project have been completed;

**x x x**

**4. Criteria for approval.-**

(1) The date of commencement of the Industrial Park should be on or after the 1<sup>st</sup> day of April 2006 and not later than 31<sup>st</sup> of March 2009;”

15. Before we deliberate and interpret the aforesaid provisions

and examine the contentions of the petitioner, one aspect may

be clarified. The petitioner does not dispute that they do not meet the prescribed parameters stipulated in the 2008, Scheme and do not satisfy the two conditions of the minimum constructed area and the number of units as stipulated in the 2008, Scheme. Thus, for the petitioner to succeed in the present writ petition, we have to hold that 2002, Scheme should be applied and it is in this context that the petitioner has raised the aforesaid four contentions.

16. Section 80 IA(4)(iii) postulates and requires that there should be a scheme framed and notified by the Central Government and the undertaking in question which develops; develops and operates; or maintains and operates; an industrial park or special economic zone should have been notified under the said scheme. Clause (iii) to Section 80 IA(4), therefore, requires a scheme which is framed and also notified by the Central Government. This is a mandatory condition. In compliance with the said requirement, the Central Government had framed 2002, Scheme which was framed by the Ministry of Commerce and Industries and thereafter the 2008, Scheme which has been framed by Ministry of Finance, CBDT. Clause 3 of the 2002, Scheme is clear and categorical. The scheme shall

be applicable to an undertaking which develops; develops and operates; or maintains or operates; an industrial park beginning from 1<sup>st</sup> April, 1997 and ending on 31<sup>st</sup> March, 2006. The said clause stipulates the beginning point and the ending point. Clause 9(1) of the 2002, Scheme states that in case commencement of industrial park gets delayed by more than one year from the date indicated in the application, a fresh approval was required to avail benefits under the 2002, Scheme.

17. In the present case, the petitioner had moved an application to the Central Government for being notified under clause (iii) to Section 80 IA(4) on 23<sup>rd</sup> September, 2006. On the said date, the 2002, Scheme was not in operation and was not applicable. As noticed above, the 2002, Scheme as notified and published in the Gazette in Clause (3) stipulates that it shall apply to any undertaking which develops; develops and operates; or maintains and operates; an industrial park for the period beginning on 1<sup>st</sup> April, 1997 and ending on 31<sup>st</sup> March, 2006. Clause 9(1) of the 2002, Scheme quoted above does show that an application/approval could be granted in advance also but the tax benefits under the Act could be availed of only after the number of units indicated in the application were

located in the industrial park. In the present case, we are not concerned with clause 9(1) of the 2002, Scheme, as the petitioner had filed an application on 23<sup>rd</sup> September, 2006, i.e., after 31<sup>st</sup> March, 2006. Clause 9(1), therefore, does not help the petitioner. Entitlement to deduction under Section 80 IA read with 2002, Scheme predicates location of specified number of units indicated in the application in the industrial park. In case there was delay of more than one year from the date indicated in the application, a fresh approval was required. The aforesaid interpretation is in consonance with clause (iii) to Section 80 IA(4). The said clause gives primacy and accepts that an undertaking which is notified in accordance with the scheme framed and notified by the Central Government qualifies for the said deduction. Thus, in the present case, when an application was filed on 23<sup>rd</sup> September, 2006, there was no scheme in place/operation, which had been framed and notified by the Central Government. The 2002, Scheme had lapsed as it was effective, notified and applicable upto 31<sup>st</sup> March, 2006. The 2002, Scheme was no longer in operation.

18. It is not possible to agree with contention of the petitioner that the second proviso to Section 80 IA(4)(iii) substituting the

words/date “31<sup>st</sup> March, 2006” with “31<sup>st</sup> March, 2009” had the effect of modifying or substituting the 2002, Scheme and the effect thereof was that the 2002, Scheme continued to remain operative at least till the 2008, Scheme was formulated and notified. This is not what is indicated and stated in the second proviso. The second proviso was separately added and the date stated in Section 80 IA(4)(iii) was not substituted by the new date, i.e., the date 31<sup>st</sup> March, 2006 was not substituted with the date 31<sup>st</sup> March, 2009. The idea and purpose behind incorporating the second proviso is clear that an undertaking which develops; develops and operates; or maintains and operates; an industrial park, as per the scheme framed and notified by the Central Government at the relevant time shall be entitled to the said deduction for the period ending 31<sup>st</sup> March, 2009. The benefit of the proviso would be given to an undertaking which develops; develops and operates; or maintains and operates; an industrial park in accordance with the scheme framed and notified after 1<sup>st</sup> March, 2006 ending on 31<sup>st</sup> March, 2009 (the date now stand substituted by Finance Act No. 2 of 2009 to 31<sup>st</sup> March, 2011).

19. In view of the aforesaid interpretation, the contention of the petitioner that there is any conflict between clause (iii) to Section 80 IA(4) of the Act or 2008, Scheme has been given retrospective effect must fail. As noticed above, there is no conflict between Section 80 IA(4)(iii), 2002, Scheme and 2008, Scheme. The 2002, Scheme was valid and in operation till 31<sup>st</sup> March, 2006 and not thereafter. After 31<sup>st</sup> March, 2006 there was no scheme which was in operation. The requirement of Section 80 IA(4)(iii) is that a scheme should be framed and gazetted and then only benefit can be claimed by an industrial undertaking which gets notified under the scheme. If there was no scheme in operation as the scheme had not been framed or gazetted, no benefit can be availed of by an undertaking on the basis of a prior scheme, the term and validity of which had come to an end by efflux of time. We may add a caveat, that we are not examining a case where an undertaking had filed an application on or before 31<sup>st</sup> March, 2006 but the same was disposed of after 31<sup>st</sup> March, 2006. This factum is extremely relevant and has been noticed below to distinguish the judgment of the Bombay High Court in ***Silver Land Developers (P)***

Taxman.com 41(Bom.).

20. Thus, for some time after 1<sup>st</sup> April, 2006, there was no scheme which was framed and had been gazetted. A new scheme was framed and gazetted only on 8<sup>th</sup> January, 2008 and this scheme has been implemented with effect from 1<sup>st</sup> April, 2006. The Central Government can be criticised for this long delay in formulating and notifying the scheme as it is contrary to the principles of good governance and is vulnerable to criticism on the ground of creating uncertainty, but this by itself in the factual matrix of the present case and the language of Section 80 IA(4)(iii) cannot and is not a ground to hold that the 2002, Scheme continued to be in operation till 8<sup>th</sup> January, 2008. The legal position, as stated above, is that with effect from 1<sup>st</sup> April, 2006 there was no scheme which had been framed and was gazetted. Therefore, no undertaking could take advantage or benefit of Section 80 IA(4)(iii) of the Act. A new scheme was formulated on 8<sup>th</sup> January, 2008 and was made applicable with effect from 1<sup>st</sup> April, 2006. The retrospective effect is to give and confer benefit to undertakings covered by the 2008, Scheme. Thus, no benefit has been withdrawn by giving retrospective

effect to the 2008, Scheme. Advantage has been conferred on the undertakings, which otherwise they would not have derived but for the 2008, Scheme. In these circumstances, we are not required to deal with the other contentions raised by the petitioner or the judgments relied upon by the petitioner, viz., ***Pournami Oil Mills versus State of Kerala***, [1987] 165 ITR 57 (SC), ***Sales Tax Officer versus K.I. Abraham***, (1967) 3 SCR 518, ***Second Income Tax Officer versus M.C.T. Trust***, (1976) 102 ITR 138 (Mad), ***Corporation Bank versus Sarawati Abharawsala***, (2009) 1 SCC 540, ***Bakul Cashew Co. versus STO***, (1986) 159 ITR 565 (SC) and ***Income Tax Officer versus Ponnoose (M.C.)***, (1970) 75 ITR 174 (SC). In the factual matrix of the present case, the aforesaid judgments are not at all applicable.

21. The factual position in ***Silver Land Developers (P) Limited*** (supra) was different. In the said case, the petitioner therein had applied for grant of approval under the 2002, Scheme on 27<sup>th</sup> December, 2005 and the approval was granted by the Ministry of Commerce and Industries on 24<sup>th</sup> July, 2006. In the application, the expected date of commencement of commercial park was stated as 15<sup>th</sup> March, 2006 and relying

upon clause 9(1) of the 2002, Scheme, it was the case of the petitioner therein that the date of commencement was extendable upto 15<sup>th</sup> March, 2007. The petitioner therein had submitted an application for grant of occupancy certificate on 8<sup>th</sup> March, 2007 and the occupancy certificate was issued on 2<sup>nd</sup> June, 2007 by the Municipal Corporation of Greater Mumbai. The said Municipal Corporation had clarified and informed the Empowered Committee that the industrial park was ready and fit for occupation on 8<sup>th</sup> March, 2007. In these circumstances, the Division Bench of the Bombay High Court has held that the 2002, Scheme was applicable and the finding of the Empowered Committee that the 2008, Scheme was applicable should be rejected. In paragraph 18 of the said judgment, it has been observed by the Bombay High Court as under:-

“18. The rival submissions now fall for determination. The object and purpose of Section 80IA is to grant a deduction, while computing the total income of the assessee of an amount equal to hundred per cent of the profits and gains derived from an eligible business for ten consecutive assessment years out of fifteen years beginning from the year in which inter alia the assessee develops an industrial park or facility. The eligible businesses to which the provisions are attracted are specified in sub-section (4) of Section 80IA. The object and purpose of Section 80IA was to provide an impetus to the growth of infrastructure in the country. Clause (iii) of sub-section (4) of Section 80IA makes eligible an undertaking which (i) develops; or (ii) develops and operates; or (iii) maintains and operates an industrial park notified by the Central Government in accordance

with the Scheme framed for the period beginning on 1 April 1997 and ending on 31 March 2006. An undertaking is eligible if it has either developed; or developed and operated; or operated and maintained an industrial park in accordance with the Scheme. The first aspect of the matter which needs emphasis is that clause (iii) of Section 80IA (4) requires that the Scheme has to be notified for the period between 1st April 1997 and 31 March 2006. The statutory provision does not contain a specific requirement to the effect that the industrial park had to be developed on or before 31 March 2006. The requirement is that the industrial park has to be developed in accordance with the Scheme framed by the Central Government for the period between 1 April 1997 and 31 March 2006. The Scheme which was framed by the Central Government stipulated the requirement for the grant of approval in those cases which did not fall in the automatic approval route. Para 3 of the Scheme lays down the period of operation of the Scheme. Under Para 3 the Scheme is to be applicable to any undertaking which develops, develops and operates or maintains and operates an Industrial Park for the period beginning on 1 April 1997 and ending on 31 March 2006. Therefore, undoubtedly it was as a result of Para 3 that a requirement to the effect that the undertaking should develop an industrial park for the period commencing on 1 April 1997 and ending on 31 March 2006 came to be introduced. The Scheme, however, stipulated in Para 9 (1) that in case the commencement of the industrial park is delayed by more than one year from the date indicated in the application, a fresh approval would have to be obtained to get the benefit of the Act. The last sentence of Para 9 (1) then clarified that this condition would also apply to the existing approvals under the Industrial Park Scheme which envisaged the commissioning of the park, latest by March 31, 2002. Para 9 (1) took notice of the fact that approvals were granted under the previous Scheme which envisaged the commissioning of parks by 31 March 2002. The new Scheme was notified on 1 April 2002. If 31 March 2002 was to be treated as an absolute cutoff then it is unlikely that the last sentence of Para 9(1) would provide that the condition which was spelt out in the said Para would also apply to existing approvals. Consequently Para 9 of the Scheme did contemplate situations where the commencement of an industrial park was delayed by more than one year from the date indicated in the application. The Scheme provides that in such cases, a fresh approval would have to be obtained in order to obtain the benefits under the Act.”

22. The aforesaid observations are in consonance with our findings and interpretation given to Section 80 IA(4)(iii), 2002, Scheme and 2008, Scheme.

23. Learned counsel for the petitioner had drawn our attention to paragraph 24 of the said judgment which reads as under:-

“24. The attention of the Court has also been drawn to the fact that in fifty cases, approvals have been granted under the Scheme of 2002 beyond 31 March 2006 and as a matter of fact as late as in April 2007. Learned Counsel on behalf of the Revenue has submitted that the Department would seek to revoke those permissions which have been granted in other cases. Be that as it may, for the reasons indicated earlier we have come to the conclusion that the basis on which the Empowered Committee has rejected the application filed by the Petitioners is contrary to law and would have to be set aside.”

24. The aforesaid paragraph does not assist or help the contention of the petitioner. What is stated in the said paragraph is that approvals were granted under the 2002, Scheme even after 31<sup>st</sup> March, 2006 and as late as in April, 2007. The said paragraph does not indicate or state the date on which the applications were filed and whether the applications were received before 31<sup>st</sup> March, 2006. During the course of hearing before us, the petitioners were asked whether they had contended or claimed that applications received after 31<sup>st</sup> March,

2006 have been processed and approved under the 2002, Scheme. It was stated that there was no such averment or plea, but it was for the respondent to explain and state. Before us, a list of all pending applications as on 3<sup>rd</sup> June, 2008 downloaded from the website of the respondent has been filed. The said details do not show that any applications filed after 31<sup>st</sup> March, 2006 had been granted approval under the 2002, Scheme.

25. The plea of promissory estoppel has no merit. The petitioner claims that they had started development of the industrial park after obtaining consent/commencement certificate in 2005. However, they filed an application only on 23<sup>rd</sup> September, 2006. By that time, the date 31<sup>st</sup> March, 2006 mentioned in the Section 80 IA(4)(iii) and the 2002, Scheme had lapsed. The petitioners could have claimed benefit under the said Section only if they were covered by a new Scheme or in case the Government had decided to extend the 2002, Scheme. As already noticed above, the petitioners were not covered by the 2008, Scheme and the 2002, Scheme was not extended after 31<sup>st</sup> March, 2006. In fact, the plea based on promissory estoppel has to fail because the petitioner has not pleaded or stated in what manner and how they had changed their position

to their detriment in view of the alleged promise held out/made. The statute in the present case was clear that there should be a scheme which was framed and gazetted and an undertaking should be notified under the said scheme. The time period or the last date was specified i.e. 31<sup>st</sup> March, 2006. The petitioner did not apply for notification before the cut of date, i.e., 31<sup>st</sup> March, 2006 on which date the 2002, Scheme came to an end. It was submitted on behalf of the petitioner that the doctrine of promissory estoppel should be applied on the basis of correspondence which was exchanged between the petitioner and the Ministry of Commerce and Industries after the application for approval was filed on 23<sup>rd</sup> September, 2006. By this correspondence, the said Ministry had called for certain details and information which was furnished and given. We do not think doctrine of promissory estoppel can be applied on the basis of the said letters. No promise was held out in the said letters. Information and details were called for and it was stated that the matter would be placed before the Empowered Committee after full details were furnished. No promise is decipherable. The respondent had not held out or promised that the 2002, Scheme shall be extended. The aforesaid

correspondence does not make out a case and does not show that any promise was held out and pursuant to the said promise the petitioner had changed their position. As noticed above, the 2002, Scheme was notified on 8<sup>th</sup> January, 2002 and during the period 1<sup>st</sup> April, 2002 till 8<sup>th</sup> January, 2002 no scheme was in operation as the same had not been framed and gazetted. This is the statutory requirement and is mandated by Section 80 IA(4). In these circumstances, the Ministry of Commerce and Industries did not reject the application but had asked for certain information and details before the matter was placed before the Empowered Committee because there was uncertainty and ambiguity. Doubt/uncertainty is not a promise.

26. The fact noticed above indicate that the petitioner had filed the application for registration on 23<sup>rd</sup> September, 2002 after the 2002, Scheme had come to an end, as the scheme was applicable only upto 31<sup>st</sup> March, 2002. The industrial park set up by them was not operational/functional by 31<sup>st</sup> March, 2002. It became operational on a subsequent date. The completion certificate for the said park issued by the Pune Municipal Corporation is dated 29<sup>th</sup> August, 2003. The petitioner cannot, therefore, claim notification under the 2002, Scheme.

27. We may note that the policy dated 8<sup>th</sup> January, 2008 has not been challenged before us on merits. The ground of challenge before us was limited to the retrospective operation and to the extent that there is conflict between the 2008 scheme and the parent Act, i.e., Section 80 IA (4) as the proviso had extended the period of the 2002 policy. We have rejected these contentions. A policy decision, though not beyond the scope and power of judicial review, can be interfered with when it is wholly irrational or inconsistent with the express or implied provisions of the statute. Government is normally free to modify, amend or withdraw fiscal benefits from time to time and they have right to implement the policy decisions. Sometimes, there can be radical difference of opinion on views but that cannot be a ground to set aside/quash a policy decision. A policy decision is quashed when there is something overwhelming and it is apparent that the decision is completely irrational or as stated above is inconsistent with the express or implied provisions of the statute.

28. In view of the aforesaid position, we do not find any merit in the present writ petitions and the same are dismissed. The interim order is vacated. Liberty is, however, granted to the

petitioner to file an appeal against the assessment order dated 22<sup>nd</sup> October, 2010 before the appellate authority on merits, but the petitioner would not be entitled to question the validity of the letters/orders dated 28<sup>th</sup> July, 2009 and 8<sup>th</sup> October, 2008 in the appellate proceedings or claim that the petitioner has been registered under Section 80 IA(4)(iii) of the Act. In the facts and circumstances of the case, there will be no order as to costs.

-sd-  
**(SANJIV KHANNA)**  
**JUDGE**

-sd-  
**( R.V. EASWAR )**  
**JUDGE**

**24<sup>th</sup> JANUARY, 2012**  
**VKR**