

Tax benefits cannot be withdrawn from a past date: Gujarat High Court

A Gujarat High Court verdict has thrown open the debate on constitutional validity of retrospective changes in the income tax laws. It has said that an amendment in income tax law, withdrawing benefits under a popular export incentive scheme, could not be done from a past date.

A division bench of acting Chief Justice Bhaskar Bhattacharya and Justice J B Padriwala has held that the amendment to section 80-HHC in 2005 seeking to withdraw incentives granted to exporters from 1998 was valid but could not be implemented retrospectively.

The judgement comes close on the heels of the retrospective amendment in the budget 2012-13 seeking to tax indirect transfer of Indian assets overseas that has sparked off intense debate on carrying out changes in tax laws effective from earlier date. This amendment unnerved both the domestic industry as well foreign investors.

Finance minister Pranab Mukherjee, however, refused to succumb to any pressure and stuck to his guns on the amendment that has now been challenged in the Calcutta High Court.

The Gujarat High Court gave the judgement while hearing a bunch of about 70 petitions transferred by Supreme Court in February this year, challenging the implementation of amendments from retrospective effect to Section 80-HHC of I-T Act.

The court observed that amendment made by Taxation Law (Amendment) Act, 2005, cannot be applicable with retrospective effect from 1998-99 as it was unconstitutional.

It, however, stated that the amendment could be applicable prospectively. Following the amendment in 2005, many exporters, led by the Indian Exporters Grievances Forum, had moved various High Courts in the country challenging the amendment.

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