In the High Court of Judicature at Madras

Dated: 23.07.2015

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The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Ms.JUSTICE K.B.K.VASUKI

Tax Case (Appeal) No.497 of 2015

The Commissioner of Income Tax-4
121, Mahatma Gandhi Road,
Chennai
.... Appellant

Vs.

M/s.Kailash Shipping Services Pvt. Ltd.,
No.23, PT Lee Chengalvaraya Naicker Maaligai,
II Floor, Parrys, Chennai - 600 001.
.... Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 8.10.2014 made in I.T.A.No.365/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench.

against the Order of the Commissioner of Income Tax(A)-II, 121, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034, dated 29.10.2013 and made in ITA.No.550/2013-14 and against the Assistant Commissioner of Income Tax, Company Circle II(A), Room No.514, New Block 121 M.G.Road, Chennai 34 dated 30.12.2011 and made in PAN/GIR.No.AAACK 2806 R.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel for Income Tax

J U D G M E N T
(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

" 1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in not considering the amended provisions of Section 80IA(4) w.e.f. 01.04.2002, Container Freight Station is not an eligible infrastructure facility for the purpose of deduction under Section 80IA(4)?

2. Whether under the facts and circumstances of the

case, the Income Tax Appellate Tribunal was right in following Delhi High Court judgment in the case of Container Corporation of India (346 ITR 140) which has not been accepted by the Department and SLP civil No.20901 of 2012 is pending before the Apex Court?"

2. The assessment in this case relates to the assessment year 2009-10. The assessee is a private limited company engaged in the business relating to shipping, namely, clearing and forwarding agent (CFA). During the assessment year in question, the assessee filed its return of income admitting a sum of Rs.7.97 lakhs after claiming deduction under Section 80IA on the Container Freight Station. The case of the assessee was selected for scrutiny and the Assessing Officer disallowed the claim of deduction under Section 80IA of the Income Tax Act holding that CFS could not be classified as 'inland ports' for the purpose of claiming deduction under Section 80IA(4)(i) of the Income Tax Act. The Assessing Officer, further held that the facility of CFS does not constitute infrastructure facility as defined in Explanation to Section 80IA(4)(i) and hence, disallowed the claim of the assessee. Aggrieved by the said order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who, by following the decision of the Tribunal Mumbai Bench in the case of All Cargo Global Logistics Ltd. V. DCIT, allowed the appeal holding that the assessee's Container Freight Station is an inland port for the purpose of Explanation to Section 80IA(4)(i) of the Income Tax Act. The Commissioner of Income Tax (Appeals) further held that he subsequent to the amendment, the 'inland ports' are brought into the statutes as infrastructure facility for the purpose of Section 80IA (4)(i) of the Income Tax Act. The Commissioner of Income Tax (Appeals) also noted that the Ministry of Commerce and Industry, Government of India, vide its office Memorandum dated 21.05.2009 addressed to the CBDT, clarified that the ICDs and CFSs are inland ports and eligible for deduction under Section 80IA of the Act. Accordingly, the Commissioner of Income Tax (Appeals) allowed deduction under Section 80IA of the Act.

3. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue pursued the matter before the Income Tax Appellate Tribunal.

4. The Tribunal after hearing both sides, dismissed the appeal holding as follows:

> "After hearing both the sides and carefully perusing the materials on record, we find the facts of the case is identical to that of the case decided by the Tribunal's Special Bench. In the case of the assessee, Chennai Port Trust has issued a certificate dated 02.06.2010 stating that the Container Freight Station owned by the assessee at No.43 Kadapakkam Village, Vichur High Road, Manali New Town Chennai 103

may be considered as an extent arm of the port in accordance with the CBDT circular No.793 dated 23.06.2000 read with circular No.133/95 Cus dated 22.12.1995 of the Central Board of Excise and Customs, New Delhi. Further circular No.10/2005 dated 16.12.2005 has also clarified that the definition of "Port" for the purpose of Sec.10 (23G) and Sec.80IA of the Income Tax Act would mean the structures forming part of the Port certified by the concerned Port Authorities. The Ld. CIT(A) after examining the issue in detail had allowed the case of the assessee in its favour following the decision of the Tribunal's Special Bench cited supra. The decisions relied by the assessee mentioned herein below also support the case of the assessee, viz;

(i) Special Bench in the case of All Cargo Global Logistics Ltd. & Others Vs.DCIT, 137 ITD 237.

(ii) Continental Warehousing Corporation (Nhava Seva) Ltd. Raigad Vs. ACIT (Order dated 31/8/2012 in ITA No.7055/Mum/2011)

(iii) Hon'ble Delhi High Court in the case of Container Corporation of India Ltd. (CCI) Vs. ACIT 346 ITR 140

(iv) United Liner Agencies of India (Private) Ltd. Vs. The JCIT (OSD) Mumbai ITAT Mumbai - ITA No.273/Mum/2013, ITA No.275/Mum/2013, ITA No.943/Mum/2013, ITA No.944/Mum/2013 dated June, 28, 2013."

Therefore, we do not have any hesitation to confirm the order of the Ld.CIT(A). It is ordered accordingly."

5. Aggrieved by the order of the Tribunal, the present appeal has been filed by the Revenue raising the above-mentioned substantial questions of law.

6. Heard Mr.T.R.Senthil Kumar, learned standing counsel appearing for the Revenue and perused the materials placed before this Court.

7. It is seen that the issue involved in this appeal has been considered by this Court in the decision dated 23.12.2014 in T.C.(A) No.1031 of 2014, wherein, while considering the identical issue, whether the CFS is an inland port, this Court held that the Government of India, Ministry of Commerce, vide letter dated 8.2.2003, has approved the proposal for setting up of a Container Freight Station at Haldia for handling import and export cargo. This Court, while holding that the container freight station is held to be falling within the customs area attached to the port, held as follows:

"As has been observed by the Tribunal, in the decision of the Delhi High Court in the case of

Container Corporation of India Ltd., Vs. ACIT reported in 346 ITR 140 (Del), container freight station is held to be falling within the customs area attached to the port. As the work relating to customs is performed at these inland container depots/container freight stations, it would fall under the provision of Section 80IA(4)(i) Explanation (d) of the Income Tax Act. The plea of Mr.T.Ravikumar, learned standing counsel appearing for the Revenue that any other public facility on similar nature has been omitted with effect from 1.4.2002 will not make the case any different in view of the decision of the Delhi High Court (supra), which holds that CSF is part of an inland port and there is no specific exclusion of CSF in clause (d) of Explanation to Section 80IA(4)(i). Therefore, on fact when it has been found by the Tribunal that CSF is an infrastructure facility, we have no hesitation to give a different conclusion on fact. "

8. In the present case, as rightly pointed out by the Commissioner of Income Tax (Appeals), which was confirmed by the Tribunal, the Office Memorandum of the Ministry of Commerce and Industry dated 21.5.2009 clarified the status of the CFS as inland ports. For better clarity, the Office Memorandum dated 21st May, 2009 reads as follows:

The 21st May, 2009

Office Memorandum

Subject: Reference from CONCOR AND CFS Association of India regarding confirming that ICDs/CFSs are Inland Ports regarding -

The undersigned is directed to refer to this Department's O.M. of even number dated 01.09.2008 on the above subject. In this regard, CONCOR and CFS Association of India have represented that in order to accord tax benefit under section 80IA of the Income Tax Act, 1961 Ministry of Finance required a more specific reply clarifying the status of ICDs/CFSs in the country. A copy oldie representation is enclosed.

The matter has been examined in this Department and it is clarified that ICDs/CFSs are inland ports. CBDT may accordingly take decision for the purpose of exemption of ICDs/CFSs of CONCOR or a private party u/s 80IA of Income Tax Act."

(Emphasis Supplied)

9. In view of the status of CFS having been clarified by the Ministry of Commerce and Industry as 'inland ports' and the Chennai

Port Trust has issued a certificate stating that the CFS of the assessee may be considered as extended arm of the Port in accordance with the CBDT Circular No.793 dated 23.06.2000 read with Circular No.133/95 Cus dated 22.12.1995 of the Central Board of Excise and Customs, New Delhi, we hold that the assessee is entitled to the benefit under Section 80IA of the Income Tax Act.

10. In the light of the above, we find no reason to interfere with the order of the Tribunal. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal, Chennai 'B' Bench.
2. The Commissioner of Income Tax (Appeals) -II, Chennai.
3. The Assistant Commissioner Income Tax, Company Circle II(4), Chennai - 34.

1 cc to Mr.T.R.Senthilkumar, Advocate SR.37692 dated 24.7.2015

T.C.(A) No.497 of 2015

ev(co)
pmk.20.8.2015