

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/6/2016

C O R A M

The Honourable Mr. Justice S. Manikumar
and
The Honourable Mr. Justice D. Krishnakumar

Tax Case Appeal No. 405 of 2016

The Commissioner of Income Tax
Chennai. Appellant / Appellant

Vs

M/s. AL Logistics P Ltd
No. 5 GNT Road
Moolakkadai
Chennai 600 110. Respondent / Respondent

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 16/12/2016 in ITA No. 1412/Mds/2015 preferred against order of the commissioner of Income Tax (Appeals) Chennai-34 made in ITA No. 411/13-14/A-1 Dated 18.02.2015 and against order of the Deputy Commissioner of Income Tax Company Circle-I(1) Chennai, made in GIR/PAN, Ax-7133, AAECA5279L, order dated 28.03.2013 for the year of the Assessment, 2010-2011.

For appellant : Mr. T. Ravikumar
Senior Standing Counsel
for Income Tax.

J U D G M E N T

(Judgment of the Court was made by S. Manikumar, J)

Facts of the case deduced from the material on record are that the respondent is a license holder of a warehousing complex consisting of buildings, godowns, weigh bridge and other equipments for the purpose of maintaining a Container Freight Station (CFS). They suffered an adverse order and hence an appeal was filed. While adverting to the grounds of challenge, vide order, dated 18/2/2015, the Commissioner of Income Tax (Appeals) - I, Chennai, ordered as hereunder:-

"4. The first issue is with regard to disallowance of deduction of Rs.3,02,65,882 under Section 80-IA (4) holding that the appellant's facility cannot be defined as "Infrastructure facility" or fit into the definition of either "Port" or "Inland Port" as per the provisions of the Act. The AO referred to the provisions of Section 80-IA and stated that all the defined infrastructure facility will not be eligible to claim deduction but which fulfills all the conditions set out in Section 80-IA 4 (i) (a), (b) & (c) will only be eligible. He also referred to Circular No.717 dated 14/8/1995 and stated that the Board's circular also reveals that the deductions can be claimed only by the public facilities created in agreement with the government and not to the private facilities.

4.1 The Id.AR of the appellant opposed to the above disallowance. In the written submissions it is stated as under;

"1. The appellant is owning and maintaining a container freight station (CFS) at Dabhog, Bowniput, Haldia, West Bengal 721 657 from 6/5/2003. On the basis of appellant's application to Ministry of Commerce, Appellant's above facility was notified as CFS by Commissioner of Customs, Kolkotta vide public notice 84/2003 on 10/11/2003 and the said CFS as 'customs area'. The said authority declared the appellant as "custodian" of the containers and the imported goods received in containers from Haldia Dock Complex and the goods meant for export through Haldia Port via their CFS at the above address - vide public Notice B.No.85/03 dt 10/11/03. Import/Export procedures of appellant's CFS was also notified by the said authority through public Notice No.86/03 dt. 10/11/2003.

2. In respect of the income from the above CFS, appellant claimed deduction u/s. 80IA to the tune of Rs.3,02,65,882.

3. In the scrutiny assessment completed u/s.143 (3) on 28/3/2013, the Id.AO disallowed the claim for the reasons that -

a). assessee's facility cannot be defined as 'infrastructure facility' or fit into the definition of either 'port' or 'inland port'

b) that the conditions prescribed u/s. 80IA (4) (i) i.e., assessee did not enter into any agreement with the Govt.

c). the assessee does not own any immovable property.

The appellant further stated that on similar issue in appellant's own case for A.Y.2009-10 the Hon'ble ITAT Chennai vide ITA No.469/Mds/2014 dt.14/7/2014 has decided the issue in favour of the appellant and the same was confirmed by the Hon'ble Madras High Court in Tax Case (Appeal) No.1031 to 2014 dated 23/12/2014 [2015-TIOL-93-HC-MAD-IT] and requested to delete the disallowance of Rs.3,02,65,882.

4.2 I have carefully considered the facts of the case and the submissions of the Id.AR. I have gone through the decisions relied on by the Id.AR. Since on the similar issue in the appellant's own case for AY 09-10, the ITAT, Chennai and the Hon'ble Madras High Court has decided the issue in favour of the appellant as mentioned above, respectfully following the decisions of the ITAT, Chennai and Hon'ble Madras High Court, the ground is allowed."

2. Being aggrieved by the aforesaid order, the Deputy Commissioner of Income Tax, Corporate Circle - 1 (1), Chennai has preferred an appeal to the Income Tax Appellate Tribunal, 'B' Bench, Chennai. Taking note of an order on an identical issue, decided in the assessee's own case, in I.T.A.No.469/MDS/2014, dated 14th July 2014 and following the Delhi High Court judgment rendered in Container Corporation of India Ltd., Vs. ACIT {346 ITR - 140 (Del)}, CESTAT Madras, dismissed the revenue appeal.

3. Testing the correctness of the same, instant Tax Case Appeal No.405 of 2016, has been raised on the following substantial questions of law:-

"(i). Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the disallowance made under Section 80IA(4) of the Income Tax Act?

(ii). Whether the Tribunal was correct in holding that the Container Freight Station could be treated as inland port and therefore, eligible for deduction under Section 80IA(4)?

(iii). Is not the finding of the Tribunal bad by deleting the disallowance made under Section 80IA(4) especially when the Assessee has not fulfilled the conditions stipulated under Section 80IA(4) (i) (b)?

(iv). Whether the Tribunal was right in not considering the amendment to Section 80IA(4) Explanation which was introduced with effect from 1/4/2002 whereby the word "any other public facility of similar nature" was omitted and thereby wrongly allowed a deduction under Section 80IA(4) on income from Container Freight Station?"

4. At the time when the instant Tax Case Appeal came up for admission, Mr.T.Ravikumar, learned Senior Standing Counsel for the Income Tax fairly submitted that in the case of the very same assessee, in Tax Case Appeal No.1031 of 2014, between Commissioner of Income Tax and A.L Logistics Pvt. Ltd) reported in (2015) 374 ITR - 0609 (Mad), the above substantial questions of law have been answered against the revenue, and that the said decision is under challenge before the Hon'ble Apex Court in SLP (Civil) CC No.9566 of 2015. He also submitted that the decision rendered by the Delhi High Court in Container Corporation of India Limited Vs. Assistant Commissioner of Income Tax & CIT, reported in {(2012) 81 CCH 0087 DelHC and followed in the case of AL Logistics Pvt Ltd., is also under challenge in Appeal (Civil) No.8900 of 2012.

5. Based on the website information of the Hon'ble Supreme Court, Mr.T.Ravikumar, learned counsel for the revenue submitted that both the aforesaid civil appeals are likely to be listed on 1/7/2016 and in as much as a challenge to the orders made in M/s.AL Logistics P Ltd and M/s.Container Corporation of India Limited, are pending in the Hon'ble Supreme Court, instant Tax Appeal No.405 of 2016 be entertained and kept pending till the

Hon'ble Supreme Court passes appropriate orders, in the pending Civil Appeals.

6. Contending interalia with the principles enunciated by the Hon'ble Supreme Court in Kunhayammed and Others Vs. State of Kerala and Another {(2000) 6 SCC 359} on the doctrine of merger, would be applicable to the instant case and in the normal circumstances, when an issue is pending before the Hon'ble Supreme Court, matters are entertained and kept alive, Mr.T.Ravikumar, learned Senior Standing Counsel for Income Tax, seeks for admission of the instant appeal.

7. Admittedly, facts and law, decided in Container Corporation of India Limited Vs. Assistant Commissioner of Income Tax & CIT followed in A.L.Logistics P Ltd's case are stated to be squarely applicable to the case on hand and thus, following the same, CESTAT, Madras, vide order, dated 16/12/2015 has dismissed the revenue appeal.

8. In Kunhayammed and Others Vs. State of Kerala and Another {(2000) 6 Supreme Court Cases - 359}, the Hon'ble Supreme Court, summarised as hereunder:-

"45. Having thus made the law clear, the case at hand poses no problem for solution. The earlier order of the High Court was sought to be subjected to exercise of appellate jurisdiction of the Supreme Court by the State of Kerala wherein it did not succeed. The prayer contained in the petition seeking leave to appeal to this Court was found devoid of any merits and hence dismissed. The order is a non-speaking and unreasoned order. All that can be spelled out is that the Court was not convinced of the need for exercising its appellate jurisdiction. The order of the High Court dated 17/12/1982 did not merge in the order dated 18/7/1983 passed by this Court. So it is available to be reviewed by the High Court. Moreover, such a right of review is now statutorily conferred on the High Court by sub-section (2) of Section 8-C of the Kerala Act. The legislature has taken care to confer the jurisdiction to review on the High Court as to such appellate orders, also against which though an appeal was carried to the Supreme Court, the same was not admitted by it. An appeal would be said to have been admitted

by the Supreme Court if leave to appeal was granted. The constitutional validity of sub-section 92) of Section 8-C has not been challenged. Though, Shri.T.L.V.Iyer, the learned Senior Counsel for the appellant made a feeble attempt at raising such a plea at the time of hearing but unsuccessfully, as such a plea has not so far been raised before the High Court, also not in the petition filed before this Court."

9. Though Container Corporation's case and A.L.Logistics's case have been challenged by the revenue before the Hon'ble Supreme Court, we are of the considered view that there cannot be any impediment in following the said decisions to cases arising out of similar set of facts and law. However, when a petition is filed before the Hon'ble Supreme Court seeking leave to appeal and the same having been converted into an appeal by the Supreme Court, the High Court should not entertain a review petition. The High Court also cannot reverse and modify the order impugned before the Supreme Court. But the judgment rendered by the High Court is not erased. The principles of Law enunciated by the Hon'ble Supreme Court in Kunhayammed and Others Vs. State of Kerala and Another {(2000) 6 Supreme Court Cases 359}, with due respect is not in strict sense be applied to the facts and law in hand. The case relates to exercise of review jurisdiction by the High Court, when Civil Appeal is pending in the Apex Court. We are not exercising such powers in the case on hand.

10. Section 262 of the Income Tax Act relates to 'Appeals to Supreme Court'. As per sub-section 3 of Section 262 of the Income Tax Act, where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 260 of the Act. Statute itself, provides for a remedy to the revenue as to how a judgment of the Hon'ble Supreme Court should be given effect.

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11. In the light of the statutory provision and discussion, we are not inclined to accept the contentions of the learned counsel for the appellant. Substantial questions of law have already been answered against the revenue in the case of Commissioner of Income Tax Vs. A.L.Logistics Pvt Ltd {(2015) 374 ITR 0609 (Mad)}. Following the same, instant Tax Case Appeal No.405 of 2016 is dismissed. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

To

1. The Income Tax Appellate Tribunal,
Madras 'D' Bench, Chennai

2.The Commissioner of Income Tax Appeals-I
Chennai-34

3.The Deputy Commissioner of Income Tax,
Company Circle-I(1)
Chennai

+1 cc to Mr.T.Ravikumar Advocate sr.34085

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