

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 465 OF 2017

The Pr. Commissioner of Income Tax, .. Appellant
Central -1, Mumbai.

Versus

M/s. JWC Logistics Park Pvt Ltd .. Respondent

-
- Mr. P.C. Chhotaray for the Appellant
 - Mr. Satish R. Mody a/w Ms. Aasifa Khan for the Respondent
-

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JUNE 10, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal, Mumbai ("the Tribunal" for short) dated 27.4.2016.

2. Following question is presented for our consideration:-

"Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal was justified in allowing the assessee's claim of deduction under Section 80-IA(4) of Rs. 4,78,56,228/- without appreciating the fact that the assessee did not fulfill the required conditions as prescribed for claiming deduction u/S. 80-IA(4), as the inland container depot / container freight station is not included in inland ports as ports on rivers or canals?"

3. Learned counsel for the respondent – assessee pointed out that identical question came up for consideration before this Court in Income Tax Appeal No. 613 of 2015 and connected appeal in case of this very assessee. By detailed judgment dated 11.4.2018, the Court dismissed the Revenue's appeal making following observations:-

"3. The impugned order of the Tribunal dismissed the Revenue's Appeal before it by holding that the Container Freight Station (CFS) run by the respondent - assessee is eligible for deduction under Section 80IA of the Act as an infrastructure facility. Thus, upholding the view of the Commissioner of Income-Tax Appeals (CIT (A)). This by following the decisions of the Special Bench of the Tribunal in **M/s. All Cargo Global Logistics Ltd. Vs. DCIT (ITA No.5018 to 5022 and 5059)** rendered on 6th July, 2012 and the decision of the Regular Bench of the Tribunal in the case of **Continental Warehousing Corporation (Nhava Sheva) Vs. ACIT (ITA No. 7055/Mum/2011)** dated 31st August, 2012. The submission of the Revenue that as Appeals have been filed against the aforesaid two decisions of the Tribunal, before this Court, the Revenue's Appeal be allowed, was not accepted by the Tribunal. In the meantime, the above two Tribunal decisions in case of *All Cargo Global Logistics Ltd.* (supra) and *Continental Warehousing Corporation (Nhava Sheva)* (supra) have been upheld by this Court in **Commissioner of Income-Tax v. 1. Continental Warehousing Corporation (Nhava Sheva) Ltd. and anr. [2015] 374 ITR 645 (Bom)** while dismissing the Revenue's Appeal. This issue therefore stands concluded in favour of the respondent- assessee."

4. In the result, this appeal is also dismissed.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]