

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos.741, 1266 of 2009 and 162 of 2015

The Commissioner of Incometax,
Coimbatore.

Appellant in
all appeals

Vs.

M/s.Chettinad Lignite Transport Services
Private Limited,
43, Race Course Road,
Coimbatore - 641 018.

Respondent in
both appeals

Tax Case Appeal No.741 of 2009 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 27.07.2007 made in ITA No.2287/Mds/06.

Against the Order of the Commissioner of Income Tax (Appeals)-1, Coimbatore dated 16/10/2006 in ITA.No. 294/05-06 against the order of the Assistant Commissioner of Income Tax Company Circle - 1(1) Coimbatore dated 22/09/2005 in PAN-GIR No. AABCC - 7357 G for the assessment Year 2004-2005.

Tax Case Appeal No.1266 of 2009 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 31.07.2007 made in ITA No.2286/Mds/2006.

Against the order of the Commissioner of Income Tax, appeals - I Coimbatore dated 16/10/2006 in ITA.No. 293/05-06 against the order of the Assistant Commissioner of Income Tax, Company Circle - I (i) Coimbatore dated 22/09/2005 in PAN.GIR.No. AABCC 7357 G for the Assessment Year 2003-2004.

Tax Case Appeal No.162 of 2015 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 13.08.2014 made in ITA No.1151/Mds/2014.

Against the order of the Commissioner of Income Tax (Appeals)-I Coimbatore dated 19/02/2014 in Appeal No. 82/13-14 against the order of the Joint Commissioner of Income Tax Range

I Coimbatore dated 18/03/2013 in PAN.GIR.No. AABCC7357G for the Assessment Year 2010-2011.

For Appellant : M/s.T.R.Senthilkumar
in all appeals K.G.Usharani
Sr. Standing Counsel
For Respondent : Mr.R.Vijayaraghavan
in all appeals for M/s.Subbaraya Aiyar
Padmanabhan

COMMON JUDGMENT
(Delivered by DR.VINEET KOTHARI,J.)

The Revenue has filed these appeals under Section 260-A of the Income Tax Act, 1961, raising the following substantial questions of law arising from the orders of the learned Tribunal dated 27th July 2007; 31st July 2007 and 13th August 2014 respectively, whereby the learned Tribunal allowed the appeals for the assessment years 2003-2004; 2004-2005 and 2010-2011 and held that the Assessee is entitled to the benefit of deduction under Section 80IA of the Act.

"T.C. (A) No.741 of 2009:

1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that the assessee was entitled to deduction under Section 80IA even though the conditions specified thereunder are not satisfied?

2. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that infrastructure facility was eligible for deduction under Section 80IA even though the assessee was only a transport contractor to augment the power generation and was only like any other building contractor/labour contractor not eligible for such deduction?

3. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that the proviso to sub section 4 of section 80IA would hold good when there was no transfer of infrastructure facility?"

"T.C. (A) No.1266 of 2009:

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the deduction under Section 80IA of the Act, even though the assessee does not satisfy the proviso to Sub-section 4 of Section 80IA of the Act?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in allowing the deduction under section 80IA of the Act, without considering the explanation 13 to Section 80IA introduced by the Finance Act, 2007 with retrospective effect from 1.4.2000, no deduction under Section 80IA, is allowable to a Sub-contractor?

"T.C.A.No.162 of 2015

1. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80 IA, when the assessee is only a sub-contractor?

2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80IA, without examining the effect of explanation inserted at the end of the Section by Finance Act 2007 with retrospective effect from 1.4.2000 which was also substituted by Finance (No.2) Act, 2009 with retrospective effect from 1.4.2000?

3. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80IA, though the assessee did not fulfil the condition laid down in Section 80 IA(4) of having a contract with any Government/authority referred to in that section?

4. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80IA, the assessee did not satisfy proviso to Section 80IA(4)

inasmuch as there is no transfer of infrastructure facility?"

2. Section 80IA of the Act is quoted below for ready reference:

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

(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of profits and gains derived from such business for ten consecutive assessment years.

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or develops a special economic zone referred to in clause (iii) of sub-section (4) or generates power or commences transmission or distribution of power or undertakes substantial renovation and modernisation of the existing transmission or distribution lines.

Provided that where the assessee develops or operates and maintains or develops, operates and maintains any infrastructure facility referred to in clause (a) or clause (b) or clause (c) of the Explanation to clause (i) of sub-section (4), the provisions of this sub-section shall have effect as if for the words "fifteen years", the words "twenty years" had been substituted."

3. The learned counsel for the Revenue, Mr.T.R.Senthilkumar, urged before us that since the Assessee was only a sub-contractor and since it was not the Assessee, who itself had entered into a contract with the specified authority viz., Central Government or State Government or Local Authority as envisaged under Section 80IA(4) of the Act, the Assessee will not be entitled to the benefit of deduction under Section 80IA of

the Act and that the Tribunal erred in giving the said benefit to the said Assessee. He submitted that the principal contractor, who had entered into an agreement with the Railways, was one M/s.ST-CMS Electric Company Private Limited and the Assessee was only a sub-contractor and undertook the work of development of the railway sidings at Vadalur and Uthangalmangalam Railway Stations and was operating and maintaining such railway sidings under the agreement dated 16.04.2002 captioned as Lignite transport system and therefore, the Assessee was not entitled to the said deduction under Section 80IA of the Act.

4. On the other hand, the learned counsel for the Assessee, Mr.R.Vijayaraghavan, submitted that the provision of Section 80IA (4) of the Act, especially, the Provisos thereto, permits even the transferee of an infrastructure facility to avail such deduction under Section 80IA of the Act and the Tribunal has rightly allowed the said benefit to the Assessee invoking the first Proviso to Section 80IA(4) of the Act.

5. The relevant findings of the learned Tribunal in this regard are quoted below for ready reference:

"8. On a careful consideration of the rival submissions advanced by the parties and from a careful perusal of the orders of the authorities below and the documents placed on record including the precedents relied upon, we find that the Department had rejected the assessee's claim for relief u/s 80IA on the ground that the assessee has not satisfied the requirement of sub-sec.(4) to sec.80IA. According to the authorities below the assessee had not entered into an agreement with the Central or State Government, local authority or any statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility. For rejecting the assessee's claim another reason adopted by the Department is that operation and maintenance of the Lignite Transport System is not an infrastructure facility eligible for relief u/s 80IA and further that the assessee had only an agreement with ST-CMS and therefore it is not entitled to sec. 80IA relief. However, while going through the orders of the authorities below particularly with regard to the contract with Railways, the Department concluded that there was only approval from the Railway authorities to put up the rail track, sidings etc. notwithstanding the fact that the Railways has recognised the assessee as a contractor. Impliedly the Department has accepted the fact that the assessee has provided "Infrastructure facility" to the specified

authority. The only doubt in the mind of the Department was that there was no existence of direct contract between the assessee and the Railways. The Department proceeded further to conclude that there was no contract as envisaged under sec.80IA. As rightly pointed out by the ld. Counsel for the assessee, the proviso was never attempted to be deliberated upon whereas the assessee relies only on the proviso to claim the relief u/s 80IA as if no transfer had taken place. To maintain a rail system and operating and maintaining such infrastructure facility as defined and the original ST-CMS agreement will hold good in view of the proviso to sec.80IA(4). This proviso has to be read along with CBDT Circular No.779 dated 14.09.1999 cited supra, clearly brings the assessee as one entitled to claim deduction u/s 80IA of the Act particularly in view of proviso to sub-sec.(4). The assessee performed the contract according to the terms agreed upon is not in dispute. Once we are satisfied that the services rendered by the assessee were an integral and inseparable part of operation and maintenance of a Lignite Transport System and therefore, the assessee's claim that it had complied with the requisite conditions specified under the proviso, and is entitled to deduction under sec. 80-IA in terms of proviso to sub-sec.(4) has to be accepted. As rightly claimed by the ld. Counsel for the assessee the decision of the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. (supra) is squarely applicable to the facts of the present case and would come to the assessee's rescue. For coming to the conclusion that the assessee is eligible for deduction under sec.80IA in terms of proviso to sec.80IA(4), we also derive support from the decision of the Hyderabad Bench of the Tribunal in the case of Ocean Sparkle Ltd. v. DCIT, 99 TTJ (Hyd) 582, wherein under similar set of facts the Tribunal concluded as under:

"Proviso to sec.80IA(4) does not require that there should be a direct agreement between the transferee enterprise and the specified authority, the assessee-company engaged in operation and maintenance of port infrastructure which was transferred by the developer to the assess in accordance with the agreement with the specified authorities was eligible for deduction under sec.80-IA."

Under the above circumstances, we set aside the orders of the authorities below and direct the AO to allow the claim of the assessee for deduction under sec.80IA of the Act.

9. In the result, appeal of the assessee stands allowed."

6. We have heard the learned counsel for the Revenue and the Assessee.

7. The provisions of Section 80IA(4) of the Act, including its Provisos and Explanations to the extent relevant are also quoted below for ready reference:

"(4) This section applies to -

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely:

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory

body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

Provided further that nothing contained in this section shall apply to any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after the 1st day of April 2017.

Explanation : For the purposes of this clause, "infrastructure facility" means-

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway, inland port or navigational channel in the sea."

8. From a reading of the aforesaid Provisos to Section 80IA (4), it is clear that the Legislature intended to extend the said benefit under Section 80IA of the Act to an enterprise involved in (i) developing or; (ii) operating and maintaining or; (iii) developing, operating and maintaining any infrastructure facility. The term "infrastructure facility" has been defined in the Explanation and the same includes a toll road, a bridge or a rail system, a highway project, etc. These are, obviously, big infrastructure facilities for which the enterprise in question should enter into a contract with the Central Government or State Government or Local Authority. However, the Proviso intends to extend the benefit of the said deduction under Section 80IA of the Act even to a transferee or a contractor who is approved and recognised by the concerned authority and undertakes the work of the said development of infrastructure facility or only operating or maintaining the same. The Proviso to sub-section (4) stipulates that subject to the fulfillment of conditions, the transferee will be entitled to the said benefit, as if the transfer in question had not taken place. It has been found by

the Assessing Authority himself, in the present case, that the present Assessee M/s.Chettinad Lignite Transport Services Private Limited under an Agreement dated 16.04.2002, captioned as Lignite Transport System with M/s.ST-CMS Electric Company Private Limited, had undertaken the work of developing the said railway sidings and was operating and maintaining the same. The only ground on which, the Assessing Authority denied the said benefit was that the Assessee himself did not enter into any such contract with the Railways or with the Central Government.

9. The learned Tribunal, however, in our opinion, rightly applied the Proviso to Section 80IA(4) of the Act and held that since the Assessee was recognised as contractor for these railway sidings, which undoubtedly fell under the definition of "infrastructure facility", it was entitled to the said benefit under Section 80IA of the Act. The grounds on which the Assessing Authority denied the said benefit to the Assessee ignoring the effect of Provisos to Section 80IA(4), therefore, could not be sustained. The learned Tribunal, in our opinion, has rightly held that the Proviso does not require that there should be a direct agreement between the transferee enterprise and the specified authority for availing the benefit under Section 80IA of the Act. There is no dispute before us that the Assessee was duly recognised as transferee or assignee of the principal contractor M/s.ST-CMS Company Private Limited and was duly so recognised by the Railways to operate and maintain the said railway sidings at Vadalur and Uthangalmangalam Railway Stations. The findings of fact with regard to the said position recorded by the learned Tribunal are, therefore, unassailable and that clearly attracted the first Proviso to Section 80IA(4) of the Act.

10. The learned counsel for the Revenue relied upon a decision of this Court in the case of M/s.Covanta Samalpatti Operating Private Limited, Chennai-20 v. The Assistant Commissioner of Income Tax, Company Circle I (3), Chennai-34, reported in (2018) 93 Taxmann 38. In the said case, the claim of the Assessee company, which was engaged in power generation, for deduction under Section 80IA of the Act was denied by the Revenue on the ground that the Assessee Undertaking had not been set up for generation and distribution of power and that the Assessee was only a contractor for the maintenance work of power plant, which was owned by Samalpatti Power Corporation Private Limited (SPCL). On these facts, the Court held that the Assessee was not entitled to deduction under Section 80IA of the Act. We do not find any parity of facts of the said case with the facts available before us. The power generating companies are entitled to deduction under Section 80IA of the Act in different sub clauses viz., under Section 80IA(4)(iv) of the Act. Where there is no such Proviso, as is available in clause (i) of Section 80IA (4) of the Act, which deals with deduction to enterprise involved

in developing, operating and maintaining the infrastructure facilities. Obviously, if the Assessee is getting only fees for the maintenance of certain power generating plant, as was the case before the Co-ordinate Bench of this Court in Covanta case (supra), he may not be entitled to such deduction, but the fact situation before us is entirely different and, therefore, we do not find any support from the said case cited by the learned counsel for the Revenue.

11. We are, therefore, of the considered opinion that there is no merit in these appeals filed by the Revenue and the questions of law framed above deserve to be answered in favour of the Assessee and against the Revenue. We hereby do so. The appeals preferred by the Revenue deserve to be dismissed and accordingly, the same are dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Income Tax Appellate Tribunal,
Madras "D" Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-I,
Coimbatore.
3. The Assistant Commissioner of Income-tax,
Company Circle-1(I),
Coimbatore.
4. The Joint Secretary to Government,
Public (law & Order), Fort Saint George,
Chennai 9

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No. 21245

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No. 21239

T.C.(A) Nos.741,1266 of 2009
and 162 of 2015

NRL(CO)
GN(05/04/2019)