IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.596 to 600 of 2019
& CMP.Nos.17556, 17563, 17564 & 17566 of 2019

M/s.A.S.Shipping Agencies Pvt. Ltd., Chennai-1 ...Appellant in All Cases

Vs

The Deputy Commissioner of Income Tax, Company Circle 1(1), Chennai-34. ...Respondent in All Cases

Appeals under Section 260A of the Income Tax Act, 1961 against the common order dated 13.11.2015 made in ITA.Nos.2763 to 2767/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench respectively for the assessment years from 2006-07 to 2008-09, 2010-11 and 2011-12 against the order dated 12.09.2014 in PAN.No.AAACA2906N for the assessment year 2006-2007, 2007-2008, 2008-2009, 2010-2011, 2011-2012 on the file of the Deputy Commissioner of Income Tax Company Circle(I),Chennai, against the order dated 28.07.2014 in ITA.No.48/14-15/A-1, ITA.No.607/09-10/A1, ITA.No.46/14-15/A-1, ITA.No.47/14-15/A-1, ITA.No.340/13-14/A-1 for the assessment year, 2006-2007, 2007-2008, 2008-2009, 2010-2011, 2011-2012 on the file of the Deputy Commissioner of Income Tax (Appeals)-I, Chennai -34, against the order dated 28.03.2014, 21.12.2009, in PAN.No.AAACA2906N for the assessment year 2006-2007, 2007-2008, 2008-2009, 2010-2011, 2011-2012 on the file of the Deputy Commissioner of Income Tax Circle 1(1), Chennai.

For Appellant : Mr.A.S.Sriraman
For Respondent : Mrs.R.Hemalatha, SSC

COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J)

We have elaborately heard Mr.A.S.Sriraman, learned counsel for the appellant – assessee and Mrs.R.Hemalatha, learned Senior Standing Counsel accepting notice for the respondent – Revenue.

2. These appeals, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the common order dated 13.11.2015 made in ITA.Nos.2763 to 2767/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench respectively for the assessment years from 2006-07 to 2008-09, 2010-11 and 2011-12.

3. The assessee has filed these appeals by raising the following substantial questions of law :

> "i. Whether the Appellate Tribunal is right in remanding the matter pertaining to the claim of deduction under Section 80IA(4) of the Act to the file of the respondent/Assessing Officer despite the compliance of the conditions prescribed in relation thereto, availability of their order for the earlier assessment years approving such claim of deduction and the compliance of the law laid down by this Court in the case of M/s.A.L.Logistics Private Limited?
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> ii. Whether the Appellate Tribunal is correct in remanding the matter to the file of the respondent/Assessing Officer in spite of the availability of the approval/agreement as contemplated by this Court to make eligible for the claim of deduction under Section 80IA(4) of the Act, which fact was not disputed by the Revenue proving perversity in recording the findings of fact in relation thereto? And
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> iii. Whether the Appellate Tribunal is correct in not following the earlier decisions rendered by them in granting such deduction for the very same infrastructure facility namely container freight station reckoned as port/inland port within the scope of Section 80IA(4) of the Act, which completely defied the principles of judicial discipline and rule of consistency?"

4. On a perusal of the common order passed by the Tribunal, we find that the Tribunal remanded the matter to the Assessing

Officer to re-examine the issue and find out as to whether the assessee obtained any approval or entered into any agreement with Government or Government agency as in the case of CIT. Vs. A.L.Logistics Private Limited [TCA.No.1031 of 2014 dated 23.12.2014].

5. We are at a loss to understand as to how the Tribunal remanded the matter to the Assessing Officer for considering this factual issue, since, in the assessee's own case for the earlier assessment years i.e. 2002-03 and 2003-04, the Tribunal accepted the stand of the assessee in ITA.Nos.825 & 826/ Mds/2010 dated 14.6.2011. The Tribunal, in the said order dated 14.6.2011, had followed its earlier order in the assessee's own case for the assessment years 2002-03 to 2005-06. For better appreciation, the operative portion of the order dated 14.6.2011 is quoted as hereunder :

> "7. We find that the Tribunal, while deciding this issue in Assessment Year 2002-03 to 2005-06 has held as under :
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> "We have considered the rival submissions and the material available on record. First of all, we would like to make an observation that by not following the directions of the Income-tax Appellate Tribunal which were very well available before the Assessing Officer at the time when he was giving effect to the Commissioner of Income-tax's direction, is a serious procedural lapse on his part. When the order of the Commissioner of Income-tax had already merged with that of the Income-tax Appellate Tribunal, the directions given by the Commissioner of Income-tax no longer survived and the Assessing Officer has simply tried to flog a dead horse. His remarks are simplistic and didactic, which carry no meaningful result. It was argued by the learned authorised representative that after making deep investigation, the learned Commissioner of Income-tax (Appeals) has found, similar claim made by the assessee in other years, as a valid claim against which finding the Revenue is in appeal against allowance of travelling expenditure as apportioned to CFS activity. We have seen the common order passed by the same learned Commissioner of Income- tax (Appeals) for the assessment years 2004-05 and 2005-06 dated February 26, 2009, which is also a subject matter of appeal before us. In fact, in these years, investigation of facts with regard to

warehousing charges have been made as directed by the Hon'ble Income-tax Appellate Tribunal in earlier years. The same officer has found in this regard thus:

"3.7 The contentions of the Assessing Officer and the submission of the appellant were carefully considered by me. I have also considered the additional submission of the Assessing Officer sent to me vide his letter dated December 13, 2007 enclosing the orders of the Commissioner of Income-tax-I, Chennai, passed for the assessment years 2002-03 and 2003-04 wherein agreeing with the Assessing Officer's action of excluding warehousing income from CFS income he set aside the assessment of assessment years 2002-03 and 2003-04 for excluding the warehousing income from CFS receipts and considering the income and expenditure on Numbal plot and director's travelling expenses after due verification of the facts. I have also considered the counter submission of the authorized representative thereon. Now I proceed to decide the issue as under.

The approving guidelines expect that adequate warehousing facilities should be provided by the CFS operator. In fact, the definition of CFS means :

'Inland container depot (ICD)/container freight station (CFS) has been defined as "A common user facility with public authority status equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers carried under customs transit by any applicable mode of transport placed under customs control. All the activities related to clearance of goods for home use, warehousing temporary admissions, re-export, temporary storage for onward transit and outright export, trans-shipment, take place from such stations".'

3.8 Therefore the CFS activity presupposes adequate infrastructure towards warehousing and the income therefrom cannot be contended as non CFS income.

3.9 The fact that warehousing activity outside CFS does not qualify for deduction under section 80-IA by no stretch can be a consideration for treating the activity inside a notified CFS alike. The activities of CFS are completely different from what happens outside.

3.10 The Government of India, further to the issuance of its policy guidelines regarding setting up of inland container depot (ICD) and CFS in India has released a set of specific guidelines containing three parts, viz., part A, part B and part C for the above purpose. The guidelines essentially lays down basic conditions one has to comply with in order to set up a CFS and operate the same.

3.11 Part C of the above guidelines governs the procedure for approval of CFS and its implementation. In terms of the said policy guidelines issued by the Ministry of Commerce, Government of India the appellant-company made an application and after due examination of the application, the Ministry of Commerce, Government of India through its Notification No. 16/4/95- Infra 1 dated February 23, 1995 has notified the setting up of a container freight station at Numbal by the appellant-company. The notification referred to above clearly stipulates that the conditions given in part A and part B of the guidelines referred to above shall be satisfied and in addition the Notification has laid down certain minimum facilities which are required at the CFS. The said minimum level of facilities required under clause 'C' reads as follows:

'The warehousing facility separately for exports and imports and long-term storage of bonded cargo.' Here it is also worthwhile to reproduce the abovementioned notification and minimum level of facilities required for ready reference:

No. 16/4/95-Infra-1
Government of India, Ministry of Commerce
Infra-I Section New Delhi, 23rd February 1995

M/s. A. S. Shipping Agencies Pvt. Ltd.,
55, Armenian Street, Madras 600 001.

Subject: Application for setting up a container freight station at Numbal village, Madras.

I am directed to refer to your application dated 9th June, 1994 on the above subject and to say that the Government has approved your proposal for setting up a container freight Station at Numbal village, Madras for handling export cargo only. The approval is subject to the following terms and conditions:

(i) Proper infrastructure would be created by you keeping in view the norms given in parts A and B of the Guidelines for setting up inland container depots/container freight stations (ICDs/CFSs) and to he satisfaction of the concerned Collector of Customs and Central Excise within a period of six months from the date of issue of this letter.

(ii) Necessary bond and guarantees would be executed by you with the concerned Collector of Customs and Central Excise;

(iii) The approval would be subject to cancellation in the event of violation of the customs and other laws of the land and Rules.

Yours faithfully,
(Sd.) (N. D. Agnihotri),
Joint Director.

Minimum level of facilities required at ICDs/CFSs

'The following minimum level of facilities are required to be provided at ICDs/CFSs-

(a) Provision of standard pavement for heavy duty equipment for use in the operational and stacking area of the terminal, in case where only chassis operation is to be performed, the pavement standard could be limited to that of a highway. A minimum of 35 per cent of the land area (provided as per the guidelines - 1 acre for the Port CFS and 3 acres for ICDs in the hinterland) would be paved.

(b) Office building for ICD, customs office and a separate block for user agencies equipped with basic facilities.

(c) Warehousing facility, separately for exports and imports and long-term storage of bonded cargo.

(d) Gate complex with separate entry and exit.

(e) Adequate parking space for vehicles awaiting entry to the terminal . . .'

3.12 Therefore, if one has to qualify as an eligible container freight station operator, one has to provide the minimum level of infrastructure as provided in the notification and as such having adequate warehousing facility is an essential part of the minimum level of infrastructure requirements.

3.13 Here it may be mentioned that as per part B of the guidelines for setting up inland container depot (ICD) and container freight station (CFS) in India the following infrastructure should be available at the ICDs/CFS. Provision of standard pavement for heavy duty equipment for use in the operational and stacking area of the terminal. In cases where only chassis operation is to be performed, the pavement standard could be limited to that of a highway. Office holding for ICD, customs office and a separate block for user agencies equipped with basic facilities. Ware housing facility, separately for exports and imports and long-term storage of bonded cargo.

Gate complex with separate entry and exit. 3.14 Now as can be seen from the above notification of Ministry of Commerce and the Guidelines the approval is subject to the creation of minimum level of infrastructure facilities. Hence it is an essential part of the CFS operation business of the appellant. Further, the Commissioner of Customs has also notified the stipulated area as public bonded warehouse vide his letter dated September 26, 2000. Furthermore, vide Public Notice 173 of 2001 and several other public notices the warehouse has been included in the customs area.

3.15 Therefore, after a careful consideration of the facts and circumstances of the case, various statutory requirements and conditional approval of the Ministry of Commerce I find that the claim of the appellant is allowable. The Assessing Officer has been wrongly influenced by the fact that warehousing facilities may be situated outside CFS area also and such warehousing

> facilities do not get any deduction. The Assessing Officer is very correct that warehousing facilities alone may not get any deduction but when they are part of CFS as a necessary infrastructure as discussed above and such CFSs can come into existence and operate only if it provides minimum infrastructure facility as only then sanction for the CFS status is granted then such warehousing facility is different from the stand alone warehousing facility operated outside CFS. In fact, situation is like that there can be a warehouse without CFS but not a CFS without warehousing as can be seen from the notification pertaining to the appellant where it is part of minimum level of infrastructure. Hence, in such a situation warehousing income, in my opinion, has to be treated as part of CFS income and eligible for the deduction under Section 80-IA. Therefore, the appellant succeeds on this ground in both the years."
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> The facts in all the years remained same and static. The reasons given by the learned Commissioner of Income-tax (Appeals) in the above paragraphs to allow this claim of the assessee are sufficient to drive us also to come to a similar conclusion. Therefore, we allow warehousing income to be a part of CFS income and hold it eligible for deduction under section 80-IA. It is found for a fact that warehousing facilities in this case are a part of CFS being a necessary infrastructure. The notification of the Ministry is very clearly worded in this respect. In all these years, this common issue is allowed in favour of the assessee and against the Revenue. In the result, both the appeals of the assessee are allowed."

6. On a reading of the above order, we find that the Tribunal allowed the warehousing income to be a part of CFS income and held that the assessee would be eligible for deduction under Section 80IA of the Act. It further observed that the warehousing facilities in the assessee's case are a part of CFS being a necessary infrastructure and that the Notification issued by the Ministry, Government of India was very clearly worded in this aspect.

7. It is submitted by the learned counsel for the appellant – that the common order passed by the Tribunal for the assessment years namely 2002-03 and 2003-04 dated 14.6.2011 was placed before the Tribunal. But, the Tribunal had not adverted to the same.

8. However, we find that the Tribunal referred to the order passed in the assessee's own case for the assessment years 2008-09 and 2009-10 in ITA. Nos.1032 and 1033 of 2013 dated 21.11.2013. This observation is found in paragraph 3 of the impugned common order wherein the Tribunal recorded the submissions of the learned counsel for the assessee. However, in the discussion portion of the impugned common order, we find that the said decision was not applied by the Tribunal while remanding the matter to the Assessing Officer.

9. The learned counsel for the appellant – assessee has relied upon the decision in the case of A.L.Logistics Private Limited.

10. In the said decision, it has been held that the container freight station was a part of inland port and therefore, the assessee therein was entitled to the infrastructure facility as defined in the Explanation to Section 80IA(4)(i) of the Act. The Revenue contended that there was no specific agreement entered into by the assessee therein with the Central Government or the State Government or a local authority or any statutory body for being entitled to claim the benefit of Section 80IA(4)(i) of the Act. After taking note of the Notification issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce Infrastructure Division vide Notification No.16/6/2003-Infra-I dated 27.5.2003 and the letter received by the assessee therein from the Director, it was pointed out that the proposal of the assessee therein was accepted by the Government on certain conditions, which were duly complied with by the assessee therein and that there may not be any specific agreement, but the sequence of events showed that the assessee was providing CFS facility in accordance with the conditions laid down by the Government. Therefore, it was held that there was no need to insist for specific execution of agreements. The Court also referred to the decision of the Tribunal in the case of United Liner Agencies of India Private Limited Vs. JCIT (OSD) [I.T.A.Nos.273 and 275/Mum/2013 dated 28.6.2013].

11. In our considered view, the Tribunal ought to have applied the decision in the assessee's own case. In any event, since the matter had been sent back to the Assessing Officer, we are not inclined to interfere with the order passed by the Tribunal. But, we would like to clarify the following :

If the identical issue had arisen in the assessee's own case for the earlier assessment years and the matter traveled upto the Tribunal and the assessee had succeeded before the Tribunal (the appeal of the Department was dismissed), then the decision of the Tribunal is binding on the authorities, which are anterior to that of the Tribunal and obviously, would bind the Assessing Officer. Furthermore, the Tribunal cannot ignore the decision of a Coordinate Bench unless it distinguishes the decision on merits or if it disagrees with the view taken by the Tribunal and the only option would be to refer the same for consideration to a Larger Bench. The Tribunal did not do either of the options available to it. Furthermore, the Tribunal referred to the decision in the case of A.L.Logistics Private Limited while remanding the matter for a fresh consideration.

12. As pointed out earlier, in the decision in the case of A.L.Logistics Private Limited, it had been clearly held that there was no necessity for specific execution of agreement.

13. For the above reasons, the above tax case appeals are disposed of and the matters are remanded to the Assessing Officer with a direction to the Assessing Officer to apply the decision of the Tribunal in ITA.Nos.825 & 826/ Mds/2010 dated 14.6.2011 and pass fresh orders on merits and in accordance with law. In addition, the assessee shall also place before the Assessing Officer, the communications received from the Government of India to establish that they are container freight station as approved by the Government of India. The substantial questions of law are left open. Consequently, the connected CMPs are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Madras 'D' Bench.
2.The Deputy Commissioner of Income Tax, Company Circle 1(1), Chennai-34.
3.The Deputy Commissioner of Income Tax(Appeals) -I, Chennai -34.

+1 cc to M/s.T.Ravikumar, Senior Standing Counsel for Income Tax, Department, Sr.No. 68762
+1 cc to Mr.S.Sridhar, Advocate Sr.No.68785

AKM/20.09.19/10P- 6C /

TCA.Nos.596 to 600 of 2019 &
CMP.Nos.17556, 17563, 17564
& 17566 of 2019