

**THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1360 OF 2022

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Saurashtra Infra & Power Pvt. Ltd.]
having its corporate office at]
65C, 6th Floor, Mittal Tower,]
Nariman Point, Mumbai-400 021.]... Petitioner

Versus

1. Deputy Commissioner of Income-tax]
Circle-3(3)(1), having his office at]
Room No.609, 6th floor,]
Maharshi Karve Road,]
Mumbai – 400 020.]
]
2. Pr. Commissioner of Income-tax-3,]
having his office at Room No.629,]
6th floor, Aayakar Bhavan,]
M.K. Road, Mumbai – 400 020.]
]
3. The Assessing Officer,]
National Faceless Assessment Centre,]
Delhi.]
]
4. Union of India,]
through Ministry of Finance,]
North Block, New Delhi – 110 001.]..Respondents

Mr.V. Sridharan, Senior Advocate with Mr.B.V. Jhaveri, Mr. Sriram & Ms. Bhargavi Rawal, Advocate for petitioner.

Mr.Akhileshwar Sharma with Ms.Shilpa Goel, Advocates for respondents.

CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, JJ.

RESERVED ON : 2nd JANUARY, 2023
PRONOUNCED ON : 9th JANUARY 2023

J U D G M E N T

PER DHIRAJ SINGH THAKUR, J.

1. The present petition is filed, *inter-alia*, challenging the notice, dated 26th March 2021, issued u/s. 148 of the Income Tax Act, 1961 ('the Act'), whereby the reassessment proceedings are sought to be initiated against the petitioner for the assessment year 2015-16.

2. Briefly stated the material facts are as under :

(a) The petitioner is a company engaged in the business of infrastructure development and running a Container Freight Station. Return of income for the assessment year 2015-16 was filed on 30th September 2015 and declared book profit u/s.115JB of the Act of Rs.8,72,54,012/-. The petitioner in its return claimed a deduction of Rs.10,24,27,306/- u/s. 80IA(4) of the Act. The case

of the petitioner was selected for scrutiny for purposes of verification of claim as regards deduction under Chapter VI-A of the Act.

(b) A notice u/s. 143(2) of the Act dated 27th July 2016 was issued and subsequently a notice u/s. 142(1) dated 19th January 2017 was issued.

(c) Reply dated 3rd May 2017 is stated to have been filed along with acknowledgment of filing revised Form 10CCB for A.Y. 2015-16 dated 27th April 2017 and un-audited accounts for infrastructure unit on which deduction u/s.80IA(4) was claimed. A reply dated 22nd May 2017 along with note on large deduction claimed under Chapter VI-A and documents explaining the basis for claiming deduction u/s. 80IA(4) of the Act was also filed. Finally, the Assessing Officer ('AO') passed the assessment order dated 12th June 2017. However, disallowed the deduction u/s. 80IA(4) of the Act to the extent of Rs.4,17,247/- only.

3. A notice dated 26th March 2021 u/s. 148 of the Act was issued for reopening the assessment for the assessment year 2015-16. Return of income was filed by the petitioner on 3rd August 2021 in response to the notice u/s. 148 of the Act. Reasons were sought for reopening of the assessment. Reasons were finally provided vide letter dated 20th January 2022. The reasons recorded are reproduced hereunder :

“Reasons of opening :

..... 2. The benefit of deduction is allowable to an assessee only for Eligible Business specified in section 80-IA viz., Infrastructure facility or Telecommunication services which are defined and thus services defined in section 80-IA is only to be treated as Eligible Business. Further, infrastructure facility is defined in two places in the Act, i.e., in Explanation under section 80-IA(4)(i) as well as in Explanation (d) to section 10(23F) and clause (d) of the Explanation of clause (viii) of sub-section (1) of section 36. In 80-IA, other public facility as notified by Board was deleted vide Finance Act, 2001 w.e.f. 1.4.2002.

Thus, Container Freight Station (CFS) is not an eligible infrastructural facility as provided in Explanation to Section 80-IA(4) of the Act. As per Boards clarification dated 6th January 2011, inland container depots and container freight stations are not ports located on any inland waterway, river or canal and therefore they cannot be classified as inland ports for the purposes of section 80-IA(4).

In the case, on perusal of the computation of income, it is seen that the assessee company has claimed deduction u/s. 80-IA of the Act of

Rs.10,20,10,059/- whereas it is seen that the assessee company is running a CFS and as noted above Container Freight Station (CFS) is not an eligible infrastructural facility as provided in Explanation to Section 80-IA(4) of the Act, the claim of deduction by the assessee on this account is not in order. This resulted in under-assessment of income by Rs.10,20,10,059/- and the same has escaped assessment.....”

4. The reasons for reopening briefly stated was that the Container Freight Station (CFS) is not an eligible infrastructural facility as provided in Explanation to Section 80-IA(4) of the Act and that the claim of deduction of the assessee on this account was not in order which had resulted in under-assessment of income by Rs.10,20,10,059/- and the same has escaped assessment. It was further stated in the reasons that the assessee had not disclosed full and true material facts in the return which was filed, and therefore, the condition specified in proviso to section 147 was fulfilled.

5. Objections were filed against the reopening of the assessment by the petitioner, which too, came to be rejected vide order, dated 10th March 2022. Hence, the present petition.

6. Counsel for the petitioner challenges the notice as also the order impugned dated 10th March 2022 on the ground that the notice u/s. 148 could not have been issued as the jurisdictional conditions for invoking the powers u/s. 147 of the Act are not satisfied.

7. Counsel for the petitioner urged that since more than four years have elapsed from the end of the relevant assessment year 2015-16, the notice impugned could not have been issued unless the Assessing Officer was satisfied that there was a failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment for that assessment year. It was urged that even the reasons recorded did not anywhere allege that there has been failure on the part of the assessee to disclose fully and truly the material facts leading to the income escaping assessment.

8. It was further urged that the petitioner had made a full disclosure about its claim during the scrutiny assessment as also filed a detailed note along with

requisite documents and also submitted the audit report and Form 10CCB for the year ended 31st March 2015 which was looked into by the Assessing Officer while leading to the passing of the order of assessment dated 10th March 2022.

9. It was further stated that this Court in *Commissioner of Income Tax-II, Thane Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.*¹ has already settled that CFS is an inland port as it carries out functions of warehousing, customs clearance and transport of goods from its location to sea-port and vice-versa, and therefore, its income was eligible to deduction u/s. 80-IA(4) of the Act. It is stated that the Supreme Court in *Commissioner of Income Tax, Delhi-1 Vs. Container Corporation of India Ltd.*² had dismissed the Civil Appeal filed by the Revenue, vide order, dated 24th April 2018.

10. Mr.Akhileshwar Sharma, learned counsel for the

1 [2015] 58 taxmann.com 78 (Bombay)

2 [2018] 93 taxmann.com 31 (SC)

respondents has also, on the other hand, supported and buttressed the stand of the Assessing Officer that a Container Freight Station (CFS) was not eligible for deduction u/s. 80-IA(4) of the Act as a CFS was not a Port located on any inland waterway, river or canal, and therefore, cannot be classified as an inland port for the purposes of section 80-IA(4) of the Act.

11. Admittedly, since the notice u/s. 148 was being issued after the expiry of four years from the end of the relevant assessment year, no action could be taken u/s. 147, after expiry of the said period unless it could be shown that the income chargeable to tax had escaped assessment by reason of the failure on the part of the assessee, *inter-alia*, to disclose fully and truly all material facts necessary for the assessment for that assessment year.

12. In the present case, from the record, it is quite clear that when the return filed by the petitioner was taken up for scrutiny assessment, information was called for by the

Assessing Officer. The petitioner, in response to the notices so received, had submitted a note in regard to the claim for deduction under Chapter VI-A which is on record. Extracts from the note so received submitted are reproduced hereunder :

“.....The Assessee company has claimed deduction u/s 80IA Rs.10.24 crores & deduction u/s 80G Rs.0.75 Lacs.

The Deduction u/s 80IA is towards deductions in respect of ‘Profit from an enterprise engaged in the business of infrastructure development’. The Assessee Company, I.e, M/s. Saurashtra Infra and Power Pvt. Ltd. (Earlier known as M/s. Saurashtra Container Pvt. Ltd.) is a registered Indian company engaged in the business of running a Container Freight Station (CFS) at Mundra Port. The Assessee Company is providing customs bound facility which includes warehousing for exim cargo & container yard facility.”

.....

A Container Freight Station is an eligible infrastructure facility for the purpose of deduction under section 80IA of the Income Tax Act, 1961 and a CFS is classified as an ‘inlands ports’ for the purpose of claiming deduction under section 80IA of the I.T. Act, 1961, the Assessee company has started claiming deduction u/s 80IA from A.Y. 14-15 onwards.

The Company has filed Form 10CCB for the above deduction along with Audit Report and other documents on 30.09.2015. Form 10CCB along with Audit Report, Infrastructure Agreement and Customs Notification were already filed vide Paper Book No.3 on 3rd May 2017.”

13. The reasons recorded by the Assessing Officer do

not at all elucidate as to what material was not disclosed fully and truly, failure of which had led to the income escaping assessment.

14. In *Hindustan Lever Ltd. Vs. R.B. Wadkar, Assistant Commissioner of Income-Tax and Others*³, this Court held :

“The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.”

15. On the other hand, it appears that the reassessment proceedings were started based upon an audit objection raised by the office of the Director General of Audit (Central) Mumbai highlighting the issue that

3 2004 ITR 332 Vol.268

Container Freight Station (CFS) was not an eligible infrastructural facility as provided in Explanation to section 80IA(4) of the Act. What was stated in the audit objection is extracted hereinbelow :

“....Container Freight Station (CFS) is not an eligible infrastructural facility as provided in Explanation to Section 80 IA (4) of the Act. As per Boards clarification dated 6th January 2011, inland container depots and container freight stations are not ports located on any inland waterway, river or canal and therefore they cannot be classified as inland ports for the purpose of section 80IA(4). The Supreme Court in [2015] 64 taxmann.com 34 (SC) Commissioner of Income-tax V. Continental Warehousing Corporation (Nhava-Sheva) Ltd. has granted special leave petition against the ruling of the High Courts which held that CFS are eligible infrastructure facilities for deduction under the section.

In this case, assessment for A.Y. 2015-16 was completed after scrutiny assessing income at Rs.11195175 after allowing 80IA deduction of Rs.102010059. It was seen that the assessee was running a CFS for which the 80IA deduction was allowed to him. This is against the law as the Department is in appeal in Supreme Court and allowing deduction after getting favourable grant of SLP amounts to taking two different stands.

16. It, thus, appears that the basis for initiation of reassessment was the objection by the Director General of Audit (Central) Mumbai and further that the Supreme

Court had been pleased to entertain a Special Leave Petition against the judgment in ***Continental Warehousing Corporation Ltd.*** (Supra).

However, even that objection loses its substratum in view of the fact that the SLP preferred by the Revenue in the case of ***Continental Warehousing Corporation Ltd.*** (Supra) has since been dismissed.

For purposes of reference, this Court, in the case of ***Continental Warehousing Corporation Ltd.*** (Supra) was considering the order passed by the Tribunal which had held the assessee in that case entitled to the benefit under section 80-IA(4) of the Act based upon the earlier view expressed by a Special Bench of the Tribunal as also the Delhi High Court in ***Container Corporation of India Ltd.*** (Supra).

The Special Bench had held that the case of Container Freight Station was similarly situate as that of an Inland Container Depot (ICD) inasmuch as both carried out similar functions of warehousing, customs clearance and transport of

goods from its location to sea-ports and *vice-versa*.

This Court in *Continental Warehousing Ltd.*

(Supra) upheld the view of the Tribunal.

17. In the present case, even the objections raised by the Director General of Audit (Central) Mumbai leading to the initiation of reassessment proceedings would not anymore furnish a sound basis for alleging that the income had escaped assessment on account of a claim having been wrongly allowed under the said section. Be that as it may, we have no hesitation in holding that the notice impugned dated 26th March 2021 as also the order dated 10th March 2022, rejecting the objections, are unsustainable in law and are accordingly quashed.

18. The Petition is allowed accordingly. No costs.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]