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T.C.A.Nos. 235 & 236 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2026

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR

T.C.A.Nos. 235 & 236 of 2014

The Commissioner of Income Tax,
Chennai.

.. Appellant
in both appeals

VS

M/s.A.S.Shipping Agencies Pvt Ltd.,
113, Armenian Street,
Chennai – 600 001.

.. Respondent
in both appeals

Prayer in TCA No.235 of 2014 : Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, Madras 'C' Bench, Chennai dated 21.11.2013 passed in ITA No. 1032/Mds/2013.

Prayer in TCA No.236 of 2014 : Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, Madras 'C' Bench, Chennai dated 21.11.2013 passed in ITA No. 1033/Mds/2013.



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For Appellant : Mr.T.Ravikumar
Senior Standing Counsel
(in both appeals)

For Respondent : Mr.A.S.Sriraman
(in both appeals)

COMMON JUDGMENT
(Delivered by Dr. ANITA SUMANTH, J.)

The present appeal relates to assessment years (AY) 2008 – 09 and 2009 – 10 and the substantial questions that had been admitted on 11.08.2014 is as follows:-

“1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that warehousing charges should be treated as part of the CFS (Container Freight Station) Income and the same would be eligible for deduction under Section 80IA?

2. Is not the finding of the Tribunal bad especially when both container freight station and bonded warehouse are infrastructure facilities while so only container freight station had been notified to be eligible for deduction under Section 80IA(4)?

3. Whether the Tribunal was right in holding that the income from warehousing activity should be treated as part of the income of Container Freight Station eligible for deduction under Section 80IA(4) overlooking the amendment to Section 80IA(4) which has been introduced with effect from 01.04.2002 omitting the words ‘any other public facility of similar nature’.”



2. Both Mr.Ravikumar, learned Senior Standing Counsel appearing for the Department and Mr.Sriraman, learned counsel, appearing for the assessee/respondent states that the issue is covered by a decision of the Supreme Court in the case of *Commissioner of Income Tax, Delhi – 1 v Container Corporation of India Ltd*¹ and the question has been answered in favour of the assessee and adverse to the revenue. The operation portion of that order is as follows:-

“Discussion:

10) As the whole point in dispute revolves around the ICDs, it would be appropriate to have an understanding about the same. The ICDs function for the benefit of exporters and importers located in industrial centers which are situated at distance from sea ports. The purpose of introducing them was to promote the export and import in the country as these depots acts as a facilitator and reduce inconvenience to the person who wishes to export or import but place of his business is situated in a land locked area i.e., away from the sea. These depots reduce the inconvenience in import and export in the sense that it reduces the bottlenecks that are arising out of handling and customs formalities that are required to be done at the sea ports by allowing the same to be done at these depots only that are situated near to them. The term ICDs was inserted in 1983 under Section 2(12) of the Customs Act, 1962 which defines ‘customs port’ and by the provisions of [Section 7\(1\)\(aa\)](#) of the Customs Act, 1962 power has been given to the Central Board of Excise and Custom(CBEC) to notify which place alone to be considered as Inland Container Depots for the unloading of imported goods and the loading of export goods by Notification in the official Gazette.

11) With the purpose of boosting country’s infrastructure

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and specially the transport infrastructure, the [Finance Act, 1995](#) which came into effect from 01.04.1996 brought an amendment to the provisions of [Section 80-IA](#) of the IT Act.

[Section 80-IA](#) of the IT Act talks about deduction in respect of profits and gains from industrial undertaking or enterprises engaged in the infrastructure development etc. The said amendment for the first time brought a provision under which a percentage of profits derived from the operation of infrastructure facility was allowed a deduction while computing the income of the assessee. A ten years tax concession allowed to the enterprises in accordance with the provisions of the Section subject to fulfillment of conditions given therein, which develops, maintains and operates any new infrastructure facility such as roads, highways, expressways, bridges, airports, ports and rail system or any other public facility of similar nature as notified.

12) The relevant portion of [Section 80IA](#) (as it stood then) reads as under:

“[Section 80-IA\(4A\)](#): This section applies to:--

any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility which fulfills the following conditions, viz., [Section 80-IA\(5\)](#) clause(ia): in the case of enterprise referred to in sub-section (4A) hundred percent of profits and gains derived from such business for the initial five assessment years and thereafter thirty per cent of such profits and gains.”

13) The term infrastructure facility had also been defined which at the relevant time stood as follows:- “[Section 80-IA\(12\)\(ca\)](#): Infrastructure facility means:-

a road, highway, bridge, airport, port or rail system or any other public facility of similar nature as may be notified by the Board in this behalf in Official Gazette;” The said provision gives the power to the Board to notify certain other enterprises which can avail the benefit of [Section 80-IA](#) of the IT Act,



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which do not fall within any of the specified categories but carries out activities of similar nature.

14) Further, Central Board of Direct Taxes (CBDT), in exercise of its power under [Section 80-IA\(12\)\(ca\)](#), vide Notification No.S.O.744(E) dated 01.09.1998 notified ICDs and CFSs as infrastructure facility.

15) In addition to the above, the [Finance Act, 1998](#), which came into effect on 01.04.1999, made a change in the definition of 'Infrastructure facility' as is relevant to the present case. The words 'Inland water ways and inland ports' were added in the definition of infrastructure facility. Now, the definition reads as under: "Infrastructure Facility means road, bridge, airport, port, inland waterways and inland ports, rail system by any other public facility of similar nature as may be notified by the Board in this behalf in official Gazette."

16) A noticeable change was further brought by the [Finance Act, 2001](#), which came into effect from 01.04.2002, in the terms that the power of the Board to extend the benefit of the said provisions to any infrastructure facility of similar nature by issuing a Notification was taken away. The new explanation to [Section 80-IA\(4\)](#) of the IT Act as is substituted by the [Finance Act, 2001](#) reads as under:

For the purpose 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 waterways or inland port;*



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17) It was contended on behalf of the appellant that the High Court erred in relying on the Notification issued by CBDT to hold that the enterprises holding ICDs are allowed to claim deductions under [Section 80-IA](#) of the IT Act. As the said power of the Board was specifically taken away by the amendment made by [Finance Act, 2001](#), in light of the said amendment, the Notifications which were issued by the CBDT would cease to operate after the Assessment Year 2002-03.

18) The argument put forward by learned senior counsel for the appellant does not have much force as the said amendment is silent with regard to any effect it would have upon the Notifications issued earlier by the Board in due exercise of its power. Had it been the intention of the legislature that the Notifications issued by the Board earlier are of no effect after 2002-03, it would have had found a place in the said amendment. In the absence of the same, we are unable to concur with learned senior counsel that the Notifications which were issued in legitimate exercise of the power conferred on the Board would cease to have effect after the Assessment Year 2002-03.

19) Learned senior counsel for the appellant contended that the High Court committed a grave error in holding ICDs as Inland Ports. It was further contended that the ICDs are never understood to fall in the category of 'Inland Port' under the scheme of the [IT Act](#). The argument in support of this contention is that if the word 'Inland Port', as used in the Explanation attached to [Section 80-IA\(4\)](#) of the IT Act defining 'infrastructure facility' includes ICDs, there would have been no need for the CBDT to separately exercise its power given under the said Section, as it stood then, to notify it as infrastructure facility. However, the argument does not hold much weight behind it as the Notification which was issued by the CBDT came into effect on 01.09.1998 i.e., the time when the term 'Inland Port' was not in itself inserted in the provisions of Explanation attached to [Section 80-IA\(4\)](#) of the IT Act defining the term 'infrastructure facility'. It was inserted



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through [Finance Act, 1998](#) which came into effect from 01.04.1999. So there seems to be no conflict within the Notification issued by the Board and the fact that the ICDs are Inland Ports or not.

20) Moreover, we find that the Respondent has been held entitled for the benefit of [Section 80IA](#) of the IT Act much before the [Finance Act, 2001](#) which came into force on 01.04.2002 and exemption for the period of 10 years cannot be curtailed or denied by any subsequent amendment regarding the eligibility conditions under the period is modified or specific provision is made that the benefit from 01.04.2002 onwards shall only be claimed by the existing eligible units if they fulfill the new conditions.

21) Moving further to the issue whether the ICDs can be termed as Inland Ports so as to entitle deduction under [Section 80-IA](#) of the IT Act. The term port, in commercial terms, is a place where vessels are in a habit of loading and unloading goods. The term 'Port' as is used in the Explanation attached to [Section 80-IA\(4\)](#) seems to have maritime connotation perhaps that is the reason why the word airport is found separately in the Explanation. Considering the nature of work that is performed at ICDs, they cannot be termed as Ports. However, taking into consideration the fact that a part of activities that are carried out at ports such as custom clearance are also carried out at these ICDs, the claim of the respondent herein can be considered within the term 'Inland port' as is used in the Explanation. It is significant to note that the word 'Inland Container Depots' was first introduced in the definition of 'Customs Port' as is given in [Section 2\(12\)](#) of the [Customs Act, 1962](#), through amendment made by the Finance Act, 1983 with effect from 13.05.1983.

22) The term 'Inland Port' has been defined nowhere. But the Notification that has been issued by the Central Board of Excise & Customs (CBEC) dated 24.04.2007 in terms holds that considering the nature of work carried out at these ICDs they can be termed as Inland Ports. Further, the communication dated 25.05.2009 issued on behalf of the Ministry of Commerce and Industry confirming that the ICDs are Inland Ports, fortifies the claim of the respondent herein. Though both the



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Notification and communication are not binding on CBDT to decide whether ICDs can be termed as Inland Ports within the meaning of [Section 80-IA](#) of the IT Act, the appellant herein is unable to put forward any reasonable explanation as to why these notifications and communication should not be relied to hold ICDs as Inland Ports. Unless shown otherwise, it cannot be held that the term 'Inland Ports' is used differently under [Section 80-IA](#) of the IT Act. All these facts taken together clear the position beyond any doubt that the ICDs are Inland Ports and subject to the provisions of the Section and deduction can be claimed for the income earned out of these Depots. However, the actual computation is to be made in accordance with the different Notifications issued by the Customs department with regard to different ICDs located at different places.

23) In light of the forgoing discussion, we are of the view that judgment of the High Court does not call for any interference and, hence, the appeal is accordingly dismissed. All the connected appeals are disposed of accordingly. The parties to bear cost on their own.

3. In light of the discussion as above, the substantial questions are answered in favour of the assessee and adverse to the revenue, and these appeals are dismissed. No costs.

[A.S.M, J.] [M.S.K, J.]
23.01.2026

Index: Yes/No
Neutral Citation: Yes
ssm

To

1. The Commissioner of Income Tax,
Chennai.

2. The Income-Tax Appellate Tribunal, Madras 'C' Bench, Chennai.

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DR. ANITA SUMANTH,J.
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