

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT
MEMBER AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1412/Mds/2015

निर्धारण वर्ष /Assessment year : 2010-2011

The Deputy Commissioner
of Income Tax,
Corporate Circle -1(1)
Chennai

Vs. M/s. AL Logistics P. Ltd
No.5, GNT Road,
Moolakkadai,
Chennai 600 110.

(अपीलार्थी/Appellant)

[PAN AAECA 5279L]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. A.V. Sreekanth, IRS, JCIT,
: Shri. K. Balasubramanian, Advocate

सुनवाई की तारीख/Date of Hearing

: 01-12--2015

घोषणा की तारीख /Date of Pronouncement

: 16-12-2015

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The Revenue has filed an appeal against order of
Commissioner of Income Tax (Appeals)-1, Chennai in ITA No.411/13-

14/A-I (New No. ITA 220/CIT(A)-1/2013-14) dated 18.02.2015 passed u/sec. 143(3) and 250 of the Income Tax Act, 1961.

2. The Revenue has raised the following grounds of appeal:-

2. The learned Commissioner of Income Tax (Appeals) has erred in directing the Assessing Officer to allow deduction u/s.80IA(4) of the I.T. Act to the tune of ₹3,02,65,882/-.

3. The learned Commissioner of Income Tax (Appeals) erred in allowing deduction u/s.80IA(4) to the assessee when the assessee had not developed any infrastructure facilities as it was only a custodian for the movement and handling of all containerized import/export consignment in Container Freight stations.

4. The learned Commissioner of Income Tax (Appeals) ought to have appreciated the amendment to Section 80IA(4) whereby Explanation was introduced with effect from 04.04.2002 which had omitted the word "any other public facility of similar nature" thereby wrongly allowing deduction u/s.80IA(4) on Container Freight Station".

3. The Brief facts of the case is that the assessee company is a licence holder of warehousing complex consisting of buildings, godowns, weigh bridge and other equipments for the purpose of maintaining a Container Freight Station (CFS) and the return was filed for the above assessment year on 22.09.2010 declaring a total income of ₹17,83,220/-. After claiming deduction u/s.80IA(4) for ₹3,02,73,659/-, the return was processed u/s.143(1) and selected for scrutiny through CASS and accordingly notice u/s.143(2) of the Act was issued. In response to the notice, the Authorised Representative

for assessee appeared from time to time, filed explanations and submissions in respect of Audited accounts and also claimed deduction u/s.80IA of the Act. But the Id. Assessing Officer disallowed the claim on the ground that the assessee company facility cannot be defined as infrastructure facility or considered it as a fit as a 'port' or 'inland port' as per the provisions of the Act and disallowed the deduction and assessed total income at ₹3,20,49,102/-. Aggrieved, by the order of the Assessing Officer the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-1, Chennai.

4. The Revenue raised the grounds that the Commissioner of Income Tax (Appeals) erred in holding that the assessee has complied with the conditions u/s.80IA(4)(i) of the Act and infrastructure facility is eligible to claim deduction and fulfils all the conditions set out in Sec. 80IA(4)(i) (a)(b) & (c) of the Act.

5. We have heard both the parties. In our opinion, identical issue was already decided in assessee's own case in ITA No. No.469/Mds/2014, dated 14th July, 2014 wherein held as under:-

"5. Both sides heard. We have also perused the orders of the authorities and the decisions on which the Id.Counsel for the assessee has placed reliance. A close reading of the provisions of section 80IA(4) makes it clear that, for claiming deduction u/s.80IA(4)(i), following conditions have to be satisfied:

- i. The undertaking should carry on the business of (a) developing or (b) maintaining and operating or (c) developing, maintaining and operating any infrastructure facility;
- ii. The undertaking should be owned by an Indian company;
- iii. There should be an agreement with the Central Government; and
- iv. The undertaking should start operations on or after 1st April, 1995;

In the present case, the benefit of section 80IA(4)(i) has been denied to the assessee on two grounds:

- a. That the assessee is not providing infrastructure facility as envisaged under the Act; and
- b. That the assessee has not entered into an agreement with the Government or any statutory authority as provided under the provisions of section 80IA(4)(i)(b);

The term 'infrastructure facility' has been defined in explanation to section 80IA(4)(i) as under:

"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]".

6. A perusal of explanation defining 'infrastructure facility' shows that clause (d) includes inland port. The Hon'ble Delhi High Court in the case of Container Corporation of India Ltd., Vs. ACIT (supra) has held that an inland container depot is actually an inland port and the CFSs are part of the port. The Hon'ble High Court in the aforesaid case also referred to the communication from Department of Revenue, Central Board of Excise and Customs, Ministry of Finance wherein clarification regarding 'inland port' was given. It was clarified:

"Container Freight Stations (CFSs) are 'customs area' attached to a port. The work related to customs is performed at these inland container depots/Container freight stations.

Accordingly, inland container depots and Container freight stations (i.e., customs area port) are 'inland ports' ”.

Another letter referred to in the order of the Hon'ble High Court is from the Department of Commerce, Infrastructure Division, Ministry of Commerce and Industry. In the said letter the status of CFS was clarified. The relevant extract is reproduced as under:

“3. The matter has been examined in this Department and it is clarified that inland container depots/container freight stations are inland ports. The Central Board of Direct Taxes may accordingly take decision for the purpose of exemption of inland container depots/container freight stations of Concor or a private party under section 80-IA of Income-tax Act”.

The view of the Hon'ble Delhi High Court has been followed by the Special Bench of the Tribunal in the case of All Cargo Global Logistics Ltd., Vs. DCIT (supra). The relevant extract of the order of the Special Bench is re-produced herein below:

“66. We find that the solitary decision in this case by any High Court is in the case of Container Corporation of India Ltd.. In this case it has been held that an ICD is not a port but it is an inland port. The case of CFS is similar situated in the sense that both carry out similar functions, i.e., ware housing, customs clearance, and transport of goods from its location to the seaports and vice-versa by railway or by trucks in containers. Thus, the issue is no longer res-integra. Respectfully following this decision, it is held that a CFS is an inland port whose income is entitled to deduction u/s.80IA(4). Question No.2 is answered accordingly”.

Thus, in view of the above decisions of the Hon'ble Delhi High Court and the Special Bench of the Tribunal, it is unambiguously clear that CFS is an infrastructure facility. Hence, the first issue is decided in favour of the assessee.

7. Now, we proceed to the next issue, whether in the absence of specific agreement with the Central/State Government, local authority or Statutory Body, the assessee is entitled to claim the benefit of section 80IA(4)(i)? The assessee had made an application for setting up of CFS at Haldia. In response to the application of assessee, the Department of Commerce, Infrastructure Division, Ministry of Commerce and Industry approved the proposal of the assessee for setting up of CFS at Haldia for handling import/export of cargo subject to execution of certain documents and compliance of other terms and conditions as stated in the letter. The Id.Counsel for the assessee has placed on record letter dt.27-05-2003 from the Ministry of Commerce

and Industry permitting the assessee to set up CFS at Haldia. The contents of the letter are reproduced herein below:

*No.16/6/2003-Infra-I
Government of India
Ministry of Commerce & Industry
Deptt.of Commerce
Infrastructure Division

UdyogBhawan, New Delhi, Dated the 27th May,2003.

To

*The Director,
M/s A L Logistics Pvt. Ltd.,
Chennai.*

Subject: Setting up of an CFS at Haldia.

Sir,

I am directed to refer to your application dated 8.2.2003 on the above subject and to say that the Government has approved your proposal for setting up of an Container Freight Station at Haldia for handling import and export cargo. The approval is subject to the following terms and conditions:-

- a) The Letter of Intent holder shall take adequate steps to create proper infrastructure keeping in view the indicative norms given in Parts A& B of the Guidelines for setting up Inland container Depots / Container Freight Stations (ICDs/CFs) within a period of one year from the date of issue of this letter.*
- b) Necessary bond and guarantees, as required, would be executed with the concerned Commissioner of Customs and Central Excise.*
- c) The approval would be subject to cancellation in the event of violation of the Customs and other laws of the land and Rules.*
- d) A quarterly progress report of the implementation shall be sent to the Ministry of Commerce.*

e) The working of the CFS will be open to review by the Inter Ministerial Committee.

h) Formalities in respect of acquisition/possession of the land shall be completed within 60 days and intimated to the M/o Commerce, failing which the approval granted would be automatically cancelled.

2. The facility to be set up shall be full computerized, with EDI compatibility and a minimum complement of equipment and accessories as necessary shall be made available at the facility. The indicative list of equipment/accessories considered necessary is annexed. The status regarding confirmation of the installation/availability of the items shall be furnished to the appropriate authorities to facilitate issue of requisite notification.

3. Please acknowledge receipt of this letter.

Yours faithfully,

*Sd/-
(N.G.Biswas)
DIRECTOR*

A perusal of clause 'b' of the above letter shows that the assessee was required to execute necessary bond and guarantees with the concerned Commissioner of Customs and Central Excise. It was only on the compliance of all the terms and conditions mentioned in the aforesaid letter that the assessee was allowed to carry on the services of CFS. The assessee on the compliance of the terms and conditions as mentioned in the letter, was notified as CFS Complex for the purpose of receiving, storing, import containers, receiving/consolidating export cargo etc. vide Public Notice dt.10-11-2013. The Public Notices were issued by the office of the Commissioner of Customs (Port) Kolkatta.

8. Thus, it is evident that the proposal of the assessee was accepted by the Government on certain conditions which were duly complied with by the assessee. There may not be any specific agreement, but the sequences of events clearly show that the assessee is providing CFS facility in accordance with the conditions laid down by the Government. In such circumstances there is no need to insist for the specific execution of agreements.

The co-ordinate bench of the Tribunal in the case of United Liner Agencies of India (Private) Ltd., Vs. Joint CIT (OSD) in ITA Nos.273 & 275/Mum/2013 (supra), has taken a similar view, Where no specific

agreement with the State Government was entered into but from the approvals granted to the assessee it was inferred that assessee should be deemed to have entered into an agreement with the State Government. Thus, we are of the considered view that the assessee has complied with all the provisions of section 80IA(4)(i) and is eligible to claim deduction under the said section. The impugned order is set aside. The appeal of the assessee is allowed.

In view of the above order of the Tribunal in assessee's own case, we are inclined to dismiss the appeal of the Revenue.

07. In the result, the appeal of the Revenue in ITA No.1412/Mds/2015 is dismissed.

Order pronounced on Wednesday, the 16th day of December, 2015, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:16.12.2015

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |