

In the High Court of Judicature at Madras

Dated: 23.12.2014

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The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) No.1031 of 2014

The Commissioner of Income Tax
Chennai

.... Appellant

Vs.

M/s.A.L.Logistics Pvt. Ltd.,
No.5, G.N.T. Road,
Moolakadai, Chennai - 600 110.

.... Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 14.07.2014 made in I.T.A.No.469/Mds/2-14 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench.

For Appellant : Mr.T.Ravikumar

Standing Counsel for Income Tax

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

“ 1. Whether on the facts and in the circumstances of the

case, the Tribunal was right in deleting the disallowance made under Section 80IA(4) of the Income Tax Act?

2. Is not the finding of the Tribunal bad especially when the assessee had not developed the infrastructure facilities as it was only a custodian for the movement and handling of all containerized import/export consignment in Container Freight Station?

3. Whether the finding of the Tribunal is proper in view of the amendment to Section 80IA(4) whereby Explanation was introduced with effect from 01.04.2002 had omitted the word "any other public facility of similar nature" and wrongly allowing deduction under Section 80IA(4) on Container Freight Station?"

2. The assessment in this case relates to the assessment year 2009-10. The assessee filed its return of income for the said assessment year on 29.9.2009 declaring its taxable income as Rs.13,87,046/-. The case of the assessee was selected for scrutiny and notice under Section 143(2) was issued to the assessee on 25.8.2010. The assessee is owning and maintaining a Container Freight Station (CFS) at Haldia, West Bengal. In the return of income, the assessee claimed deduction under Section 80IA(4)(i) of the Income Tax Act, 1961. The Assessing Officer observed that to be eligible for claiming deduction under Section 80IA(4)(i) of the Income Tax Act, the assessee should carry on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility and the assessee should have entered into an

agreement with the Central Government or State Government or a local authority or any statutory body for developing or operating and maintaining or developing, operating and maintaining an infrastructure facility. The Assessing Officer further viewed that the assessee has not been able to show any such agreement with the Central or State Government or any other authority as prescribed under the Act for claiming benefit of Section 80IA(4)(i) of the Income Tax Act. The Assessing Officer, therefore, held that the facility of CFS does not constitute infrastructure facility as defined in Explanation to Section 80IA(4)(i) and hence, disallowed the claim of the assessee vide order dated 29.12.2011. Aggrieved by the said order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who upheld the order of assessment, thereby dismissed the appeal.

3. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the assessee pursued the matter before the Income Tax Appellate Tribunal.

4. Before the Tribunal, the assessee relied upon the decision of the Delhi High Court in the case of **Container Corporation of India Ltd., Vs. ACIT** reported in **346 ITR 140 (Del)** to contend that CFSs are inland ports and therefore they are entitled to the benefit of Section 80IA(4)(i). In support of the plea that the requirement of Section 80IA(4)(i) has been

satisfied, they placed reliance on the copy of the approved proposal by the Ministry of Commerce and Industry vide letter dated 27.5.2003 for setting up a CSF at Haldia for handling import export of cargo, which required certain procedure to be followed. Thus the assessee by public notice dated 10.11.2013 was notified as CFS Complex for the purpose of receiving storing import containers, receiving/consolidating export cargo by the Office of the Commissioner of Customs (Port), Kolkatta. These two documents were considered in the light of the co-ordinate bench of the Tribunal in the case of ***United Liner Agencies of India (Private) Ltd., Vs. Joint CIT (OSD)*** in ***I.T.A.Nos.273 and 275/Mum/2013 dated 28.06.2013***.

5. Before the Tribunal, the Department contended that there is no proper agreement with the Central or the State Government and even in the approved proposal, certain other requirements are yet to be complied with. On this premise, the Department contended that the benefit of Section 80IA(4)(i) would not enure to the benefit of the assessee.

6. The Tribunal, however, interpreting the said provision, namely, Section 80IA(4)(i) of the Income Tax Act in the light of the decision of the Delhi High Court in the case of ***Container Corporation of India Ltd., Vs. ACIT*** reported in ***346 ITR 140 (Del)*** that the CSF approved by the Ministry of Commerce and Industry vide letter dated 27.5.2003 and the public notice issued clearly makes the case fall under Section 80IA(4)(i) of the Income

Tax Act. To come to this conclusion, the Tribunal relied on the decision of the Delhi High Court in the case of ***Container Corporation of India Ltd., Vs. ACIT*** reported in ***346 ITR 140 (Del)***, which clearly held that an inland container depot is actually an inland port and the CFSs are part of the port. Hence, the Tribunal allowed the appeal holding that the assessee is entitled to the benefit of Section 80IA(4)(i) of the Income Tax Act.

7. Aggrieved by the order of the Tribunal, the present appeal has been filed by the Revenue raising the above-mentioned substantial questions of law.

8. Heard Mr.T.Ravikumar, learned standing counsel appearing for the Revenue and perused the materials placed before this Court.

9. We find that the Tribunal has extracted the relevant provision and the reasons to avail such benefit in paragraph 5 of the order and we extract the same as such.

"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]".

10. As has been observed by the Tribunal, in the decision of the Delhi High Court in the case of ***Container Corporation of India Ltd., Vs. ACIT*** reported in ***346 ITR 140 (Del)***, container freight station is held to be falling within the customs area attached to the port. As the work relating to customs is performed at these inland container depots/container freight stations, it would fall under the provision of Section 80IA(4)(i) Explanation (d) of the Income Tax Act. The plea of Mr.T.Ravikumar, learned standing counsel appearing for the Revenue that any other public facility on similar nature has been omitted with effect from 1.4.2002 will not make the case any different in view of the decision of the Delhi High Court (supra), which holds that CSF is part of an inland port and there is no specific exclusion of CSF in clause (d) of Explanation to Section 80IA(4)(i). Therefore, on fact when it has been found by the Tribunal that CSF is an infrastructure facility, we find no good reason to differ on fact. We respectfully agree with the Delhi High Court.

11. The next issue is as to whether the requirement of Section 80IA(4)(i) has been satisfied. This apparently is the key issue on which the Revenue is trying to fall back on stating that certain conditions have not been complied with and there is no agreement as required under Section 80IA(4)(i) of the Income Tax Act. To this, the assessee has submitted and the Tribunal has considered the proposal approved by the Government of India, Ministry of Commerce and Industry dated 27.5.2003, which has been

extracted in paragraph 6 of the Tribunal and the public notice dated 10.11.2013 issued by the Commissioner of Customs (Port), Kolkatta permitting the CSF to operate. Once the public notice was issued and is valid as on date, it is deemed to be approval granted by the competent authority of the Central Government or an undertaking or a body of the Central Government. This principle has been enunciated by the Supreme Court in the case of *Union of India v. Sampat Raj Dugar*, AIR 1992 SC 1417, wherein it has been held that once a license is issued, it is valid until cancelled. Therefore these two documents satisfy the requirement of Section 80IA(4) of the Income Tax Act. There is no manner of confusion as the facts culled out by the Tribunal clearly show that the respondent/assessee has complied with the requirements of Section 80IA(4)(i).

12. Yet another factor which has been raised by the Revenue is that the respondent/assessee is only a custodian for the movement and handling of consignment in the Container Freight Station. It is apparently a misunderstanding of the letter of the Ministry of Commerce dated 27.5.2003. For better clarity, we set out the relevant portion of the order of the Tribunal, which would highlight the issue.

"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 the 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*

Udyog Bhawan, New Delhi, Dated the 27th May, 2003.

To
The Director,
M/s.AL 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."

13. In paragraph 7 of the order of the Tribunal, the letter issued by the Government of India, Ministry of Commerce, which has been extracted as such, clearly state that with reference to the letter dated 8.2.2003, the Government has approved the proposal for setting up of a Container Freight Station at Haldia for handling import and export cargo. Therefore, there cannot be any doubt in the light of the approval given by the Government. The reason of the Tribunal is unimpeachable.

14. In the light of the above, we find no reason to interfere with the order of the Tribunal. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Index :Yes

(R.S.,J) (R.K.,J)

Internet:Yes

23.12.2014

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To

1. The Income Tax Appellate Tribunal, Chennai 'D' Bench.
2. The Commissioner of Income Tax (Appeals), (Central)-I, Chennai.
3. The Income Tax Officer, Company Ward -I(1), Chennai - 34.

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

SI

T.C.(A) No.1031 of 2014

23.12.2014