



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.4230/Mum./2016
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Central Circle-6(4), Mumbai

..... Appellant

v/s

M/s. German Express Shipping Agency
India Pvt. Ltd., 3rd Floor, Sapt Building
18, J.N. Heredia Marg, Ballard Estate
Mumbai 400 001 – AABCG0117C

..... Respondent

Revenue by : Shri V. Vidhyadhar

Assessee by : Shri Nitesh Joshi a/w Shri M.M. Golwala

Date of Hearing – 17.04.2018

Date of Order – 25.04.2018

ORDER

PER SAKTIJIT DEY, J.M.

This appeal by the Revenue is against order dated 1st March 2016, passed by the learned Commissioner (Appeals)-54, Mumbai, for the assessment year 2012-13.

2. The solitary issue arising in the appeal of the Revenue pertains to allowance of assessee's claim of deduction under section 80IA(4) of the Income Tax Act, 1961 (for short "*the Act*") in respect of container freight station (CFS).

3. Brief facts are, the assessee a company is engaged in the business of shipping agency house. For the assessment year under dispute, the assessee filed its return of income on 28th September 2012, declaring total income of ₹ 4,95,26,080, after claiming deduction of ₹ 6,51,63,734, under section 80IA(4) of the Act. In the course of assessment proceedings, the Assessing Officer while examining the assessee's claim of deduction under section 80IA(4) of the Act called for the necessary information from the assessee and on verifying them found that the assessee has shown profit from operation of a container freight station (in short, CFS) at Kondakarai Village, S.R. Palayam B.P.O. Chennai, and against such profit assessee claimed deduction under section 80IA(4) of the Act. He observed that the assessee has started its CFS facility at Chennai and the first year of CFS operation was assessment year 2008-09. However, in the absence of any business income from the said CFS the assessee did not claim deduction under section 80IA(4) of the Act. After verifying the details submitted by the assessee the Assessing Officer was of the view that the CFS of the assessee company was not located at the Port i.e., the Chennai Port Trust and was 80 km. away from the Port. Referring to the clarification dated 6th January 2011, issued by the CBDT with regard to the claim of deduction under section 80IA by CFS, the Assessing Officer observed that the assessee is not eligible for claiming

deduction under section 80IA(4) of the Act in respect of profit derived from CFS. He, therefore, called upon the assessee to justify its claim of deduction. In response to the show cause notice issued by the Assessing Officer the assessee submitted its reply on 14th February 2014, explaining in detail its eligibility to claim deduction under section 80IA(4) of the Act. The assessee relying upon various circulars issued by the Government submitted that the CFS set-up by it is eligible to claim deduction under section 80IA(4) of the Act. In support of its claim, the assessee furnished the approval of Ministry of Commerce and Industries dated 6th March 2006 in respect of the CFS. Further, the assessee also furnished copies of custom notification and the certificate issued by Chennai Port Trust dated 20th November 2008, stating that the assessee's CFS may be considered as extended arm of the Port in accordance with CBDT circular no.793 dated 23rd June 2000 r/w circular no.133/95-CUS dated 22nd December 1995 of Central Board of Excise and Customs, New Delhi. It was also submitted that the assessee has commenced operation of the CFS in May 2007 and in this regard assessee submitted copy of the first commercial invoice raised by the company. The assessee also relied upon the circular by the Ministry of Commerce and Industries dated 7th July 2009, stating that as per CBDT clarification, CFS are to be considered as Inland Port. The Assessing Officer, however, was not convinced with the submissions of the assessee and held that CFS cannot be termed as

Port or an extension of the Port as the basic definition of the Port does not include CFS. The Assessing Officer observed, assessee's CFS is not located at the Port. Thus, ultimately, the Assessing Officer concluded that the assessee is not eligible to claim deduction under section 80IA(4) of the Act in respect of the profit derived from CFS. Assessee challenged the disallowance of deduction claimed under section 80IA(4) of the Act before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the elaborate submissions of the assessee qua the facts and materials available on record and relying upon the decision of the Hon'ble Jurisdictional High Court in CIT v/s Continental Warehousing Corporation (374 ITR 609), as well as the decision of the Tribunal, Mumbai Bench, in case of assessee's sister concern M/s. United Liner Agencies (Indi) Pvt. Ltd., ITA no.273 and 275/Mum./2013 and ITA no.943 and 944/Mum./2013, held that assessee is eligible for deduction under section 80IA(4) on profit derived from its CFS at Chennai. Accordingly, he directed the Assessing Officer to allow assessee's claim of deduction under section 80IA(4) of the Act.

5. The learned Departmental Representative fairly submitted before us that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in Continental Warehousing Corporation (supra).

6. The learned Authorised Representative strongly relied upon the decision of the first appellate authority as well as the decision of the Hon'ble Jurisdictional High Court in Continental Warehousing Corporation (supra).

7. We have considered rival submissions and perused materials on record. We have also applied our mind to the decisions relied upon. The limited issue arising for consideration before us is, whether the CFS set-up by the assessee at Chennai Port Trust can be considered as "*Inland Port*" for enabling it to avail deduction under section 80IA(4) in respect of profit derived from the said CFS. Notably, while the Assessing Officer has denied assessee's claim of deduction under section 80IA(4) of the Act in respect of the profit derived from CFS, the learned Commissioner (Appeals) has allowed assessee's claim of deduction relying upon the decision of the Hon'ble Jurisdictional High Court in CIT v/s Continental Warehousing Corporation Ltd. (supra), and the decision of the Co-ordinate Bench in case of assessee's sister concern M/s. United Liner Agencies (Indi) Pvt. Ltd. (supra). Learned Counsels appearing for rival parties have conceded before us that the disputed issue is squarely covered by the decision of the Hon'ble Jurisdictional High Court in CIT v/s Continental Warehousing Corporation Ltd (supra). Keeping in view the aforesaid submissions of the learned counsels and considering the fact that learned

Commissioner (Appeals) relying upon the aforesaid decision of the Hon'ble Jurisdictional High Court has allowed assessee's claim of deduction under section 80IA(4) of the Act in respect of the profit derived from the CFS, we do not find it necessary to deliberate much on the issue. At this stage it is necessary to point out, in course of hearing the learned Counsel for the assessee specifically drawing our attention to the grounds raised by the Revenue submitted that they are totally misconceived considering the fact that assessee's CFS is situated under the Chennai Port Trust. Therefore, the question of withdrawal of certification by JNPT does not arise. Though, we find merit in the aforesaid submissions of the assessee, however, there is no need to dwell upon this issue any further in view of our decision hereinabove. In view of the aforesaid, we uphold the order of the learned Commissioner (Appeals) on this issue by dismissing the grounds raised by the Revenue.

8. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 25.04.2018

**RAJESH KUMAR
ACCOUNTANT MEMBER**

**SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED:

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

(Asstt. Registrar/Sr.P.S)
ITAT, Mumbai