

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.4872/Mum/2018
(Assessment Year : 2012-13)**

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| DCIT – 14(2)(1) Mumbai 432, 4 th Floor Aayakar Bhavan Mumbai – 400 020 | Vs. | M/s. LCL Logistix (India) Pvt. Ltd. 220, 2 nd Floor, Sai Commercial Centre Station Road, Govandi (E) Mumbai – 400 088 |
| PAN/GIR No.AACL2287K | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|----------------------------|
| Assessee by | Shri. S. Michael Jerald |
| Revenue by | Shri Abhishek Jhunjhunwala |
| Date of Hearing | 03/10/2019 |
| Date of Pronouncement | 16/10/2019 |

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.4872/Mum/2018 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-57, Mumbai in appeal dated 29/05/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 92CA(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2016 by the Id. Income Tax Officer 14(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in granting deduction u/s.80IA of the Act in respect of customs

freight station operated by the assessee in the facts and circumstances of the case.

3. We have heard rival submissions. The Id. DR vehemently relied on the order of the Id. AO. We find that the Id. CIT(A) had granted relief to the assessee in the instant case by placing reliance on the decision of the Hon'ble Supreme Court by observing as under:-

5. Decision:

I have gone through the detailed submissions made by the appellant and on all the points raised by the assessing officer.

From the perusal of the A.O.'s Order it is seen that the A.O. has discussed the C.B.D.T circular vide clarification dated 06-01-2011 which considered the circular dt: 16-12-2005 & 23-12-2000. After considering these two circulars the CBDT has clarified that the ICD'S and CFS are not ports located on any Inland water way river or canal and therefore they cannot be classified as 'Inland Ports' for the purpose of Sec 80IA(4) of the Act.

Moreover the AO also mentioned that SLP has been admitted by the Hon. Supreme Court in the case of jurisdictional Bombay High Court in the case of CIT V/s Continental Warehousing Corporation (Nahava Sheva) Ltd. The said case has been clubbed with the Delhi High Court decision in the case of M/s Container Corporation of India Ltd by the Apex Court and the matter has not reached finally and so opined that assessee is not eligible to claim deduction u/s 80IA(4) of the Act.

However it was seen that during the ongoing appellant proceedings the order of Apex Court of the SLP in the case of "Commissioner of Income Tax Delhi-1 Vs M/s Container Corporation India Ltd" has been reported. The Supreme Court vide its order Dt: 24/4/2018 has disposed of the SLP against the Revenue and has held on the specific issue whether ICD can be termed as Inland Ports so as to entitle deduction u/s 80IA of the Income Tax 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. 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 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".

In the light of the order of the Hon'ble Supreme Court in which it has been held that ICD/CFS are Inland Ports, the controversy has come to rest and the claim of appellant for deduction u/s 80 IA (4) of the Income Tax is allowable. The A.O. is directed to allow the deduction. In the result the appeal is Allowed.

3.1. The Id. AR placed on record the decision of the Hon'ble Supreme Court in the case of CIT vs. Container Corporation of India Ltd. reported in 404 ITR 397 which are enclosed in page 28 & 34 of the legal paper book in support of his contentions. Respectfully following the said decisions, we hold that we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in

the facts and circumstances of the instant case. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 16/10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 16/10/2019
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai