

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No. 5860/Del/2016
Assessment Year: 2011-12**

**M/s. Container Corporation of India Ltd., vs. DCIT, Circle 3(1),
Concor Bhawan, C-3, Mathura Road, New Delhi.
Opp. Apollo Hospital, New Delhi.
PAN: AAACC 1205A**

**I.T.A. No. 6375/Del/2016
Assessment Year: 2011-12**

**ACIT, Circle 6(2), vs. M/s. Container Corporation of India Ltd.,
New Delhi. Concor Bhawan, C-3, Mathura Road,
Opp. Apollo Hospital, New Delhi.
(Appellant) (Respondent)**

**Assessee by: Shri S. Krishnan, Advocate &
Shri V. Rajakumar, Advocate
Department by: Ms. Nidhi Srivastava, CIT-DR**

**Date of Hearing: 16/01/2020
Date of Pronouncement: 22/01/2020**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 31.08.2016 in appeal No. 504/14-15 passed by the learned Commissioner of Income Tax (Appeals)-2, New Delhi ("Ld. CIT(A)"), for assessment year 2011-12, M/s. Container Corporation of India Ltd., ("the assessee") as well as the Revenue preferred these cross appeals.

2. Brief facts of the case are that the assessee is engaged in the business of handling and transportation of containerised cargo. For the assessment year 2011-12 they have filed their return of income on 23/9/2011 declaring taxable income of Rs.4,88,15,71,824/-after availing deduction under section 80IA of the Income Tax Act, 1961 (for short "the Act") in the computation of income. Learned Assessing Officer, however, computed the income of the assessee at a Rs.987,29,09,951/-after disallowing the deduction under section 80IA of the Act in respect of inland port and the rail system, depreciation on assets retired from active use, on assets not registered, on land and also on registration fees.

3. Aggrieved by such action of the learned Assessing Officer, assessee preferred appeal before the Ld. CIT(A). Ld. CIT(A) by way of impugned order allowed the appeal in part while granting relief to the assessee in respect of the deduction of 80IA of the Act on rail system (rolling stock), depreciation on the assets retired from active use and depreciation on the assets which were not registered in the name of the assessee while sustaining the other additions. Aggrieved by the deletion of the additions, Revenue preferred ITA 6375/del/2016 whereas in respect of the additions that are sustained, assessee preferred ITA No. 5660/Del/2016.

4. At the outset, it is the submission of the Ld. AR that all the additions made by the learned Assessing Officer and which are subject matter of these appeals are covered in favour of the assessee in assessee's own case in earlier years by the orders of the Tribunal as well as the Hon'ble High Court. It remains an admitted fact and the copies of the orders are produced before us. We shall deal with these aspects in

the light of the observations of the Tribunal and the Hon'ble High Court on relevant grounds.

5. In respect of the claim under section 80IA of the Act on inland container depots covered by ground No. 1 of assessee's appeal and rail system (rolling stock) covered by ground No. 1 of the appeal of the Revenue, in assessee's own case in ITA No. 917 and 918/2017 by order dated 31/10/2017 the Hon'ble High Court observed that the Revenue's contention was resurrected for the previous years in assessee's own case reported in 346 ITR 140 and Hon'ble High Court approved the reliance on previous ruling in respect of rolling stock also. Hon'ble Supreme Court in assessee's own case reported in (2018) 404 ITR 397 (SC) held that inland container depots or inland ports, subject to provisions of section 80IA of the Act and deduction can be claimed for income earned out of these depots. On this score ground No. 1 of assessee's appeal stands allowed and ground No. 1 of Revenue's appeal stands dismissed.

6. Ground No. 2 of assessee's appeal is in respect of the disallowance to the tune of Rs.95,06,934/-on account of depreciation on intangible assets being value of license acquired from the Indian Railways for running the container trains on Indian Railways. In ITA No. 77 and 186 /Del/ 2015 in assessee's own case, a coordinate Bench of this Tribunal in the light of the decision of the coordinate Bench in ITA No. 1876 and 6377/Del/2012 for the assessment year 2008-09 and 2009-10 wherein this issue was covered and dealt with in extenso, reached a conclusion that the license acquired by the assessee from the Indian Railways for running the container trains on Indian Railways is a "commercial right" and it is eligible for depreciation under section 32(1)(ii) of the Act. In view

of this consistent view, and also fortified by the decision of the Hon'ble Delhi High Court reported in 345 ITR 421 in the case of Areva, we hold that commercial right acquired by the assessee by way of this license for an enduring benefit for a period of 20 years would amount to capital asset and eligible for depreciation under section 32(1)(ii) of the Act. Ground No. 2 of assessee's appeal is accordingly allowed.

7. Coming to ground No. 3 of assessee's appeal, it relates to the disallowance of Rs.2,47,73,927/- being the claim of deduction on account of advance lease rent paid for the land taken on long-term lease for business purpose on pro rata basis. In the order for the assessment year 2008-09 and 2009-10 (supra), a coordinate Bench of this Tribunal mindful of the difference between the amortisation of leasehold premium paid and equalisation of lease charges, which cannot be compared and so set aside the issue to the file of the learned Assessing Officer for verification of the completed details of the claim of the assessee.

8. In assessment year 2010-11, a coordinate Bench of this Tribunal, while following the earlier decision for the assessment years 2008-09 and 2009-10 of this Tribunal, held that there is change in the factual matrix of the case on this aspect and thought it fit to set aside this issue to the file of the learned Assessing Officer with a direction to the assessee to furnish all requisite details in respect of the claim of depreciation and directed the Assessing Officer to verify the details to determine the allowability of this claim.

9. It is submitted that the facts and circumstances involved in this matter also are identical to those obtaining for the assessment year 2008-09 and 2009-10 as well as 2010-11 and therefore the issue requires

factual verification at the end of the learned Assessing Officer, and it is prayed that the same course may be followed for this year also. We grant the request and remand the issue to the file of the learned Assessing Officer for necessary verification and to decide it according to law on such factual verification of the details to be furnished by the assessee. Ground No. 3 of the assessee's appeal is, accordingly, allowed for statistical purpose.

10. Now coming to ground No. 2 of Revenue's appeal, it relates to the disallowance of Rs.3,86,945/-made in respect of depreciation on the assets retired from the active use. It is submitted that this issue is also squarely covered by the decisions in earlier assessment years. In CIT vs. Yamaha motor India Private Limited 328 ITR 297, the Hon'ble jurisdictional High Court held that actual user of the machinery is not required with respect to discarded machinery and the condition which was eligible for depreciation is that the machinery being used for the purpose of the business would mean that the discarded missionary is used for the purpose of the business in the earlier years for which depreciation was allowed. Relying upon such observations of the Hon'ble High Court in assessee's own case, a coordinate Bench of this Tribunal for the assessment year 2008-09 held the issue in favour of the assessee. So also, for the assessment year 2010-11. Issue being identical, in the absence of any change in circumstances, we follow the same and consequently dismiss ground No. 2 of Revenue's appeal.

11. Lastly, ground No. 3 of Revenue's appeal is in respect of the disallowance to the tune of Rs.3,08,178/-of depreciation on the assets which were not registered in the name of the assessee. This issue is also

squarely covered by the order dated 31/10/2017 of the Hon'ble High Court in ITA No. 917 & 18/2017 wherein it was held that inasmuch as the assessee has been paying all the amounts to the transferor and obtained possession, and has also been using the same for business purpose, depreciation is allowable as held by the Tribunal.

12. From the assessment order, it could be seen that it was brought to the notice of the learned Assessing Officer that the Ld. CIT(A) decided this issue in favour of the assessee for the assessment year 2008-09. Ld. CIT(A) for this year followed the above view taken in assessee's own case, in view of the factual and legal identity involved for this year also, and allowed depreciation. In this set of circumstances, we do not find any illegality or irregularity in the view taken by the Ld. CIT(A) and consequently find this ground of appeal as devoid of merits and is liable to be dismissed.

13. In the result, appeal of the assessee is allowed in part for statistical purpose and the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 22nd January, 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 22/01/2020.

*aks