

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No.576/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11)
आयकरअपीलसं./ I.T.A. No.577/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2011-12)
आयकरअपीलसं./ I.T.A. No.578/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13)
आयकरअपीलसं./ I.T.A. No.6468/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2013-14)

D.C.I.T, C.C 1(2) R. No. 906, 9 th Fl., Old CGO Bldg., Annex-Bldg, M.K. Road, Mumbai-400020	बनाम/ Vs.	M/s. JWC Logistics Park P.Ltd. Shop No. 8 to 11, 1 st Fl., Vaibhav Apt, Sahar Pipe Line Road, Sahar, Andheri-E, Mumbai-400 069.
स्थायीलेखासं./जी आइ आरसं./PAN No. AABCJ231E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Sushil Kumar Poddar, DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Satish Mody, AR
सुनवाईकीतारीख/ Date of Hearing	:	12.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	08.01.2020

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आदेश / ORDER

PER BENCH:

The present four Appeals have been filed by the revenue against the separate orders of Ld. Commissioner of Income Tax (Appeals) -47 in short referred as 'Ld. CIT(A)', Mumbai, dated 01-11-2017 & 18-08-2017 for Assessment Years (in short AYs) 2010-11 to 2013-14.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking ITA No. 576/Mum/2018 for AY 2010-11 filed by the revenue.

ITA No. 576/Mum/2018 for AY 2010-11

Grounds of appeal raised by the revenue are as under:-

(i) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing claim of deduction u/s. 80IA(4) of Rs. 1 2,97,713/- on account of FOR interest, scrap sales and EDI charges without appreciating the fact that these incomes cannot be said to be derived from the business activity of the assessee of running a Container Freight Station."

(ii) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing the deduction of Rs. 4,65,58,515/- u/s 80IA(4) of the I.T. Act, 1961

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on the profit earned from the operation of a Inland Container Depot (ICD) treating that as an infrastructure facility being "Inland Port" without appreciating that CBDT's clarification issued vide letter no. F.NO. 178/42/2010-ITA-I dated 06.01.2011 states clearly that Inland Container Depot/Container Freight Station are not ports located on any inland waterway, river or canal and therefore that cannot be classified as Inland Port for the purpose of section 80IA(4)(i)."

(iii) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred allowing the deduction of Rs. 4,65,58,515/- u/s 80IA(4) of the I.T. Act, 1961 on the profit earned from the operation of a Inland Container Depot (ICD) without appreciating that the benefit of deduction under the said section is not at all intended to any Inland Container Depot/Container Freight Station; and even otherwise for being eligible to any such deduction, there ought to be an agreement executed between the assessee company and the Government for developing, operating and maintain the infrastructure facility whereas there is no such agreement."

"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing the deduction of Rs. 4,65,58,515/- u/s 801 A(4) of the I.T. Act, 1961 on the profit earned from the operation of a Inland Container Depot (ICD) without appreciating that the license which was issued by Director, Infrastructure Division, Department of Commerce dated 24.11.2004, Director, Custom CBEC Department of Revenue dated 24.03.2009 are with reference to the request made by the assessee for constructing ICD/CFS and that such license cannot be considered to be a required agreement between the assessee company and the Government as provided in sub clause (b) of section 80IA(4)(i) of the I.T. Act, 1961."

3. Ground nos. 1 to 3 allowance of claim of deduction of Rs.12,97,713/- and Rs. 4,65,58,515 u/s. 80IA(4) of the Act made on account of FDR interest, scrap sales & EDI charges and profits earned from container business.

4. Brief facts of the case are that a search & seizure action u/s. 132 of the Income-tax Act, 1961 (in short, the 'Act') were initiated in the case of Lalit Jobanputra Group on 19-08-

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2011 by the DIT (Inv.), Unit-II(4), Mumbai. During the course of search proceedings u/s. 132 of the Act in the premises of Lalit C. Jobanputra certain documents/papers belonged to present assessee company were found and seized the same by marking as 'Annexure A-1'page-1 This page contains noting of cash/cheque payments made to the various assessee group companies. However, the assessee filed its return of income on 29-09-2012 declaring income of Rs.14,42,95,980/-, which had been reduced to Rs. Nil after claiming deduction u/s. 80IA(4). Thereafter, the AO issued statutory notices u/s. 143(2)/142(1) of the Act calling for the assessee for specific information, as mentioned therein. In response, the AR of the assessee appeared and filed details as called for in support of the said return as filed by the assessee. The AO found that the main object of the assessee company is to construct/develop/acquire and manage container yard, inland container depot, freight station, ware housing, packaging, distributing and providing complete logistics solutions. The AO found that the assessee has declared G.P of Rs. 52.89 crores and N.P at Rs. 13.42 crores. During the course of assessment proceedings the AO found that the assessee company had claimed deduction of Rs.

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12,97,713/- and Rs.4,65,58,515/-, totaling to Rs.4,78,56,228/- u/s. 80IA(4) of the Act on account of FDR interest, scrap sales and EDI charges and on account profit earned from the operation of Inland container Depot (ICD). He also found that the assessee had credited the FD interest received from its banks of Rs. 27,04,276/- in the P & L account. The AO has elaborately discussed the provisions of section 80IA(4) of the Act & CBDT Circular No. 10 of 2005 dt. 16-12-2005 for such deduction in his order at pages 4-5. On perusal of the same, the AO was of the view that for claiming such deduction u/s. 80IA(4), the assessee is to carry on the business of developing/operating/maintaining in infrastructure facility and he held that all the conditions u/s. 80IA of the Act should be fulfilled to avail such deduction. In support of such deduction, the assessee also filed detailed Explanation in respect of its business activities u/s. 80IA(4). The details of which are available in the assessment order. As the conditions for availing such benefit of deduction u/s. 80IA(4) of the Act are not fulfilled, assessee's claim of deduction of Rs.4,78,56,228/- is not allowed and as such added the same to the total income/loss of assessee vide

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assessment order dt. 28-03-2014 passed u/s. 143(3) of the Act for the A.Y 2010-11.

5. Aggrieved with the order of the A.O the assessee preferred an appeal before the CIT(A). The ld. CIT(A) considering the detailed submissions of assessee and following his earlier order and the decision of the Hon'ble Bombay High Court in assessee's case for AY 2008-09 allowed impugned deduction by holding that the 'other income' of Rs. 12,97,713/- & Rs. 4,65,58,515/- consisting of interest on margin money for BG/Bond, scrap sales and EDI charges and profits earned from operation of container depot are eligible for deduction u/s. 80IA(4) of the Act. The ld. CIT(A) has also relied on various judgments, which are available in his order dt. 01-11-2017 for the AY 2010-11.

6. Aggrieved with the above order of the ld. CIT(A) the revenue is in appeal before us and raised the aforementioned ground(s) of appeal.

7. At the time of hearing the ld. DR brought to our notice the grounds of appeal filed by the revenue and submitted that the ld. CIT(A) has erred in allowing the same and also

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submitted that income cannot be said to be derived from business activity of the assessee of running a container freight station. However, he relied on the order of the AO and opposed the impugned order of the ld. CIT-A in allowing the same.

8. On the other hand, the ld. AR submitted that the issue involved in the appeal is squarely covered in favour of assessee and against the revenue by an orders dt. 31-12-2018 /13-02-2019 of the Co-ordinate Bench of this Tribunal in assessee's own case for the AYs 2008-09 & 2009-10.

9. After hearing the rival submissions and perusing the material available on record including the orders of revenue authorities and orders dt. 31-12-2018/13-02-2019, we find that the issues (reg: claim of deduction u/s. 80IA (4) of the Act] on a/c of FDR/EDI/scrap sales and profit earned from the operation of an inland container depot (ICD) involved in the present appeal are in favour of assessee and against the revenue, which has been affirmed by decision of the Hon'ble Bombay High Court in assessee's case for AY 2008-09. The facts in AY 2010-11 are identical and similar to the facts in earlier assessment years (AY 2008-09) as dealt with by this

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tribunal. We further find that the AO has ought to have followed the said decision of the Hon'ble Bombay High Court in assessee's own case. The AO made additions only on the reason that the matter is still pending in Hon'ble High Court, ignoring the fact that the Hon'ble High Court had already decided the issues in AY 2008-09 in favour of assessee. Similar issue was dealt by Co-ordinate bench in AY 2009-10, relying on the decision of AY 2008-09, ITA No. 4466/Mum/2017. Relevant portion of order dt. 31-12-2018 is reproduced herein below:-

Order dt.31-12-2018

"6. We have heard the rival submissions and perused the relevant materials on records. We find that the issue has been decided in favour of the assessee by the Hon'ble Bombay High Court in assessee's own case. The question before the Hon'ble High Court was the following:

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in allowing the claim of deduction u/s80IA made by the assessee?"
The Hon'ble High Court held as under:

"3. The impugned order of the Tribunal dismissed the Revenue's Appeal beforejt by holding that the Container Freight Station (CFS) run by the respondent assessee is eligible for deduction under Section 80IA of the Act as an infrastructure facility. Thus, upholding the view of the Commissioner of Income-Tax Appeals (CIT (A)]. This by following the decisions of the Special Bench of the Tribunal in M/s. All Cargo Global Logistics Ltd. Vs. DCIT (ITA No.5018 to 5022 and 5059) rendered on 6th July, 2012 and the decision of the Regular Bench of the Tribunal in the case of Continental

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Warehousing Corporation (Nhava Sheva) Vs. ACIT (ITA No. 7055/Mum/2011) dated 31st August, 2012. The submission of the Revenue that as Appeals have been filed against the aforesaid two decisions of the Tribunal, before this Court, the Revenue's Appeal be allowed, was not accepted by the Tribunal. In the meantime, the above two Tribunal decisions in case of All Cargo Global Logistics Ltd. (supra) and Continental Warehousing Corporation (Nhava Sheva) (supra) have been upheld by this Court in Commissioner of Income Tax v. 1. Continental Warehousing Corporation (Nhava Sheva) Ltd. and anr. [2015] 374 ITR 645 (Bom) while dismissing the Revenue's Appeal. This issue therefore stands concluded in favour of the respondent assessee."

6.1 Facts being identical, we follow the above decision of the Hon'ble Bombay High Court and uphold the order of the Ld.

7. Having examined the relevant documents available on record we find that the Ld. CIT(A) has rightly allowed the claim of the assessee of deduction u/s 80IA(4) on account of FDR interest of Rs.45,086/- , scrap sales of Rs.2,67,591/- and EDI charges of Rs.1,27,315/-."

In view of above, the CIT-A was correct in allowing the same. We uphold his order on this count. Thus, the grounds raised by the revenue (ITA No. 576/Mum/2018 for the AY 2010-11) are dismissed.

The appeal of revenue (ITA No. 576/Mum/2018 for the AY 2010-11) is dismissed.

ITA Nos. 577,578/Mum/2018 & 6468/Mum/2017
For the A.Ys 2011-12 to 2013-14

8. The facts in A.Ys 2011-12 to 2013-14 (ITA 577,578/Mum/2018 & 6468/Mum/2017) are similar to A.Y

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2010-11 (ITA No. 576/Mum/18), therefore, the findings as given in ITA No. 576/Mum/18, are applicable to these AYs also. Accordingly, the grounds raised by the revenue in all appeals are dismissed.

9. In the result all the appeals filed by the revenue are dismissed.

This Order pronounced in Open Court on 08/01/2020.

Sd/-
(PAWAN SINGH)
(JUDICIAL MEMBER)

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Dated 08/01/2020
**PP,SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

*ITA Nos. 576-578M/18 & 6468/M/17
A.Ys 2010-11 to 2013-14
M/s. JWC Logistics Park P.Ltd.*

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उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Mumbai

6. Date