

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 2367/Del/2018
Assessment Year: 2014-15**

**DCIT Circle-6(2), New Delhi Vs. M/s Container Corporation of
India Ltd., Concor Bhawan,
C-3, Mathura Road, Sarita
Vihar, New Delhi-110076**

**ITA No.1616/Del/2018
Assessment Year : 2014-15**

M/s Container Corporation of India Ltd., Concor Bhawan, C-3, Mathura Road, Sarita Vihar, New Delhi-110076 PAN-AAACC1205A	Vs.	ACIT, Circle-6(2),New Delhi
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(Appellant)

(Respondent)

Appellant by : Sh. S. Krishnan, Adv
Respondent by : Ms. Nidhi Srivastava, CIT DR

Date of hearing : **10.03.2021**
Date of pronouncement : **10.03.2021**

ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 30/11/2017 in appeal No. 10471/16-17/434/17-18 passed by the learned Commissioner of Income Tax (Appeals)-33, New Delhi ("Ld. CIT(A)") in the case of M/s Container

Corporation of India Ltd (“the assessee”) for the assessment year 2014-15, assessee preferred ITA No. 1616 /Del/ 2018 whereas the Revenue preferred ITA No. 2367 /Del/ 2018. Since these appeals emanate from the same assessment order and the order of the Ld. CIT(A), it would be just and convenient to dispose them of by way of this common order.

2. Brief facts of the case as could be culled out from the record are that the assessee company is engaged in the business of handling and transportation of containerized cargo. For the assessment year 2014-15, assessee filed the return of income on 23/9/2014 declaring taxable income of Rs. 7 88, 18, 00, 850/- after claiming deduction under chapter VI-A of the Income Tax Act, 1961 (for short “the Act”) amounting to Rs. 3 83, 27, 14, 511. Assessment under section 143(3) of the Act was, however, complete by order dated 6/12/2016 by making certain additions, which insofar as these 2 appeals are concerned include disallowance of deduction amounting to Rs. 52, 49, 79, 828/-claimed under section 80IA of the Act in respect of the income from ICDs/CFS; Rs. 5, 46, 47, 887/-by disallowing the deduction on account of amortization of advance lease rent paid for the land taken on long-term lease for the business purpose; and Rs. 3 30, 76, 84, 683/- disallowing the deduction under section 80IA of the Act on Rail System (Rolling Stock).

3. In appeal, Ld. CIT(A) deleted the disallowance of deduction claimed to the tune of Rs. 3 30, 76, 84, 683/-on Rail System (Rolling stock), but confirmed the disallowance of Rs. 52, 49, 79, 828/-under section 80IA of the Act and also the disallowance of Rs. 5, 46, 47, 887/- the claim of deduction on account of amortization of advance lease rent

paid for the land taken on long-term lease for business purpose.

4. Now coming to the appeal of the assessee, and confirmation of the disallowance to the tune of Rs. 52, 49, 79, 828/-claimed under section 80IA of the Act, record reveals that the assessee argued before the authorities that the Hon'ble jurisdictional High Court had decided the issue in favour of the assessee for the assessment years 2003-04, 2004-05 and 2005-06, but the authorities refused to follow the decision of the Hon'ble jurisdictional High Court on the ground that the Department had preferred an SLP admitted by the Hon'ble Apex Court in ITA numbers 1411/2009, 967/2011 and in 968/2011 dated 26/1/2011.

5. It is submitted by the Ld. AR that the Hon'ble Apex Court vide the decision reported in 404 ITR 397 (SC) decided the issue in favour of the assessee and therefore, in view of the decision of the Hon'ble Apex Court, the disallowance cannot be sustained.

6. We have on through the record in the light of the submissions made on either side. It could be seen from the record that on a perusal of the record, learned Assessing Officer noticed that the deduction under section 8 EIA on Inland Container Depot was not allowed to the assessee in the earlier assessment years and on that ground the same could not be allowed for this year also. As stated earlier, Ld. CIT(A) also confirmed such disallowance on the ground that the decision of the Hon'ble High Court was under challenge before the Hon'ble Supreme Court and to keep the issue alive the disallowance has to be continued. Now, however, the Hon'ble Apex Court held the issue in favour of the

assessee in the decision reported in CIT vs. Container Corporation of India (supra) and the relevant observations of the Hon'ble Apex Court on the issue are,-

21. Moving further to the issue whether the ICDs can be termed as Inland Ports so as to entitle deduction under Section 80-IA of the IT 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.

22. 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 17 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.

7. Since the issue is no longer res Integra and decided by the Hon'ble Apex Court with the above observations while respectfully following the same, we hold that the disallowance cannot be sustained and direct the assessing officer to delete the same.

8. Next coming to the disallowance of Rs. 5, 46, 47,887/- , learned Assessing Officer observed that land cannot be considered as a dip receivable and no depreciation rates are prescribed as per the Income Tax Rules 1962 . Ld. CIT(A) followed the view taken for the assessment year 2007-08 and confirmed the addition.

9. At the outset, Ld. AR submitted that this issue is no longer res Integra and in assessee's own case for the assessment year 2010-11 in ITA No. 186/Del/2015, a coordinate Bench of this Tribunal held the issue in favour of the assessee. He filed a copy of the order dated 23/08/2018. There is no dispute as to the Tribunal dealing with this issue in the earlier assessment year and holding the same in favour of the assessee. For the sake of completeness, however, we find it just and necessary to note the observations of the Tribunal while dealing with the issue because the same have a bearing on the issue for this year also. This issue was ground No. 4 in Revenue's appeal in the said appeal and the observations of the Tribunal are as follows: –

12. Ground No. 4 is in respect of disallowance of deduction on account of lease rent paid in advance against the land taken on long-term lease for business purposes on pro rata basis. 12.1. Ld.Counsel submitted that this issue is also covered by order of this Tribunal in assessee's own case for Assessment Year 2008-09 and 2009-10 wherein following view has been taken:

"52. We have carefully considered the rival contentions and also noted the para extracted by Ld CIT(A) in para No. 7.1 of his order of AY 2004-05. The Id Assessing Officer has followed the decision of Hon'ble Bombay High Court in case CIT Vs. Indian Oil Corporation wherein premium paid on leasehold land is disallowed and also it was held that such premium said cannot be included in the cost of the building constructed thereon. The Ld.CIT(A) followed his own decision for AY 2004-05 which was in respect of amortization of leasehold land and it is not the issue of depreciation on leasehold land. The decision of Hon'ble Delhi High Court relied upon by the Ld AR also do not apply to the facts of the ease because that decision also do not apply to the leasehold land.

We are conscious about the difference between amortization of leasehold premium paid and equalization of lease charges and therefore both cannot be compared. It is also not ascertained by the lower authority whether the claim of the assessee on depreciation can be considered u/s 32(1) (ii) of the Income Tax Act or not and this fact is not available on record we set aside this ground of appeal of the revenue back to the file of Assessing Officer with a direction to the assessee to furnish the complete details of the claim of the assessee clearly bringing out the facts whether it is a claim of the depreciation or whether it is a claim of the allowability of expenditure."

12.2. Ld. CIT DR did not object for the issue being set aside with a direction clearly bringing on the facts whether it is the claim of depreciation or whether the claim of allowability of expenditure.

10. For this assessment year also, Ld. CIT DR did not object for the issue being set aside with a direction clearly bringing on the facts whether it is the claim of depreciation or whether the claim of allowability of expenditure. Recording the same we set aside the findings of the Ld. CIT(A) on this issue and remained the same to the file of the learned Assessing Officer with a direction to the assessee to furnish the complete details of the claim of the assessee clearly bringing out the facts whether it is a claim of the depreciation or whether it is a

claim of the allowability of expenditure. Ground No. 2 of assessee's appeal is accordingly allowed for statistical purpose.

11. Now coming to the Revenue's appeal, only ground is in respect of the eligibility of the assessee further direction under section 80IA of the Act. Learned Assessing Officer while following the assessment orders were the assessment years 2012-13 and 2013-14 whereunder the claim of deduction under section 80IA of the Act on the Rail System (Rolling stock) was disallowed, disallowed the same for the year also and added back a sum of Rs. 3 30, 76, 84, 683/-to the income of the assessee.

12. Ld. CIT(A) however, followed the reasoning for deleting the same in the assessment year 2013-14 by the first appellate authority. He further noted the submission of the assessee that the deduction for Rail system was granted by the Tribunal for the assessment years 2003-04 to 2005-06 and the Department accepted the said allowance and not filed any appeal to the High Court. He therefore, proceeded to hold the issue in favour of the assessee for this year also.

13. Assessment order itself shows that the learned Assessing Officer is aware of the fact of Ld. CIT(A) and ITAT in allowing the deduction, but observed that it was not acceptable to the Revenue and since the Department filed appeal before the higher appellate forum is, the issue had not attained finality. Revenue, however, did not produce any material before us to contradict the observations of the Ld. CIT(A) that the Department had accepted the orders of the ITAT for the assessment year 2003-04 and no appeal was filed before the Hon'ble High Court. Should be any appeal before the Hon'ble High Court, the Revenue should have submitted the details thereof.

14. Since a consistent view has been taken by the appellate authorities right from Assessment Year 2003-04 and for all the successive years such disallowance was deleted, in the absence of any material to show that such view taken by the appellate authorities had not attained finality, we find it difficult to deviate from such consistent view. While respectfully following the view taken by the Tribunal in assessee's own case for the assessment year 2003-04 and also the subsequent deletions made by the appellate authorities, we hold that this disallowance cannot be sustained has to be deleted. We therefore, direct the assessing officer to delete this addition.

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

Above decision was pronounced on conclusion of Virtual Hearing on 10.03.2021.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

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Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order
Assistant Registrar