

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखकसदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपीलसं./ITA No.2927/Chny/2018  
(निर्धारणवर्ष / Assessment Years: 2012-13)

&

आयकर अपीलसं./ITA Nos.2928/Chny/2018  
(निर्धारणवर्ष / Assessment Years: 2013-14)

<b>Chennai Port Trust</b> C/o. Sundaram & Narayanan (CA) 18 Balaiah Avenue, LUZ Church Road, Mylapore, Chennai – 600 004.	<b>बनाम/</b> Vs.	<b>DCIT (Exemptions),</b> Chennai Circle, Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAALC-0025-B		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपीलसं./ITA No.3117/Chny/2018  
(निर्धारणवर्ष / Assessment Year: 2012-13)

<b>DCIT (Exemptions),</b> Chennai Circle, Chennai.	<b>बनाम/</b> Vs.	<b>Chennai Port Trust,</b> C/o. Sundaram & Narayanan, 18 Balaiah Avenue, LUZ Church Road, Mylapore, Chennai – 600 004.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAALC-0025-B		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

<b>Assessee by</b>	:	S/Shri G. Baskar & I. Dinesh (Advocates)-Ld. Ars
<b>Revenue by</b>	:	Shri AR V Sreenivasan (Addl. CIT) –Ld. Sr. DR

<b>सुनवाई की तारीख /</b> <b>Date of Hearing</b>	:	11-05-2022
<b>घोषणा की तारीख /</b> <b>Date of Pronouncement</b>	:	08-06-2022

## आदेश / O R D E R

### Manoj Kumar Aggarwal (Accountant Member)

1. The assessee is in further appeal for Assessment Years (AY) 2012-13 & 2013-14 whereas the revenue is in further appeal for AY 2012-13. The impugned order is common order for both the years. First, we take up cross-appeals for AY 2012-13 which arises out of the order of learned Commissioner of Income Tax (Appeals)-17, Chennai [CIT(A)] dated 23.08.2018 in the matter of assessment framed by Ld. AO u/s 143(3) on 31.03.2015.

#### The grounds raised by the assessee read as under:

1. Disallowance u/s Rule 8D - Rs.1,05,58,230 : This is a covered issue in favour of the assessee, as per Para 6.7 of the decision of Hon'ble ITAT, "D" Bench in its order dt. 22.07.2016 in ITA No.495/Mds/2015 for AY 2011-12 which held the issue in favour of the assessee subject to verification of facts by the Id. AO. Subsequently, the Id. AO verified the facts and deleted the disallowance vide his order dt. 14.09.2016 passed u/s 154.

#### The grounds raised by the Revenue are as under:

1. The order of the learned CIT(A) is contrary to the law and facts of the case.

2.1 The Ld CIT(A) erred in holding that the assessee is eligible for deduction u/s 80IA of the Act without realizing the fact that the assessee did not develop the eligible business activity which was otherwise developed by its own sister concern CITPL which is entitled for the deduction u/s 80IA and not the assessee.

2.2 The Ld. CIT(A) erred in holding that based on mere revenue sharing of eligible business by another entity, the assessee is entitled for 100% deduction from its profits u/s 80IA.

2. The Ld. Sr. DR supported the stand of Ld. AO whereas Ld. AR submitted that the issues have exhaustively been dealt with in the impugned order. The Ld. AR also assailed the disallowance u/s 14A as confirmed in the impugned order. Having heard rival submissions, our adjudication would be as under.

### **Assessment Proceedings**

3. The assessee is a Central Public Sector Enterprises functioning under the direct control and supervision of Ministry of the Union Government and administered by Major Port Trusts Act, 1963. It was assessed for the year under consideration u/s 143(3) on 31.03.2015. The assessee is the sole authority to control and manage Ports at Chennai. The assessee developed a new container terminal within the port premises jointly with Chennai International Terminals Private Ltd. (CITPL) which was commissioned. Against the same, the assessee claimed deduction u/s 80IA (4) for Rs.31.27 Crores and was required by Ld. AO to demonstrate the fulfillment of conditions of the statutory provisions. Though the assessee justified the deduction, however, Ld. AO denied the same on the ground that actual operations were done by CITPL and therefore, the deduction would not be available to the assessee. The Ld. AO also made disallowance u/s 14A for Rs.112.95 Lacs since the assessee earned exempt income. This disallowance has been revised to Rs.105.58 Lacs in the rectification order dated 26.06.2015.

### **Appellate Proceedings**

4. During appellate proceedings, the assessee, inter-alia, relied on the decision of Hon'ble High Court of Madras in **CIT V/s Kailash Shipping Services Pvt. Ltd. (383 ITR 630)** and the decision of Hon'ble High Court of Delhi in **Container Corporation of India Ltd. V/s ACIT (346 ITR 140)** in support of the submissions that deduction u/s 80IA(4) would be available to the assessee. The Ld. CIT(A) noted that the second container terminal under consideration was jointly developed by the assessee and CITPL. The assets owned by the assessee and CITPL

were expressly identified and listed in the exhaustive license agreement dated 07.03.2007. The assessee, as a licensor, provide reasonable access to the licensee to all infrastructural facilities and utilities including water, electricity and telecommunication facilities necessary during the construction stage or operational phase for the project facilities and services in accordance with the agreement. Further the assessee was vested with the authority of developing and providing infrastructural facilities for ports. The second container terminal was a new infrastructural facility and was not in existence prior to its development by the assessee jointly with CITPL as per the terms of license agreement dated 07.03.2007. Thus, the condition that infrastructural facility should start its operation on or after 01.04.1995 was duly satisfied. The container terminal developed was a part of Chennai Port. The term 'Port' is mentioned as an infrastructural facilities in the explanation (d) to Sec.80IA(4). The term 'port' as defined in CBDT Circular No. 10 dated 16.12.2005 includes structures at the ports for storage, loading and unloading etc. This Circular does not in any way restrict the term port to only the structure at the terminal of a port but also clarifies that such structure for storage, loading, unloading etc. will also be included in the definition of port. The term 'port' was a larger term and not restricted just to the structures only. Further, the terminal was developed on BOT model whereby the gross revenue was split at source level between the assessee and CITPL. The assessee also produced certificate from CITPL wherein it was certified that the profits / losses of CITPL were arrived at by considering their respective revenue share only. Thus, the share of the assessee and CITPL was clearly defined and therefore, CITPL alone could not be held to be eligible for aforesaid deduction.

Accordingly, the assessee was also held to be eligible for deduction u/s 80IA(4). Aggrieved, the revenue is in further appeal before us. The disallowance made u/s 14A was confirmed against which the assessee is in further appeal before us.

### **Our findings and Adjudication**

5. So far as the issue of deduction u/s 80IA(4) is concerned, we find that facts noted by Ld. CIT(A) remain uncontroverted before us. After going through the adjudication of Ld. CIT(A), we find that second container terminal under consideration was jointly developed by the assessee and CITPL and it was a new infrastructural facility. The assets owned by the assessee and CITPL were expressly identified and listed in the exhaustive license agreement dated 07.03.2007. The assessee, as a licensor, provide reasonable access to the licensee to all infrastructural facilities and utilities including water, electricity and telecommunication facilities necessary during the construction stage or operational phase for the project facilities and services in accordance with the agreement. Further the assessee was vested with the authority of developing and providing infrastructural facilities for ports. The container terminal developed was a part of Chennai Port. The term 'Port' is mentioned as an infrastructural facilities in the explanation (d) to Sec.80IA(4). The term 'port' as defined in CBDT Circular No. 10 dated 16.12.2005 includes structures at the ports for storage, loading and unloading etc. The project fulfilled all the stipulate conditions. The gross revenue was split at source level between the assessee and CITPL. The same is further supported by the certificate from CITPL wherein it was certified that the profits / losses of CITPL were arrived at by considering their respective revenue share only. The other entity has been allowed

similar deduction and there is no reason as to why the deduction is not available to the assessee. Thus, the adjudication in the impugned order could not be faulted with. The cited case laws support the case of the assessee. Accordingly, the revenue's appeal stands dismissed.

6. Regarding disallowance u/s 14A r.w.r. 8D, Ld. AR made a limited prayer that while computing the disallowance u/r 8D(2)(iii), only those investments should be considered which has yielded exempt income during the year. Accepting the same, we direct Ld. AO to recompute disallowance u/s 14A r.w.s. 8D(2)(iii) by considering only those investments which have actually yielded any exempt income during the year. This ground stands partly for statistical purposes. The assessee's appeal stands partly allowed for statistical purposes.

7. In AY 2013-14, the sole grievance of the assessee is disallowance u/s 14A. In this year, the assessee offered suo-motu disallowance of Rs.51.39 Lacs in the computation of income. The assessee earned tax free income of Rs.644.80 Lacs. The Ld. AO computed aggregate disallowance of Rs.166.96 Lacs which was direct expense disallowance u/r 8D(2)(i) for Rs.26.45 Lacs, interest disallowance u/r 8D(2)(ii) for Rs.7.01 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.133.50 Lacs. However, while computing the assessed loss, Ld. AO had made disallowance only for Rs.26.45 Lacs. The same has been confirmed by Ld. CIT(A) against which the assessee is in further appeal before us.

8. The limited prayer of Ld. AR is that only investment yielding investments are to be considered while computing disallowance u/r 8D(2)(iii). Accepting the same, we direct Ld. AO to re-compute disallowance u/r 8D(2)(iii) by considering only those investments which

have actually yielded any exempt income during the year. The disallowance u/r 8D(2)(i) & 8D(2)(ii) stand confirmed. The suo-motu disallowance as offered by the assessee shall be adjusted from the aggregate disallowance. Finally, the income / loss of the assessee shall be re-computed by taking correct figures of aggregate disallowance as made u/s 14A. The assessee's appeal stands partly allowed for statistical purposes.

**Conclusion**

9. Both the appeals filed by the assessee stands partly allowed for statistical purposes. The revenue's appeal stands dismissed.

Order pronounced on 08<sup>th</sup> June, 2022.

Sd/-  
(MAHAVIR SINGH)  
उपाध्यक्ष / VICE PRESIDENT

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 08-06-2022  
*JPV*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A) 4.  
आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF