

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER**

ITA No. 354/Del/2021  
(Assessment Year : 2017-18)

DCIT Circle – 4(2) New Delhi  <b>PAN No. AADCC 6885 B (APPELLANT)</b>	Vs.	Celebi Delhi Cargo Terminal Management India Pvt. Ltd. Room No.CE-05, Import Building-2, International Cargo Terminal, IGI Airport, New Delhi-110037 <b>(RESPONDENT)</b>
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Assessee by	Ms. Yamini, C.A.
Revenue by	Shri Surender Pal, CIT-D.R.

Date of hearing:	04.08.2022
Date of Pronouncement:	31.08.2022

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the Revenue is directed against the order dated 03.09.2020 of the Commissioner of Income Tax (Appeals)-2, New Delhi relating to Assessment Year 2017-18.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of warehouse management at IGI Airport, New Delhi. Assessee

filed its return of income for A.Y. 2017-18 on 29.11.2017 declaring income of Rs.1,82,82,970/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 28.12.2019 and the total income was determined at Rs.17,76,52,651/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A), who vide order dated 03.09.2020 in Appeal No.10652/19-20 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. *On the fact the circumstances of the case, whether the Ld CIT(A) has erred on facts and in law to allow the claim of deduction u/s 80IA of the Act to the Assessee, when the assessee has not been granted approval by any statutory authority to carry out prescribed activities eligible for deduction u/s 80IA.*
2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forgo any ground(s) of appeal at any time before or during the hearing of this appeal.”*

4. During the course of assessment proceedings, AO notice that assessee had claimed deduction of Rs.15,93,69,681/- u/s 80IA of the Act. The assessee was asked to justify its claim to which assessee *inter alia* submitted that assessee is a joint venture between a Turkish Company M/s. Celebi Hava Servisi and M/s. Delhi International Airport Ltd. ('DIAL'). It was formed as Special Purpose Company for the up gradation, operation and maintenance of the cargo terminal at Indira Gandhi International Airport, New Delhi. It was further submitted that 'DIAL' had entered into an Operation, Management and Development Agreement ('OMDA') with the Airport Authority of India ('AAI') under which 'DIAL' has been granted the exclusive right and

authority for 30 years to operate, maintain, develop, design, construct, upgrade, modernize, finance and manage the IGIA, Delhi. Consequent to the concession agreement entered between 'DIAL', Celebi Hava Servisi and the assessee on 24<sup>th</sup> August 2009, assessee received the concession for a period of 25 years to upgrade, modernize and finance the cargo terminal and the common area and to operate, manage and maintain the same for rendering the cargo services and thus assessee being eligible for claiming deduction u/s 80IA of the Act had claimed the deduction u/s 80IA of the Act. It was further submitted that the deduction has been claimed by assessee from A.Y. 2011-12. The submissions of the assessee was not found acceptable to AO. According to AO, for getting a benefit of deduction u/s 80IA of the Act, it was a pre-requisite that the entity should have entered into an agreement with a statutory authority to carry out prescribed activities in an eligible business. In the case of the assessee, AO noted that 'DIAL' signed an 'OMDA' with the Airport Authority of India Ltd., which authorized 'DIAL' to enter into a sub contract agreement with the assessee on the basis of which 'DIAL' then signed a concession agreement with Celebi Hava Servisi and the assessee to sub-contract some part of its mandate to the assessee. According to AO, thus the assessee had not entered into any agreement with a statutory authority. AO, therefore, held that the assessee was not eligible for deduction u/s 80IA of the Act. He accordingly denied the claim of deduction of Rs.15,93,69,681/- claimed by the assessee.

5. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) while deciding the issue in favour of the assessee noted that identical issue arose in assessee's own case in A.Y. 2011-12 & 2012-13 and the Delhi Bench of Tribunal in ITA No.3182/Del/2016 order dated 23.10.2018 for A.Y. 2011-12 and ITA No.3376/Del/2017 order dated 18.02.2019 for A.Y. 2012-13 has held that the assessee qualified for deduction u/s 80IA of the Act. He noted that since the facts of the case in the year under consideration are identical to that of A.Y. 2011-12, therefore the assessee is eligible for deduction u/s 80IA (4) of the Act. He accordingly set aside the order of AO and directed the AO to grant the deduction u/s 80IA(4) of the Act. Aggrieved by the order of CIT(A), Revenue is now before us.

5. Before us, Learned DR supported the order of AO.

6. Learned AR on the other hand reiterated the submissions made before lower authorities and further submitted that in identical issue in assessee's own case, the Tribunal for A.Ys. 2011-12 & 2012-13 has allowed the claim of deduction. She further submitted that since the facts of the case in the year under consideration are identical to that of earlier year, the ground of Revenue be dismissed.

7. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the allowability of claim of deduction u/s 80IA of

the Act which is denied by AO but allowed by CIT(A). We find that CIT(A) in his order has reproduced the findings of Co-ordinate Bench of Tribunal in assessee's own case for A.Ys. 2011-12 & 2012-13 wherein it was held that assessee was eligible for deduction u/s 80IA(4) of the Act. He has further noted that since the facts are identical to that of earlier years, the assessee is eligible for claiming the deduction. Before us, Revenue has not pointed to any distinguishing facts of the case in the year under consideration and that of earlier years nor has placed any material to demonstrate that the order of Delhi Tribunal in assessee's own case for A.Ys. 2011-12 & 2012-13 has been set aside/stayed/over ruled by the Higher Judicial forum. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus dismiss the grounds of the Revenue.**

**8. In the result, appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 31.08.2022**

**Sd/-**  
**(NARENDER KUMAR CHOUDHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Date:- 31.08.2022

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI