

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

ITA NO.4393/MUM/2023
Assessment Year :2016-17
ITA NO.4394/MUM/2023
Assessment Year : 2017-18

ACIT, CIR 8(2)(1),Mumbai,
Room No.481, 4th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

---- Appellant

Vs.

Star Track Terminals Pvt. Ltd.
ICD Dadri, Tilpata Road,
Gautam Budh Nagar,
Greater Noida – 201 307
PAN: AAHCS-5182-K

--- Respondent

Appellant by : Shri Manish Kant
Respondent by : Ms. Sujatha Iyengar, Sr.AR
Date of Hearing : 21/05/2024
Date of Pronouncement : 22/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The revenue has filed these appeals challenging the orders passed by Ld.CIT(A), NFAC, Delhi and they relate to the assessment years 2016-17 and 2017-18. Since, common issue is urged in these appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee company is engaged in the business of operating Inland Container Depot (ICD) at Dadri, Noida (U.P). It also provides storage facilities in terms of containers handling, custom bonded warehousing for temporary

storage of containers for onward transit etc. The assessee company is a joint venture undertaking with the shareholders, viz., M/s. APM Terminals Pvt. Ltd holding 51% shares and Container Corporation of India holding 49% shares. The assessee claimed deduction u/s. 80IA(4) of the Act in both the years on the ground that it is an industrial undertaking engaged in infrastructure development. Before the Assessing Officer, the assessee submitted that its claim is admissible as per the decision rendered by Special Bench of ITAT in the case of All Cargo Global Logistic Ltd. Vs. DCIT (23 taxmann.com 103) (Mum) (SB), which has been upheld by the Hon'ble Bombay High Court. The Assessing Officer however, placed reliance on a Circular issued by CBDT, wherein it was opined that the inland port does not constitute infrastructure facility for the purposes of sec. 80IA of the Act. The assessee further pointed out that similar claim made by it in the earlier years has been allowed by ITAT. However the Assessing Officer expressed the view that the Revenue has challenged the said decision of ITAT by filing appeal before the Hon'ble Bombay High Court. Accordingly, the Assessing Officer rejected claim of the assessee for deduction u/s. 80IA(4) of the Act.

3. In the appellate proceedings, the Id.CIT(A) followed the decision rendered by ITAT and accordingly allowed the claim of the assessee. Aggrieved, the Revenue has filed these appeals.

4. We heard the parties and perused the record. We notice that an identical issue was examined by the co-ordinate bench in the assessee's own case in AY 2011-12 (ITA No.3221/Mum/2016). In that year, the AO had allowed the deduction u/s 80IA of the Act and the Ld PCIT revised the assessment order

holding that the deduction allowed by the AO is erroneous and prejudicial to the interests of revenue. The assessee challenged the revision order so passed by Ld PCIT and the Tribunal quashed the same with the following observations:-

“9. We have perused the record and gone through the orders passed by the authorities below and the cases relied upon by the assessee and Ld. Pr. Commissioner. The only issue involved in this appeal is whether the assessee is entitled for the deduction claimed u/s 80IA (4) of the Act, or whether the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue to exercise jurisdiction u/s 263 of the Act by the Ld. Pr. Commissioner?

10. As pointed out by the Ld. counsel for the assessee the identical issue has already been decided by the special Bench of the Bombay Tribunal in *All Cargo Global Logistics v. DCIT (supra)*. In the said case one of the issues to be adjudicated by the Bench was whether a Container Freight Station engaged in performing functions such as warehousing, customs clearance, and transport of goods from its location to sea-ports and vice-versa by railway or by trucks in containers, has to be regarded as an inland port whose income is entitled to deduction under section 80-I A(4). The special Bench decided the said issue in favour of the assessee. The relevant portion of the findings of the Special Bench on this issue reads as under:

"65. We have considered the facts of the cases and submissions made before us. It may be mentioned that one of the arguments advanced by the Ld. Counsel for the assessee is that the case of Container Corpn. of India Ltd. (supra) is not based on any of the circulars issued by the Port authorities, however, the CFS the assessee has been granted such certificate. The certificate mentions that the CFS carries on port related activities, and it may be considered as an extendable activity of the port related activities. It is clarified that the CFS has not been built on BOT or BOLT Scheme Assessment Year: 2011-12 and that it is situated on land which does not belong to the port. The letters written by port trust to the assessee also state that the matter has been referred to the Income Tax Department. The department has clarified that an ICD/CFS does not constitute an inland port. In the case of CIT v. ABG Heavy Industries Ltd. [2010] 189 Taxman 54 (Bom.), the Hon'ble Court has held that the assessee is entitled to deduction u/s 80-IA. However there is a very salient difference in facts that structures were located at port and such

structures had to be handed over to the Port Trust on expiry of the period of agreement. In the case at hand it is clear that the assets of the CFS are not to be handed over to the Port Trust at any point of time as it is not built on BOT & BOLT Scheme. The CFS is also not located at the Port. As against the aforesaid, the Ld. Standing Counsel has submitted that clarifications issued by other authorities including Central Board of Excise and Customs under the relevant Acts do not lay guidelines under the [Income Tax Act](#) and that the matter has to be decided under the [Income-tax Act](#) independently. For doing so, initially a strict interpretation has to be placed on the words "inland port" to examine that the assessee is entitled to the deduction. CBDT has furnished opinion that ICDs and CFSs are not entitled to such deduction as they do not constitute inland ports. Other Acts as well as study report lead to the conclusion that a port can be said to be an inland port only if it has an access to the sea via a waterway.

66. We find that the solitary decision in this case by any High Court is in the case of [Container Corpn. of India Ltd.](#) (supra). In this case it has been held that an ICD is not a port but it is an inland port. The case of CFS is similar situated in the sense that both carry out similar functions, i.e., ware housing, customs clearance, and transport of goods from its location to the seaports and vice-versa by railway or by trucks in containers. Thus, the issue is no longer res- integra. Respectfully following this decision, it is held that a CFS is an inland port whose income is entitled to deduction [u/s 80-IA\(4\)](#). Question No. 2 is answered accordingly."

11. Since, the assessee was entitled to the deduction claimed [u/s 80-IA\(4\)](#) of the Act as per the decision of the Special Bench discussed above, the AO has Assessment Year: 2011-12 rightly allowed the deduction in question claimed by the assessee."

It can be noticed that the co-ordinate bench has followed the decision rendered by the Special bench in the case of All Cargo Logistics (supra). We further notice that another co-ordinate bench has allowed the deduction u/s 80IA(4) to the assessee in AY 2010-11 to 2014-15 (ITA Nos. 7114, 7119, 7115/Mum/2017 and ITA Nos. 156 & 157/Mum/2018 respectively dated 30-04-2019), by following the decision rendered in the assessee's own

case in AY 2011-12. Consistent with the view taken by the co-ordinate benches, we hold that the assessee is eligible for deduction u/s 80IA(4) of the Act in both the years under consideration. We noticed earlier that the Ld CIT(A) has followed the decisions so rendered by the co-ordinate benches in deciding this issue in favour of the assessee. Accordingly, we do not find any reason to interfere with the decision rendered by Ld CIT(A) in both the years under consideration.

5. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 22nd May , 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER
Mumbai, Date : 22nd May, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai