

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos.1394/Mds/2014 & 94/Mds/2015

निर्धारण वर्ष /Assessment year : 2009-2010

M/s. Continental Container
Freight Stations Pvt. Ltd,
81, Samy Complex,
Thambu Chetty Street,
Parrys Corner,
Chennai 600 001.

Vs. The Assistant Commissioner
of Income Tax,
Company Circle I(3)
Chennai.

आयकर अपील सं./I.T.A. No.136/Mds/2015

निर्धारण वर्ष /Assessment year : 2009-2010

The Assistant Commissioner
of Income Tax,
Company Circle I(3)
Chennai.

Vs. M/s. Continental Container
Freight Stations Pvt. Ltd,
81, Samy Complex ,
Thambu Chetty Street,
Parrys Corner,
Chennai 600 001.

(अपीलार्थी/Appellant)

**[PAN AADCC 3448C]
(प्रत्यर्थी/Respondent)**

ASSESSEE BY
DEPARTMENT BY

: Shri. S. Sridhar, Advocate
: Ms. Ruby George, CIT
and A.V. Srekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 10-11-2016

घोषणा की तारीख /Date of

: 25-11-2016

Pronouncement

आदेश / ORDER**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

Appeal No. 1394/Mds/2014 of the assessee is directed against an order of Sec. 263 of the Act passed by the Id. Commissioner of Income Tax (Appeals)-I, Chennai on 26.03.2014. ITA No. 94/Mds/2015 and 136/Mds/2015 are cross appeals of the assessee and Revenue respectively directed against an order dated 30.09.2014 of Id. Commissioner of Income Tax (Appeals)-I, Chennai. All these appeals are for very same assessment year.

2. Cross appeals of the assessee and Revenue in ITA No.94/Mds/2015 and 136/Mds/2015 are taken up first for disposal.

3. Revenue in its appeal is aggrieved on the deletion of a disallowance of a claim of ₹1,26,12,282/- under section 80IA(4) of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income Tax (Appeals). As against this, assessee in its appeal is aggrieved on notional charge of interest @9% on outstanding balance of unsecured loans thereby reducing the deduction u/s.80IA claimed by it. One other ground taken by the assessee is on disallowance of depreciation of warehousing facilities, which Id. Assessing Officer considered as part of capital work in progress.

4. Facts apropos are that assessee engaged in the business of operating container freight station and inland container depots at Chennai, Tuticorin, Tiruppur and Karur had filed return of income for the impugned assessment year disclosing Nil income. Assessee had claimed deduction u/s.80IA(4) of the Act for its earnings from warehouse rental. Assessee received warehouse rentals of ₹19,51,367/- from Deccan and Pondy at its Corporate Office, ₹1,06,60,915/- from M/s. ITC at its Ennore facility and ₹ 98,35,215/- at its Pondicherry CFS. The Id. Assessing Officer was of the opinion that ware housing facility at Ennore and corporate office were not approved container freight stations. Relying on the decision of Co-ordinate Bench in the case of *A.S. Shipping and Services P. Ltd dated 17.11.2011*, Id. Assessing Officer held that stand alone facilities were not eligible for deduction u/s.80IA(4) of the Act. In so far as rental receipt at Pondicherry office was concerned, Id Assessing Officer was of the opinion such rental income were not on account of temporary hold back of container in the CFS facility. As per Assessing Officer, CFS handling charges which was eligible for deduction under section 80IA(4) of the Act was only those arising from temporary warehousing but not pure warehousing business.

5. Assessing Officer also noted that transportation cost debited in the profit and loss account of the assessee included ₹44,88,784/- relating to Pondicherry and Tuticorin. As per the Id. Assessing Officer such costs were incurred for outbound traffic outside the CFS and not to the ports. He excluded this amount from eligible turnover and worked out deduction u/s.80IA(4) of the Act.

6. Assessee had also received trailer detention charges of ₹6,20,625/- and vehicle lease charges of ₹36,00,000/- aggregates to ₹42,20,625/-. As per the Assessing Officer this was required to be excluded from eligible turnover for working out deduction u/s.80IA(4) of the Act.

7. Ld. Assessing Officer thus excluded warehousing rental received at corporate office, Ennore facility and Pondicherry CFS, transportation cost relating to Pondicherry and Tuticorin facilities and vehicle lease and rent charges from the turnover of the assessee while working out the deduction available to it under section 80IA(4) of the Act.

8. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals), assailing exclusion of the above amounts from the turnover for working out the deduction

u/s.80IA(4) of the Act. Ld. Commissioner of Income Tax (Appeals) was of the opinion that considering the object of inserting 80IA(4) in the Act, which was promotion of ports and infrastructure facilities, and also considering the decision of Special Bench of this Tribunal in the case of *All Cargo Global Logistics Ltd vs. CIT 137 ITD 237*, assessee was eligible for deduction u/s.80IA(4) of the Act on warehousing rentals received for the warehouses in Corporate office and Ennore. For the warehousing rentals received from Pondichery CFS, Id. Commissioner of Income Tax (Appeals) observed that conclusion of the Id. Assessing Officer regarding temporary nature of the warehousing facilities was incorrect. According to him, Id. Assessing Officer had relied on turnover percentage of Pondy facilities for coming to this conclusion which was incorrect. As for the exclusion of transportation revenue, Id. Commissioner of Income Tax (Appeals) noted that Id. Assessing Officer had considered transportation cost incurred at Pondicherry and Tuticorin to be not related to out bound traffic of CFS without any evidence. As per Ld. Commissioner of Income Tax (Appeals), assessee was doing transportation of cargo containers only for export and import and there was no question of any transportation charges unrelated to this activity. As for the transportation and incidental charges, Id. Commissioner of Income Tax (Appeals) noted that assessee was offering CFS services as a

bouquet and division of the Revenue and activity could not be done. Thus, he ruled against exclusion of transport charges as well as incidental charges while computing deduction available to the assessee u/s.80IA(4) of the Act. He held that assessee was eligible to include all these amounts in its turnover while working out the deduction under section 80IA(4) of the Act.

9. Now before us, Id. Departmental Representative strongly assailing the orders of the lower authorities submitted that facilities operated at Corporate office at Ennore were not approved container freight stations and hence not eligible for deduction u/s.80IA(4) of the Act. Reliance was place on circular No.133/95, dated 22.12.1995 of the CBDT. According to him, unless and until CFS was notified as a customs area under section 8 of the Customs Act, deduction u/sec. 80IA(4) of the Act could not be given. He also sought to distinguish Special Bench decision in the case of *All Cargo Global Logistics Ltd(supra)* by submitting that facility in said case was an inland container division which was similar to CFS. As for transportation income at Tiruppur and Karur, Id. Departmental Representative submitted that assessee was transporting goods in the hinterland and hence not eligible for deduction u/s. 80IA(4) of the Act on such turnover.

10. Contra, Id. Authorised Representative strongly supporting the order of the Id. Commissioner of Income Tax (Appeals) submitted that decision of the Id. Commissioner of Income Tax (Appeals) was in line with the judgement of Jurisdictional High Court in the case of *CIT vs. A.L. Logistics Pvt. Ltd in Tax Case (Appeal) No.1031 of 2014, dated 23.12.2014.*

11. We have considered the rival contentions and perused the orders of the lower authorities. There is no dispute that assessee was operating a container freight station and providing warehousing facilities. Id. Assessing Officer himself had stated that there was approval from the assessee for its CFS operation at Chennai, Tuticorin, Tiruppur and Karur at para 3 of his order. That warehousing facilities operated by the assessee were part and parcel of the CFS activity has not disputed by the Revenue. Hon'ble Delhi High Court in the case of *Container Corporation of India Ltd vs. ACIT 340 ITR 140* had held that even inland container depot would be eligible for deduction u/s. 80IA(4) of the Act when it was doing activities similar to CFS. Hon'ble Jurisdictional High Court in the case of *A.L. Logistics Pvt Ltd (supra)* had also taken a similar view. Therefore, we are of the opinion that Id. Commissioner of Income Tax (Appeals) was justified in taking a view that warehousing rental received by the

assessee in Corporate office Ennore and Pondicherry were eligible for deduction u/s.80IA(4) of the Act considering these as part of the CFS facility.

12. With respect to transportation revenue relating to Pondicherry and Tuticorin to ports, it is not disputed that such transportation charges were received for moving goods in cargo containers to the ports. Hence, the distinction sought to be made between areas of transport was not in our opinion justified. Similarly, incidental charges on account of trailer detention and vehicle lease, were a part of the bouquet of services offered by the assessee as a part of its CFS division. Hence, we are of the opinion that Id. Commissioner of Income Tax (Appeals) was justified in allowing the claim of the assessee u/s. 80IA(4) of the Act on these items.

13. Now coming to the cross appeal of the assessee, Id. Assessing Officer had found that there were unsecured loans of ₹11,99,12,541/- in the books of the assessee. As per Id. Assessing Officer, if 9% interest was imputed on such loans then profit available for deduction u/s.80IA(4) of the Act would be lower by that amount. According to the Id.Assessing Officer, assessee was arranging its business transactions in such a way that more profits than what it would have earned was shown to take advantage of 80IA(4) of the

Act. Claim of the assessee u/s.80IA(4) of the Act was scaled down by ₹1,06,69,284/-. For doing this, Id. Assessing Officer placed reliance on sub-section (10) to Sec. 80IA of the Act.

14. In its appeal before Id. Commissioner of Income Tax (Appeals) argument of the assessee was that notional interest could not be imputed. However, Id. Commissioner of Income Tax (Appeals) was not impressed. According to him, there was a close relation between assessee and lenders of the money who were earlier partners. Id. Commissioner of Income Tax (Appeals) noted that nonpayment of interest to these persons had resulted in excessive relief being granted to the assessee u/s.80IA(4) of the Act. He confirmed the view taken by the assessee.

15. Now before us, Id. Authorised Representative submitted that related parties were ex-partners of the firm which was converted into assessee company. According to him, there was no reason how any interest could be imputed on a loan when no such interest was charged by the lender.

16. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

17. We have considered the rival contentions and perused the orders of the authorities below. Breakup of the loans on which interest was not paid by the assessee were as under:-

S. Xavier Britto	:	₹2,19,36,233/-
Smt. Vimala Rani Britto	:	₹1,31,85,850/-
Indev Shipping Services (Tuticorin) Ltd	:	₹2,11,40,183/-
Ennore Cargo Containers Terminal P. Ltd	:	₹1,69,16,689/-
Indev Logistics P. Ltd	:	₹4,53,68,649/-
Others	:	₹ 13,64,937/-

Total		₹11,99,12,541/-

Sec. 80IA(10) of the Act which was relied on by the Id. Assessing Officer for making the disallowance is reproduced as under:-

“(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom”.

It is stated by the assessee itself that lenders were ex-partners. Hence there is every reason for Id. Assessing Officer to believe that course of business was arranged in such a manner that more than

eligible amount was shown as the profit. Assessee was not able to show why interest was not charged by the above mentioned persons when substantial unsecured loans were outstanding in their names. We do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals).

18. The only other issue raised by the assessee is on a disallowance of depreciation on its warehousing facility at Bangalore.

19. Ld. Commissioner of Income Tax (Appeals) specifically noted that value of the above asset was shown as a part of capital work in progress in the fixed asset schedule of the assessee. There was no income whatsoever credited in the profit and loss from the facility. If it was operational assessee would have earned at least a nominal income from this facility. Hence, in our opinion, depreciation was rightly disallowed. We do not find any reason to interfere with the orders of the lower authorities.

20. In the result, appeals of both the Revenue as well as assessee appeal are dismissed.

21. Coming to the appeal of the assessee in ITA No.1394/Mds/20114 it is directed against an order dated 26.03.2014

by Id. Commissioner of Income Tax-1, Chennai passed u/s.263 of the Act for the very same assessment year.

22. Ld. Commissioner of Income Tax had revised the assessment done by the Assessing Officer for the impugned assessment year considering it to be erroneous and prejudicial to the interest of Revenue. Reason cited was that Id. Assessing Officer had not considered amendment to Sec. 80IA(4) of the Act which came into effect from 01.04.2002. According to CIT, said amendment withdrew the benefit under section 80IA(4) to "facility of similar nature". Ld. Commissioner of Income Tax had refused to follow the judgment of Delhi High Court in the case of Container Corporation of India Ltd vs. ACIT 346 ITR 140 citing a reason that the said judgment had not reached finality.

23. We find that Id. Assessing Officer had allowed deduction to assessee u/s.80IA (4) of the Act considering the CFS to be an infrastructure facility eligible for such benefit. Hon'ble Jurisdictional High Court in the case of *M/s. A.L. Logistics Pvt. Ltd. (supra)* which was for assessment year 2009-2010 has held that earning from container freight station was eligible for deduction u/s.80IA(4) of the Act. Further in the appeal of the assessee against denial of deduction

on some parts of its turnover, Id. Commissioner of Income Tax (Appeals) had held in assessee's favour and this view has been upheld by us at para 11 & 12 above. We are therefore of the opinion that the assessment could not have been considered as erroneous and prejudicial to the interest of revenue, Id. Assessing Officer having taken a view which was legally permissible. We, therefore set aside the order of the Id. Commissioner of Income Tax.

24. In the result, appeal of the assessee in ITA No.1394/Mds/2014 is allowed, appeal of the assessee in ITA No.94/Mds/2015 is dismissed and appeal of the Revenue in ITA No.136/Mds/2015 is also dismissed.

Order pronounced on Friday, the 25th day of November, 2016, at Chennai

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 25th November, 2016

KV

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF