

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2763, 2764, 2765, 2766 & 2767/Mds/2014

निर्धारण वर्ष/Assessment Years : 2006-07, 2007-08, 2008-09, 2010-11 & 2011-12

The Deputy Commissioner of
Income Tax,
Company Circle I(1),
Chennai - 600 034.

M/s A.S. Shipping Agencies Pvt. Ltd.,
v. No.113, (Old No.55), Armenian Street,
Chennai - 600 034

PAN : AAACA 2906 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. P. Radhakrishnan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. A.S. Sriraman, Advocate

सुनवाई की तारीख/Date of Hearing : 09.09.2015

घोषणा की तारीख/Date of Pronouncement : 13.11.2015

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals)-I, Chennai, for the assessment years 2006-07, 2007-08, 2008-09, 2010-11 and 2011-12. Since common issue arises for consideration in all the appeals, we heard the appeals together and disposing of the same by this common order.

2. Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assessee is engaged itself in the business of clearing and forwarding agency in the sea port. The assessee is also owning and operating a Container Freight Station. The assessee claimed deduction under Section 80-IA of the Income-tax Act, 1961 (in short 'the Act') from operating Container Freight Station. According to the Ld. D.R., Container Freight Station is not an infrastructure facility as defined in Section 80-IA of the Act. Container Freight Station cannot be construed either as a "port" or "inland port". The assessee has not entered into any agreement with Government of India or any other local authority for creation of infrastructure facility. Since the conditions stipulated under Section 80-IA were not fulfilled, the Assessing Officer rejected the claim of the assessee under Section 80-IA of the Act. However, the CIT(Appeals) found that the Container Freight Station set up by the assessee can be construed as port or inland port and therefore, eligible for the benefit of deduction under Section 80-IA of the Act. The CIT(Appeals) has placed his reliance on the decision of this Tribunal in assessee's own case for assessment years 2008-09 and 2009-10 in I.T.A. Nos.1032 & 1033/Mds/2013.

3. On the contrary, Sh. A.S. Sriraman, the Ld.counsel for the assessee, submitted that for the assessment years 2008-09 and 2009-10, this Tribunal in assessee's own case in I.T.A. Nos.1032 & 1033/Mds/2013, by an order dated 21.11.2013, found that the Container Freight Station operated by the assessee has to be construed as inland port, therefore, eligible for deduction under Section 80-IA of the Act. This Tribunal placed his reliance on its earlier order in the assessee's own case for assessment years 2003-04 and 2005-06. Referring to an unreported judgment of Madras High Court, a copy of which is filed by the assessee, in CIT v. M/s A.L. Logistics Pvt. Ltd. in Tax Case (Appeal) No.1031 of 2014 dated 23.12.2014, the Ld.counsel submitted that on identical set of facts, the Madras High Court found that Container Freight Station is a port or inland port. In the absence of a specific exclusion of Container Freight Station in clause (d) of Explanation to Section 80-IA (4)(i) of the Act, the Madras High Court found that Container Freight Station is an infrastructure facility eligible for deduction under Section 80-IA of the Act.

4. We have considered the rival submissions on either side and perused the relevant material on record. Admittedly, the assessee

owns and operates a Container Freight Station. The question arises for consideration is whether the Container Freight Station forms part of port or inland port within the meaning of Section 80-IA of the Act. We have carefully gone through the provisions of Section 80-IA of the Act, more particularly, sub-section (4) of Section 80-IA of the Act. Sub-section (4) of Section 80-IA of the Act clearly says that an enterprise carrying on the business of developing or operating and maintaining any infrastructure facility which fulfills all the conditions prescribed in sub-section (4) of Section 80-IA of the Act, is eligible for the benefit of deduction. Explanation to Section 80-IA(4) of the Act clarifies the infrastructure facility. Explanation (d) to Section 80-IA(4)(i) of the Act clarifies that a port, airport, inland waterway, inland port or navigational channel in the sea are to be considered as infrastructure facility. In the case before us, the assessee owns and operates Container Freight Station. The assessee claims that Container Freight Station forms part of inland port. We find that the Madras High Court in A.L. Logistics Pvt. Ltd. (supra), has examined this issue and found that Container Freight Stations are Customs area attached to the port. By referring to a communication said to be issued by Department of Revenue, Central Board of Excise and Customs, Ministry of

Finance, it was found that the work related to Customs is performed at these inland container depots. Ultimately, by placing reliance on the decision of Special Bench of this Tribunal in All Cargo Global Logistics Ltd. v. DCIT (2012) 137 ITD 287 and the judgment of the Delhi High Court in Container Corporation of India Ltd. v. ACIT (2012) 346 ITR 140, the Madras High Court found that the Container Freight Station is inland port, therefore, it is an infrastructure facility within the meaning of Section 80-IA(4) of the Act. In view of this judgment of Madras High Court, this Tribunal is of the considered opinion that Container Freight Station has to be construed as inland port, hence, forms part of infrastructure facility within the meaning of Section 80-IA(4) of the Act.

5. The next contention of the Ld. D.R. is that no agreement was entered into between the assessee and Government or any local authority for establishing the infrastructure facility.

6. We have carefully gone through the provisions of Section 80-IA of the Act. Section 80-IA(4)(i)(b) clearly says that Section 80-IA of the Act applies to an enterprise, which has entered into an agreement with Central Government or a State Government or a local authority or any other statutory body for developing or

operating and maintaining or developing, operating and maintaining a new infrastructure facility. In view of the mandatory requirement under Section 80-IA(4)(i)(b) of the Act, the assessee has to necessarily enter into an agreement either with Central Government or State Government or with local authority or any other statutory body for developing Container Freight Station.

7. The Madras High Court in the case of A.L. Logistics Pvt. Ltd. (supra) has examined this issue. In the case before CIT(Appeals), the assessee made an application for setting up of Container Freight Station. The Department of Commerce approved the proposal of the assessee for setting up of Container Freight Station at Haldia. Accordingly, the High Court found that the assessee is eligible for deduction under Section 80-IA of the Act. In the case before us, even though the Assessing Officer specifically claimed that the assessee has not entered into any agreement either with State Government or any other authority or local body, the CIT(Appeals) has not examined this contention of the Assessing Officer. The CIT(Appeals) simply placed his reliance on the decision of this Tribunal in assessee's own case for assessment years 2008-09 and 2009-10. We have carefully gone through the

decision of this Tribunal in assessee's own case for assessment years 2008-09 and 2009-10. This Tribunal, by placing reliance on the earlier order in the assessee's own case for assessment years 2003-04 and 2005-06, found that the Container Freight Station is a part of inland port, therefore, eligible for deduction under Section 80-IA of the Act. The Tribunal has not examined the contention of the Assessing Officer whether there was any agreement between the assessee and Government or any other authorities. The material available on record does not indicate any approval obtained by the assessee as in the case of A.L. Logistics Pvt. Ltd. (supra) before the Madras High Court. As found by the Tribunal in the case of A.L. Logistics Pvt. Ltd. (supra), even though no specific agreement was required, approval from Government or Government agency is required for claiming deduction under Section 80-IA of the Act. Since these aspects were not examined by the CIT(Appeals), even though a specific issue was raised by the Assessing Officer, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer in the light of the judgment of Madras High Court in A.L. Logistics Pvt. Ltd. (supra). Accordingly, the orders of the lower authorities are set aside and issue of deduction under Section 80-IA of the Act is remitted back to the file

of the Assessing Officer. The Assessing Officer shall re-examine the issue and find out whether the assessee has obtained any approval or entered into any agreement with Government or Government agency, as in the case of A.L. Logistics Pvt. Ltd. (supra) and thereafter decide the same in accordance with law, after giving reasonable opportunity to the assessee.

8. In the result, all the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced on 13th November, 2015 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 13th November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-I, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.