

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.954/PUN/2018
Assessment Year : 2014-15

Dy. Commissioner of Income Tax,
Panvel Circle, Panvel

Appellant

V/s.

M/s. Continental Warehousing Corporation
(Nhava Sheva) Ltd.,
D. No. 1088, Khopta Village,
Tal.-Uran, Dist.-Raigad

PAN : AAACC5849C

.....प्रत्यर्थी / Respondent

Assessee by : Shri Fenil Bhatt
Revenue by : Shri Abhinay Kumbhar

Date of Hearing : 20-07-2022
Date of Pronouncement : 21-07-2022

ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 05-01-2018 passed by the Commissioner of Income Tax (Appeals)-2, Pune ['CIT(A)'] for assessment year 2014-15.

2. The only issue is to be decided is as to whether the CIT(A) justified in allowing deduction u/s. 80IA(4) of the Act in respect of Container Freight Station (CFS).

3. At the outset, we note that this issue is covered in favour of the assessee by the decision of Hon'ble Supreme Court in batch of appeals. Similar issue basing on same identical facts came up before this Tribunal in assessee's own case for A.Y. 2013-14 and by placing reliance on the decision of Hon'ble Supreme Court, the Tribunal decided the issue in favour of the assessee by holding that the assessee is entitled to claim deduction u/s. 80IA(4) of the Act in respect of Container Freight Station. The relevant part from Para Nos. 3 to 6 in ITA No. 385/PUN/2018 for A.Y. 2013-14 in assessee's own case are reproduced here-in-below for ready reference :

"3. The Id. DR, Shri J.P. Chandraker submits that the assessee is a company engaged in the business of operating the Container Freight Station (CFS) and filed return of income declaring a total income at Rs.74,11,870/- which was revised at Rs.82,23,750/- after claiming deduction of Rs.45,59,42,920/- u/s. 80IA(4) of the Act. In support of deduction it was claimed that the activities of operating the Container Freight Station qualifies as a Port which is one of the infrastructure facilities for the purpose of section 80IA of the Act. In the assessment proceedings, the assessee furnished a certificate from Jawaharlal Nehru Port Trust (JNPT) stating that the activities of operating the Container Freight Station considered as an extended arm of Port related services. He submits that the Jawaharlal Nehru Port Trust withdrew the said certificate, considering the same the AO disallowed the deduction claimed by the assessee as if did not fulfill the required conditions. Further, he vehemently argued that the CIT(A) erred in allowing the deduction u/s. 80IA(4) of the Act even the activities undertaken by the assessee do not fall within clause (d) of the Explanation to section 80IA(4) of the Act which defines the term 'Infrastructure facilities'. Further, he argued that the CIT(A) failed to take cognizance of the fact that the assessee has not entered into an agreement with the Central Govt./State Govt./Local Authority or any other statutory body for developing or operating and maintaining a new infrastructure facility. He submits finally that the CIT(A) erred in observing the fact that the Jawaharlal Nehru Port Trust issued certificate to treat the Container Freight Station as an extended arm of Port related services. He argued that the assessee is not eligible to claim deduction u/s. 80IA(4) of the Act and prayed to restore the order of AO.

4. The Id. AR, Shri Fenil Bhatt placed on record legal paper book containing Page Nos. 1 to 82 and drew our attention to Page No. 25 and submitted that the Hon'ble High Court of Bombay in assessee's own case decided the issue in favour of the assessee by holding ICDs and CFSs are infrastructure facilities entitled to claim deduction under sub-section 4 of section 80IA of the Act. He referred to Para No. 44 and submitted that the Hon'ble High Court of Bombay referred the decision of Hon'ble High Court of

Delhi which is reproduced in Para No. 44 of the case laws. Further, he took us to Para No. 47 and submitted that the Hon'ble High Court Bombay held that once the facility as an infrastructural facility set up within the precincts of the port having considering its proximity to the sea port and its activities to be held the deduction is admissible u/s. 80IA(4) of the Act. Further, he referred to the decision of Hon'ble Supreme Court in assessee's own case at Page Nos. 2 and 7 of the paper book. He drew our attention to Para Nos. 21 and 22 of the Hon'ble Supreme Court decision and submitted that the assessee is entitled to claim deduction u/s. 80IA(4) of the Act in respect of the Container Freight Station.

5. *The ld. DR opposed the arguments of ld. AR and drew our attention to Para No. 22 and argued that the Hon'ble Supreme Court decided the issue based on letter of CBEC dated 24-04-2007 and Ministry of Commerce and Industries letter dated 25-05-2009 that Inland Container Depots are Inland Ports. Both the notification and communication are not binding on the CBDT to decide whether ICDs can be termed as Inland Ports within the meaning of section 80IA of the Act. The CBDT has issued Instruction through File No. 178/42/2010-ITA-I dated 06-01-2011 that the Inland Container Depots (ICDs) and Container Freight Stations (CFS) are not Ports for the purpose of section 80IA(4)(i) of the Act. He concludes that apparently, the contrary view of Instruction of CBDT has not been mentioned specifically in the order of the Hon'ble Supreme Court and the AO has rightly relied on CBDT Instruction dated 06-01-2011 while framing the assessment order.*

6. *Heard both the parties and perused the material available on record. As rightly pointed by the ld. AR that the Hon'ble High Court of Bombay in assessee's own case for A.Y. 2008-09 discussed the issue in detail confirmed the order of Tribunal in holding that the Container Freight Station (CFS) is infrastructure facility eligible for deduction under Sub-section (4) of Section 80IA of the Act vide Para No. 47 of the said decision which is at Page No. 46 of the paper book. The Hon'ble Supreme Court in batch of Civil Appeals in which the assessee also party as respondent decided the issue in favour of the assessee vide Para Nos. 21 and 22 of the said decision which is at Page Nos. 22 and 23 of the paper book. The Co-ordinate Bench of this Tribunal in assessee's own case for A.Y. 2011-12 allowed the deduction u/s. 80IB(4) of the Act by placing reliance on the decision of Hon'ble High Court of Bombay in assessee's own case vide Para No. 6 of Page No. 81 of the paper book. Coming to the impugned order passed by the CIT(A), we note that he held that the assessee is eligible for claim of deduction u/s. 80IA(4) of the Act in terms of decision of Hon'ble High Court of Bombay in assessee's own case vide Para No. 5 of the impugned order. Therefore, in our opinion that it is a settled issue by the Hon'ble Supreme Court in assessee's own case and therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, the grounds raised by the Revenue are dismissed."*

4. In the light of above, we hold that the assessee is entitled to claim deduction u/s. 80IA(4) of the Act in respect of Container Freight Station. Thus, the ground raised by the Revenue is dismissed.

5. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 21st July, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Pune; Dated : 21st July, 2022.

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Pune
4. The Pr. CIT-2, Thane
5. DR, ITAT, "A" Bench, Pune.
6. Guard File.

True Copy//

BY ORDER,

Sr. Private Secretary
ITAT, Pune