

Commissioner Of Income Tax, Delhi-I vs M/S. Container Corporation Of India ... on 24 April, 2018

Equivalent citations: AIRONLINE 2018 SC 1399

Author: R.K.Agrawal

Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8900 OF 2012

Commissioner of Income Tax, Delhi-1Appellant(s)

Versus

M/s Container Corporation of India Ltd.Respondent(s)

WITH

CIVIL APPEAL No. 8901 of 2012
CIVIL APPEAL No. 4409 of 2014
CIVIL APPEAL No. 4983 of 2015
CIVIL APPEAL No. 8546 of 2015
CIVIL APPEAL No. 66 of 2016
CIVIL APPEAL No. 6407 of 2016
CIVIL APPEAL No. 6411 of 2016
CIVIL APPEAL No. 8034 of 2016
CIVIL APPEAL No. 6982 of 2016
CIVIL APPEAL No. 6635 of 2016
CIVIL APPEAL No. 9651 of 2016
CIVIL APPEAL No. 7211 of 2016
CIVIL APPEAL No. 7210 of 2016
CIVIL APPEAL No. 7209 of 2016
CIVIL APPEAL No. 8033 of 2016
CIVIL APPEAL No. 8032 of 2016
CIVIL APPEAL No. 10336 of 2016
CIVIL APPEAL NO. 4487 OF 2018

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Date: 2018.05.01

(Arising out of Special Leave Petition (C)
No. 24512 OF 2016)

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Reason:

CIVIL APPEAL No. 8755 of 2016

CIVIL APPEAL No. 9158 of 2016

1

CIVIL APPEAL No. 9157 of 2016

CIVIL APPEAL No. 8352 of 2016

CIVIL APPEAL No. 9159 of 2016

CIVIL APPEAL No. 10307 of 2016

CIVIL APPEAL No. 9744 of 2016

CIVIL APPEAL No. 9743 of 2016

CIVIL APPEAL No. 10308 of 2016

CIVIL APPEAL NO. 4543 OF 2018

(Arising out of Special Leave Petition (C)
No. 30630 OF 2016)

CIVIL APPEAL No. 10662 of 2016

CIVIL APPEAL No. 11709 of 2016

CIVIL APPEAL (C) NO. 4484 OF 2018

(Arising out of Special Leave Petition (C)
No.1106 OF 2018 @ SLP(C)... (CC) No. 3354 OF 2017)

CIVIL APPEAL No. 1441 of 2017

CIVIL APPEAL No. 4458 of 2017

CIVIL APPEAL NOS. 4493-4494 OF 2018

(Arising out of Special Leave Petition (C)
Nos. 17056-17057 OF 2017)

CIVIL APPEAL No. 4459 of 2017

CIVIL APPEAL No. 5571 of 2017

CIVIL APPEAL No. 5573 of 2017

CIVIL APPEAL No. 6800 of 2017

CIVIL APPEAL No. 11075 of 2017

CIVIL APPEAL NO. 4499 OF 2018

(Arising out of Special Leave Petition (C)
No. 18849 OF 2017)

CIVIL APPEAL No. 9364 of 2017

CIVIL APPEAL No. 9487 of 2017

CIVIL APPEAL No. 9277 of 2017

CIVIL APPEAL No. 10236 of 2017

2

CIVIL APPEAL No. 14900 of 2017

CIVIL APPEAL No. 16162 of 2017

CIVIL APPEAL No. 11202 of 2017

CIVIL APPEAL NO. 4548 OF 2018

(Arising out of Special Leave Petition (C)
No. 23116 OF 2017)

CIVIL APPEAL No. 15028 of 2017
CIVIL APPEAL No. 11117 of 2017
CIVIL APPEAL No. 15033 of 2017
CIVIL APPEAL No. 11160 of 2017
CIVIL APPEAL NO. 4547 OF 2018

(Arising out of Special Leave Petition (C)
No. 23115 OF 2017)

CIVIL APPEAL No. 15494 of 2017
CIVIL APPEAL No. 15497 of 2017
CIVIL APPEAL No. 17315 of 2017

CIVIL APPEAL NO. 4655 OF 2018
(Arising out of Special Leave Petition (C)
No. 11535 OF 2018)
(DIARY NO. (s) 26081 of 2017)

CIVIL	APPEAL	No.	17534	of	2017
CIVIL	APPEAL	No.	17317	of	2017
CIVIL	APPEAL	No.	17318	of	2017
CIVIL	APPEAL	No.	18272	of	2017
CIVIL	APPEAL	No.	17986	of	2017
CIVIL	APPEAL	No.	18011	of	2017
CIVIL	APPEAL	No.	19491	of	2017

3

CIVIL APPEAL No. 19535 of 2017
CIVIL APPEAL No. 19935 of 2017

CIVIL APPEAL NO. 4645 OF 2018
(Arising out of Special Leave Petition (C)
No. 32825 OF 2017)

WITH

CIVIL APPEAL No. 20850 OF 2017
CIVIL APPEAL No. 20851 of 2017

JUDGMENT

R.K.Agrawal, J.

1) Leave granted.

2) The present appeal has been filed against the judgment and order dated 11.05.2012 passed by the High Court of Delhi in ITA Nos.1411 of 2009, ITA Nos. 967 and 968 of 2011 wherein the Division Bench of the High Court while allowing the above appeals filed by the respondent herein set aside the order dated 27.02.2009 passed by the Income Tax Appellate Tribunal (in short 'the Tribunal') holding that the respondent herein is entitled to claim the benefit of Section 80-IA of the Income

Tax Act,1961(in short 'the IT Act').

3) Brief facts:

(a) M/s Container Corporation of India Ltd. (CONCOR)-the respondent herein is a government Company and is engaged in the business of handling and transportation of containerized cargo and is under the direct administrative control of Ministry of Railways. Its operating activities are mainly carried out at its Inland Container Depots (ICDs), Container Freight Stations (CFSS) and Port Side Container Terminals (PSCTs) spread all over the country.

(b) The issue in the present case pertains to the assessment year 2003-04 to 2005-06. The respondent herein filed the returns on the income for all these years and claimed deduction under various heads including deduction under Section 80-IA of the IT Act. This issue is with regard to the deduction claimed under Section 80-IA on the profits earned from the Inland Container Depots (ICDs) and on rolling stocks. The claim for deduction on the profits earned from the ICDs and further the deduction on account of rolling stocks has been rejected by the Assessing Officer vide Assessment Order dated 28.02.2006.

(c) The respondent herein, being aggrieved with the aforesaid order, filed an appeal being No. 325/05-06 to the Commissioner of Income Tax (Appeals)-VI, New Delhi. Learned CIT (Appeals), vide order dated 29.05.2007, partly allowed the appeal while rejecting the deduction claimed under Section 80-IA of the IT Act. Being aggrieved, the respondent herein further preferred ITA Nos. 2851 & 3680/DEL./2007, 2753 & 4477/DEL/2007 before the Tribunal. The Tribunal, vide order dated 27.02.2009, partly allowed the appeal and held that the deduction under Section 80-IA can be claimed with regard to the rolling stocks of the company but not with regard to the ICDs.

(d) Being aggrieved by the order dated 27.02.2009, the respondent herein challenged the same before the High Court by filing three Income Tax Appeals being Nos. 967 of 2011, 1411 of 2009 and 968 of 2011. The Division Bench of the High Court, vide judgment and order dated 11.05.2012, allowed the appeals and held that the Respondent herein is entitled to claim deduction on the income earned from the ICDs for the relevant period under consideration under Section 80-IA of the IT Act. Being aggrieved by the judgment and order dated 11.05.2012, the Revenue has preferred this appeal before this Court.

4) Heard learned senior counsel for the parties and perused the factual matrix of the case.

Points for consideration:-

5) The only point for consideration before this Court is whether in the facts and circumstances of the case the Inland Container Depots (ICDs) under the control of the Respondent, during the relevant period, qualified for deduction under Section 80-IA(4) of the IT Act or not.

Rival contentions:-

6) Learned senior counsel appearing for the appellant contended that the High Court was not right in holding that the Respondent is entitled to deduction under Section 80-IA of the IT Act as the activities undertaken by the assessee cannot be said to fall within Explanation (d) of Section 80-IA(4) defining the term infrastructure facility.

7) Learned senior counsel further contended that the High Court was wrong in placing reliance on the Notification dated 01.09.1998 issued by the Central Board of Direct Taxes (CBDT) to hold that the Respondent is allowed to claim deduction under Section 80-IA of the IT Act as the power of the said Board was taken away by the Finance Act, 2001 with effect from 01.04.2002. Learned senior counsel further contended that in view of the aforesaid amendment, the Notifications issued by the CBDT with regard to treating the ICDs as infrastructure facility were applicable only upto the Assessment Year 2002-03.

8) Learned senior counsel finally contended that the ICDs cannot be termed as ports or inland ports within the meaning of Section 80-IA(4) so as to allow them to claim deduction under the said Section and the judgment rendered by the High Court is erroneous in the eyes of the law and is liable to be set aside.

9) Per contra, learned senior counsel appearing for the Respondent contended that the High Court has rightly set aside the judgment and order dated 27.02.2009 passed by the Tribunal. Learned senior counsel further contended that once the ICDs have been notified validly by the CBDT, by virtue of the powers conferred upon them, the fact that at a later point of time the power was taken away does not put an end to the validity or effect of the notification and as per the relevant Section as it stood at the time when the notification was issued, the Respondent was eligible for deduction for a period of 10 successive assessment years which covers the Assessment Years 2003-04 to 2005-06 which are the years under appeal. Learned senior counsel finally contended that the judgment and order passed by the High Court does not call for any interference.

Discussion:

10) As the whole point in dispute revolves around the ICDs, it would be appropriate to have an understanding about the same. The ICDs function for the benefit of exporters and importers located in industrial centers which are situated at distance from sea ports. The purpose of introducing them was to promote the export and import in the country as these depots acts as a facilitator and reduce inconvenience to the person who wishes to export or import but place of his business is situated in a land locked area i.e., away from the sea. These depots reduce the inconvenience in import and export in the sense that it reduces the bottlenecks that are arising out of handling and customs formalities that are required to be done at the sea ports by allowing the same to be done at these depots only that are situated near to them. The term ICDs was inserted in 1983 under Section 2(12) of the Customs Act, 1962 which defines 'customs port' and by the provisions of Section 7(1)(aa) of the Customs Act, 1962 power has been given to the Central Board of Excise and Custom(CBEC) to

notify which place alone to be considered as Inland Container Depots for the unloading of imported goods and the loading of export goods by Notification in the official Gazette.

11) With the purpose of boosting country's infrastructure and specially the transport infrastructure, the Finance Act, 1995 which came into effect from 01.04.1996 brought an amendment to the provisions of Section 80-IA of the IT Act.

Section 80-IA of the IT Act talks about deduction in respect of profits and gains from industrial undertaking or enterprises engaged in the infrastructure development etc. The said amendment for the first time brought a provision under which a percentage of profits derived from the operation of infrastructure facility was allowed a deduction while computing the income of the assessee. A ten years tax concession allowed to the enterprises in accordance with the provisions of the Section subject to fulfillment of conditions given therein, which develops, maintains and operates any new infrastructure facility such as roads, highways, expressways, bridges, airports, ports and rail system or any other public facility of similar nature as notified.

12) The relevant portion of Section 80IA (as it stood then) reads as under:

“Section 80-IA(4A):This section applies to:--

any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility which fulfills the following conditions, viz., Section 80-IA(5) clause(ia): in the case of enterprise referred to in sub-section (4A) hundred percent of profits and gains derived from such business for the initial five assessment years and thereafter thirty per cent of such profits and gains.”

13) The term infrastructure facility had also been defined which at the relevant time stood as follows:-

“Section 80-IA(12)(ca): Infrastructure facility means:-

a road, highway, bridge, airport, port or rail system or any other public facility of similar nature as may be notified by the Board in this behalf in Official Gazette;” The said provision gives the power to the Board to notify certain other enterprises which can avail the benefit of Section 80-IA of the IT Act, which do not fall within any of the specified categories but carries out activities of similar nature.

14) Further, Central Board of Direct Taxes (CBDT), in exercise of its power under Section 80-IA(12)(ca), vide Notification No.S.O.744(E) dated 01.09.1998 notified ICDs and CFSs as infrastructure facility.

15) In addition to the above, the Finance Act, 1998, which came into effect on 01.04.1999, made a change in the definition of 'Infrastructure facility' as is relevant to

the present case. The words 'Inland water ways and inland ports' were added in the definition of infrastructure facility. Now, the definition reads as under:

“Infrastructure Facility means road, bridge, airport, port, inland waterways and inland ports, rail system by any other public facility of similar nature as may be notified by the Board in this behalf in official Gazette.”

16) A noticeable change was further brought by the Finance Act, 2001, which came into effect from 01.04.2002, in the terms that the power of the Board to extend the benefit of the said provisions to any infrastructure facility of similar nature by issuing a Notification was taken away. The new explanation to Section 80-IA(4) of the IT Act as is substituted by the Finance Act, 2001 reads as under:

For the purpose of this clause “infrastructure facility” means-

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
- (d) a port, airport, inland waterways or inland port;

17) It was contended on behalf of the appellant that the High Court erred in relying on the Notification issued by CBDT to hold that the enterprises holding ICDs are allowed to claim deductions under Section 80-IA of the IT Act. As the said power of the Board was specifically taken away by the amendment made by Finance Act, 2001, in light of the said amendment, the Notifications which were issued by the CBDT would cease to operate after the Assessment Year 2002-03.

18) The argument put forward by learned senior counsel for the appellant does not have much force as the said amendment is silent with regard to any effect it would have upon the Notifications issued earlier by the Board in due exercise of its power. Had it been the intention of the legislature that the Notifications issued by the Board earlier are of no effect after 2002-03, it would have had found a place in the said amendment. In the absence of the same, we are unable to concur with learned senior counsel that the Notifications which were issued in legitimate exercise of the power conferred on the Board would cease to have effect after the Assessment Year 2002-03.

19) Learned senior counsel for the appellant contended that the High Court committed a grave error in holding ICDs as Inland Ports. It was further contended

that the ICDs are never understood to fall in the category of 'Inland Port' under the scheme of the IT Act. The argument in support of this contention is that if the word 'Inland Port', as used in the Explanation attached to Section 80-IA(4) of the IT Act defining 'infrastructure facility' includes ICDs, there would have been no need for the CBDT to separately exercise its power given under the said Section, as it stood then, to notify it as infrastructure facility. However, the argument does not hold much weight behind it as the Notification which was issued by the CBDT came into effect on 01.09.1998 i.e., the time when the term 'Inland Port' was not in itself inserted in the provisions of Explanation attached to Section 80-IA(4) of the IT Act defining the term 'infrastructure facility'. It was inserted through Finance Act, 1998 which came into effect from 01.04.1999. So there seems to be no conflict within the Notification issued by the Board and the fact that the ICDs are Inland Ports or not.

20) Moreover, we find that the Respondent has been held entitled for the benefit of Section 80IA of the IT Act much before the Finance Act, 2001 which came into force on 01.04.2002 and exemption for the period of 10 years cannot be curtailed or denied by any subsequent amendment regarding the eligibility conditions under the period is modified or specific provision is made that the benefit from 01.04.2002 onwards shall only be claimed by the existing eligible units if they fulfill the new conditions.

21) Moving further to the issue whether the ICDs can be termed as Inland Ports so as to entitle deduction under Section 80-IA of the IT Act. The term port, in commercial terms, is a place where vessels are in a habit of loading and unloading goods. The term 'Port' as is used in the Explanation attached to Section 80-IA(4) seems to have maritime connotation perhaps that is the reason why the word airport is found separately in the Explanation. Considering the nature of work that is performed at ICDs, they cannot be termed as Ports. However, taking into consideration the fact that a part of activities that are carried out at ports such as custom clearance are also carried out at these ICDs, the claim of the respondent herein can be considered within the term 'Inland port' as is used in the Explanation. It is significant to note that the word 'Inland Container Depots' was first introduced in the definition of 'Customs Port' as is given in Section 2(12) of the Customs Act, 1962, through amendment made by the Finance Act, 1983 with effect from 13.05.1983.

22) The term 'Inland Port' has been defined nowhere. But the Notification that has been issued by the Central Board of Excise & Customs (CBEC) dated 24.04.2007 in terms holds that considering the nature of work carried out at these ICDs they can be termed as Inland Ports. Further, the communication dated 25.05.2009 issued on behalf of the Ministry of Commerce and Industry confirming that the ICDs are Inland Ports, fortifies the claim of the respondent herein. Though both the Notification and communication are not binding on CBDT to decide whether ICDs can be termed as Inland Ports within the meaning of Section 80-IA of the IT Act, the appellant herein is unable to put forward any reasonable explanation as to why these notifications and communication should not be relied to hold ICDs as Inland Ports. Unless shown otherwise, it cannot be held that the term 'Inland Ports' is used differently under Section 80-IA of the IT Act. All these facts taken together clear the position beyond any doubt that the ICDs are Inland Ports and subject to the provisions of the Section and deduction can be claimed for the income earned out of these Depots.

However, the actual computation is to be made in accordance with the different Notifications issued by the Customs department with regard to different ICDs located at different places.

23) In light of the forgoing discussion, we are of the view that judgment of the High Court does not call for any interference and, hence, the appeal is accordingly dismissed. All the connected appeals are disposed of accordingly. The parties to bear cost on their own.

.....J. (R.K. AGRAWAL)J. (ABHAY
MANOHAR SAPRE) NEW DELHI;

APRIL 24, 2018.