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## Income from Container Freight Station eligible for deduction under section 80-IA of the Income-tax Act, 1961

### In brief

The Special Bench of Mumbai Income-tax Appellate Tribunal (Special Bench) in case of All Cargo Global Logistics Ltd<sup>1</sup> (assessee or company) has held that Container Freight Station (CFS) is an inland port whose income is entitled to deduction under section 80-IA(4) of the Income-tax Act, 1961 (the Act). In holding so, it mainly relied on the Delhi High Court decision in case of Container Corporation of India Limited (CONCOR) wherein deduction was granted to Inland Container Depot (ICD). Further, the Special Bench held that the functions carried on by a CFS are similar to the functions performed by an ICD.

<sup>1</sup> All Cargo Global Logistics Ltd v. DCIT [TS-345-ITAT-2012(Mum)] In addition to the assessee, there were other interveners before the Special Bench, including CONCOR.

### Facts

- The assessee commenced its CFS activities on 7 April 2003. In this connection, it received a letter (dated 28 February 2003) from the Commissioner of Custom (Import) classifying the area of 3282 sq mtrs as customs area for the purpose of storage, stuffing/de-stuffing and clearance of export/import cargo. Subsequently, the assessee was certified as a custodian of cargo under the Customs Act, 1962, by notifying the area as 'customs area'.
- During the assessment years (AY) under appeal i.e. from AYs 2004-05 to 2009-10, the assessee had been operating CFS at Jawaharlal Nehru Port Trust, Mumbai. CFS was also operated at Chennai during AY 2009-10.

- During the processing of return of AY 2004-05 under section 143(1) of the Act as well as scrutiny proceedings completed under section 143(3) of the Act, the claim of the assessee under section 80-IA(4) of the Act was scrutinised by issuing a questionnaire. Based on the factual and legal submissions furnished by the assessee, the learned assessing officer (AO) allowed the deduction claimed by the assessee (except for a small portion on account of damages).
- A search was conducted under section 132(1) of the Act, pursuant to which assessment under section 153A of the Act was initiated wherein the deduction claimed by the assessee under section 80-IA(4) of the Act was disallowed.
- With respect to its deduction claim, the assessee had enclosed a certificate from the Chartered Accountant in Form no. 10CCB, which is a pre-condition for claiming deduction under section 80-IA(4) of the Act. A certificate from the port trust authorities was also enclosed to the effect that the activities may be considered as extended activities of port in accordance with Central Board of Direct Taxes (CBDT) Circular no. 793(b) dated 23 June 2000 read with Circular no. 133/95 dated 22 December 1995 of the Central Board of Excise and Customs.
- The Commissioner of Income-tax (Appeals) upheld the disallowance made by the AO. Aggrieved by this, the assessee filed an appeal before the Tribunal. The Tribunal, after hearing both the parties and having considered several decisions, opined that a reference to Special Bench is necessary. Following issues were addressed by the Special Bench.

## Issues

- Whether the scope of assessment under section 153A of the Act encompasses additions not based on any incriminating materials found during the course of search?
- Whether the Commissioner of Income-tax (Appeals) was justified in upholding the disallowance of deduction under section 80-IA(4) of the Act on merits?

## Assessee's contentions

- Assessment under section 153A of the Act is different from a regular assessment. It can be made only when incriminating documents or unaccounted assets are found or seized in the course of search.
- With respect to disallowance of deduction under section 80-IA(4), the decision of the Delhi High Court in case of CONCOR was relied on, wherein, after going through the history of, and various amendments to section 80-IA of the Act, the Delhi High Court observed that the object of deduction was to strengthen infrastructure in general and transport infrastructure in particular. In this case, the claim that ICDs are inland ports under Explanation (d) of section 80-IA(4) of the Act was upheld.
- The assessee submitted that in the case of CONCOR, it was held that ICDs are landlocked, situated far off from the sea port but were nonetheless inland ports for the purpose of section 80-IA(4) of the Act. It was argued that the assessee's case is better placed than the case of CONCOR in as much as its CFS is situated only 5 kms away from the port and is thus a part of the port for carrying out its activities. Also, the customs clearance takes place from assessee's CFSs. Therefore, the assessee is entitled to claim deduction under section 80-IA(4) of the Act.

## Revenue's contentions

- With respect to the assessment under section 153A, the Revenue contended that there is no contradiction or unconstitutionality in the provisions of the Act.
- With respect to deduction under section 80-IA(4) of the Act, it contended that as per the clarification dated 6 January 2011 issued by the CBDT, wherein Circulars dated 23 June 2000 and 16 December 2005 were considered, it is clarified that ICDs and CFSs are not ports located on any inland waterway, river or canal and therefore they cannot be classified as 'inland ports' for the purpose of section 80-IA(4).
- The certificate issued by Jawaharlal Nehru Port Trust was withdrawn by the Port Trust. Further, the Inland Waterways Authority of India Act 1985, provides definition of the term 'infrastructure facilities'. In this definition, inland port is included as an item, thus, this term is distinct and separate from other terms. Therefore, ICDs and CFSs cannot be interpreted to be included in the term 'inland port'.

## Special Bench ruling

- On the scope of assessment under section 153A of the Act, the Special Bench held that in addition to the income that has already been assessed, an assessment under section 153A can be made on the basis of incriminating material found in the course of search.
- On the availability of deduction under section 80-IA(4) of the Act, the Special Bench relied on solitary decision of the Delhi High Court in case of CONCOR wherein it is held that ICD is not a port but an 'inland port'.
- The Special Bench held that the case of CFS is similar situated in the sense that both carry out similar functions i.e. warehousing, custom clearance and transport of goods from its location to the seaports and *vice-versa* by railways or by trucks in containers.
- The issue is no longer *res-integra* (untouched matter) and accordingly, it is held that a CFS is an inland port whose income is entitled to deduction under section 80-IA(4) of the Act.

## Conclusion

This is a welcome ruling and is likely to bring cheer to the CFS/ICD operators who are facing issues on entitlement of deduction under section 80-IA of the Act to their income from such activities.

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