



## Deduction under 80-IA cannot be disallowed pending tax department's appeal before the Supreme Court

### Background

Recently, the Madras High Court (High Court) in the case of AL Logistics P Ltd.<sup>1</sup> (the taxpayer) dealt with a case where the taxpayer is maintaining a Container Freight Station (CFS) and claimed deduction under Section 80-IA(4)(i) of the Income-tax Act, 1961 (the Act). The High Court, relying on the taxpayer's own case and the Delhi High Court's decision in the case of Container Corporation of India Ltd<sup>2</sup>, allowed the deduction claimed by the taxpayer under Section 80-IA of the Act.

The High Court did not agree with the tax department's contention that since the taxpayer's own case as well as the Delhi High Court's decisions are challenged before the Supreme Court, the present appeal should be kept pending till the Supreme Court passes appropriate orders.

### Facts of the case

- The taxpayer is a license holder of a warehousing complex consisting of buildings, godowns, weigh-bridge and other equipment for the purpose of maintaining CFS.
- Section 80-IA(4) provides a deduction to any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility subject to conditions prescribed therein.
- During assessment, the Assessing Officer (AO) denied the deduction claimed under Section 80-IA(4) of the Act, holding that taxpayer's facility could not be defined as infrastructure facility or fit into the definition of 'port' or 'inland port' as per the provisions of the Act.

- The AO referring to Circular 717 of 1995<sup>3</sup> held that the deductions could be claimed only with respect to public facilities created in line with agreement entered with the government and not to private facilities.
- The DCIT and the Income Tax Appellate Tribunal (Tribunal) relying on the taxpayer's earlier case for Assessment Year (AY) 2009-10, held in the taxpayer's favour.

### High Court's Ruling

- The High Court allowed deduction under Section 80-IA(4) of the Act following the decision of the coordinate bench in the taxpayer's own case wherein it was held that CFS is a part of inland port and, therefore, it is an infrastructure facility as defined in Explanation to Section 80-IA(4)(i) of the Act.
- The principles laid down by the Supreme Court in the case of Kunhayammed<sup>4</sup> were related to exercise of review jurisdiction by the High Court when a civil appeal is pending before the Supreme Court. The said principles cannot be applied in the present case since it is not a case dealing with exercise of review jurisdiction by the High Court.
- Even though the Delhi High Court in the case of Container Corporation of India Limited and the taxpayer's earlier case were challenged by the tax department before the Supreme Court, there could not be any impediment in following the said decisions to cases arising out of similar set of facts and law.

<sup>1</sup> CIT v. AL Logistics P Ltd [Tax Case Appeal No 405 of 2016]-Taxsutra.com

<sup>2</sup> Container Corporation of India v. ACIT [2012] 346 ITR 140 (Del)

<sup>3</sup> Circular 717 of 1995, dated 14 August 1995

<sup>4</sup> Kunhayammed and others v. State of Kerala and Another [2000] 6 SCC 359 (SC)

- When a petition is filed before the Supreme Court seeking leave to appeal and the same having been converted into an appeal by the Supreme Court, the High Court should not entertain a review petition. The High Court also cannot reverse and modify the order impugned before the Supreme Court. But the decision rendered by the High Court is not erased.
- As per Section 262(3) of the Act, when a High Court decision is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 260 of the Act. The statute itself has provided for a remedy to the tax department for giving effect to the Supreme Court order.

### Our comments

Generally, where an appeal has been filed before the Supreme Court, the tax department has been contending that the matter should be kept pending till the Supreme Court passes an appropriate order.

In the present case, the High Court has observed that when a petition is filed before the Supreme Court, the High Court should not entertain a review petition. The High Court also observed the fact that the decisions are challenged by the tax department before the Supreme Court cannot be an impediment in following the said decisions to cases arising out of similar set of facts and law.

Various High Courts<sup>5</sup> have held that CFS is an 'inland port' and thus an infrastructure facility as defined in Explanation to Section 80-IA(4)(i) and therefore, eligible for deduction under Section 80-IA(4) of the Act. The tax department has challenged the decision of the High Courts, and the Supreme Court has also admitted Special Leave Petition in these cases<sup>6</sup>. It would be interesting to see the ruling of the Supreme Court on this issue.



<sup>5</sup> Container Corporation of India v. ACIT [2012] 346 ITR 140 (Del); CIT v. Continental Warehousing Corporation (Nava Sheva) Ltd [2015] 58 taxman 78 (Bom); AL Logistics

<sup>6</sup> CIT v. Container Corporation of India Civil Appeal No 8900 of 2012; CIT v. Continental Warehousing Corporation (Nava Sheva) Ltd Civil Appeal No 18506 of 2015; CIT v. AL Logistics (P.) Ltd Civil Appeal No 9566 of 2015.

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#### Ahmedabad

Commerce House V, 9th Floor,  
902 & 903, Near Vodafone House,  
Corporate Road,  
Prahlad Nagar,  
Ahmedabad – 380 051  
Tel: +91 79 4040 2200  
Fax: +91 79 4040 2244

#### Bengaluru

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala, Bangalore 560 071  
Tel: +91 80 3980 6000  
Fax: +91 80 3980 6999

#### Chandigarh

SCO 22-23 (1st Floor)  
Sector 8C, Madhya Marg  
Chandigarh 160 009  
Tel: +91 172 393 5777/781  
Fax: +91 172 393 5780

#### Chennai

No.10, Mahatma Gandhi Road  
Nungambakkam  
Chennai 600 034  
Tel: +91 44 3914 5000  
Fax: +91 44 3914 5999

#### Delhi

Building No.10, 8th Floor  
DLF Cyber City, Phase II  
Gurgaon, Haryana 122 002  
Tel: +91 124 307 4000  
Fax: +91 124 254 9101

#### Hyderabad

8-2-618/2  
Reliance Humsafar, 4th Floor  
Road No.11, Banjara Hills  
Hyderabad 500 034  
Tel: +91 40 3046 5000  
Fax: +91 40 3046 5299

#### Kochi

Syama Business Center  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682019  
Tel: +91 484 302 7000  
Fax: +91 484 302 7001

#### Kolkata

Unit No. 603 – 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata 700 091  
Tel: +91 33 44034000  
Fax: +91 33 44034199

#### Mumbai

Lodha Excelus, Apollo Mills  
N. M. Joshi Marg  
Mahalaxmi, Mumbai 400 011  
Tel: +91 22 3989 6000  
Fax: +91 22 3983 6000

#### Noida

6th Floor, Tower A  
Advant Navis Business Park  
Plot No. 07, Sector 142  
Noida Express Way  
Noida 201 305  
Tel: +91 0120 386 8000  
Fax: +91 0120 386 8999

#### Pune

703, Godrej Castlemaine  
Bund Garden  
Pune 411 001  
Tel: +91 20 3050 4000  
Fax: +91 20 3050 4010

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