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. (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, 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 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 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.

1 CIT v. AL Logistics P Ltd [Tax Case Appeal No 405 of 2016]- Taxsutra.com
2 Container Corporation of India v. ACIT [2012] 346 ITR 140 (Del)
3 Circular 717 of 1995, dated 14 August 1995
4 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\(^5\) 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\(^6\). It would be interesting to see the ruling of the Supreme Court on this issue.

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\(^5\) 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

\(^6\) 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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