

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.667/Mum/2020
(Assessment Year: 2010-11)

DCIT 3(2)(2) R. No. 674, 6 th Floor, Aayakar Bhavan, M K Road, Mumbai – 400 020	Vs.	M/s. PNP Maritime Services Pvt. Ltd. A-5 Iconic 18 Arthur Bunder Road, Colaba, Mumbai-400 005
PAN/GIR No. AABCP 8020 D		
(Appellant)	:	(Respondent)
Assessee by	:	Ms. Neha Patel
Revenue by	:	Shri H. M. Bhatt
Date of Hearing	:	02.08.2023
Date of Pronouncement	:	07.08.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2010-11.

2. The Revenue has challenged the deletion of the addition made on account of disallowance of port charges amounting to Rs.4,81,11,547/- claimed as deduction u/s. 80IA of the Act.

3. The brief facts of the case are that the assessee is engaged in the business of operating and maintenance of port developed by the assessee in Alibaug by the name Dharmatar PNP Jetty. The assessee filed its return of income dated 01.10.2010, declaring total income at Rs.80,33,890/- and book profit u/s. 115JB of the Act at Rs.6,22,29,730/-. The assessee's case was selected for scrutiny and the assessment order dated 14.12.2012 was passed u/s. 143(3) of the Act where the Assessing Officer ('A.O.' for short) assessed the total income at Rs.1,18,05,460/-. The assessee's case was reopened u/s. 147 of the Act vide notice u/s. 148 dated 30.03.2017 for the reason that the deduction claimed u/s. 80IA(4) of the Act amounting to Rs.4,81,11,547/- has escaped assessment. The reasons recorded for reopening of the assessment are extracted hereunder for ease of reference:

The assessee has filed return of income for A.Y. 2010-11 on 01.10.2010 declaring total income of Rs.6,22,29,730/-. The return was processed u/s. 143(1).

It is seen from the records that the assessee has claimed 100% deduction u/s. 80IA of Rs.5,69,87,628/- of profit derived from the port related business comprising of income from Jetty usage for loading & unloading of materials, wharfage charges, port service which was received by the assessee from port rental charges, collected from providing parking or other ancillary/support services from smooth functioning of ports and such services cannot be construed as derived from activity of developing, operating and maintaining infrastructure facility.

It has judicially held that the word "derived from" cannot have a wide import so as to include any income which can in some manner be attributed to the business. The derivation of income must be directly connected with the business and generated therefrom. In the instant case, port rental charges are not directly connected with the activity of the new infrastructure facility and therefore not eligible for deduction u/s. 80IA.

Hence, I am of the opinion that amount of Rs.4,81,11,547/- claimed by the assessee as deduction u/s. 80IA(4) of I. T. Act has escaped the assessment for the relevant year.

4. The A.O. passed the assessment order dated 27.12.2017 u/s. 143(3) r.w.s. 147 of the Act by determining the total income at Rs.6,53,22,663/- and book profit u/s. 115JB of

the Act at Rs.6,25,30,870/- where the A.O. disallowed the port rent charges of Rs.4,81,11,547/- on the ground that it does not have a direct and first degree nexus with the business activity of running and maintaining of the port.

5. The assessee was in appeal before the first appellate authority, challenging the reassessment proceeding and the disallowance /addition made by the A.O. The Id. CIT(A) deleted the impugned addition made on account of disallowance of port charges of Rs.4,81,11,547/- claimed u/s. 80IA of the Act by relying on the assessment of the assessee where the A.O. has allowed the said deduction for previous nine years. The Id. CIT(A) also relied on the decision of Hon'ble Bombay High Court in the case of *Madhukar C Ashar vs. Union of India* [2016] 69 taxmann.com 221 (Bom) wherein the principle of consistency has to be followed in case of no change in circumstances.

6. Aggrieved the Revenue is in appeal before us challenging the order of the Id. CIT(A) in deleting the impugned addition made by the A.O.

7. The learned Departmental Representative ('Id.DR' for short) for the Revenue contended that the activity of earning port rental charges are not directly related to the activity of running and maintaining of the port. The Id. DR further stated that the assessee has failed to furnish the details of the expenses that were incurred for earning the port rental charges. The Id. DR also contended that the principle of resjudicata is not applicable for income tax proceeding and that the Id. CIT(A) has merely relied on the earlier orders where the claim of the assessee has been allowed. The Id. DR relied on the

order of the Hon'ble Apex Court in the case of *M/s. Liberty India vs. CIT* 317 ITR 218 (SC).

8. The learned Authorised Representative ('Id. AR' for short), on the other hand, controverted the said fact and stated that the A.O. for earlier years have allowed the said deduction and there was no change in circumstances for this year. The Id. AR relied on the Id. CIT(A)'s order in following the principle of consistency.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee's case was reopened for the reason that the assessee had claimed 100% deduction u/s. 80IA amounting to Rs.5,69,87,628/- as being profit derived from port related business out of which the impugned amount of Rs.4,81,11,547/- was towards port rental charges collected by the assessee which according to the A.O. was for providing parking and other ancillary support services which does not directly relate to the business activity of the assessee. The assessee vide its submission dated 18.05.2017 before the A.O. has contended that the port rental charges were for the use of the backup land in the customs notified area at the port in respect of storage of cargo stored in relation to specified vessel awaiting loading for export or awaiting onward transportation of imported cargo and such cargo stored in port area can be cleared only after payment of custom duty and other charges. Further the assessee has contended that the Commissioner of Customs (Preventive), Mumbai has notified the said landing place for such unloading of imported goods and loading of export goods at PNP (Dharmatar Port) in scheduled A and schedule B area and that the assessee has been certified by the Port Officer and Conservator, Resister Mora Group of

Ports, Thane that the assessee has developed new port infrastructure facility consisting of landing points as well as developed plant, compound wall and roadway bridges, office structures forming part of the port. The assessee further to this has stated that the audit objection specifying that the port rent charges for providing parking or other ancillary support services are for smooth functioning of the ports, is not justifiable as the said charges was in relation to the import/export of goods stored on the notified port area which form part of the port services. The A.O. rejected the contention of the assessee and distinguished the receipts specified in schedule K of the audited accounts relating to Jetty usage charges, port service charges and wharfage to be directly related to the activity of running and maintaining the ports and the port rental charges to be an ancillary activity, thereby allowing 10% of expenses on estimated basis incurred for such activity. The A.O. relied on the proposition laid down by the Hon'ble Apex Court in the case of *Liberty India vs. CIT 317 ITR 218 (SC)*, which laid the distinction between 'profits derived from industrial undertaking' and 'profits attributable to industrial undertaking'. The Id. CIT(A), on the other hand, held that the port rental charges has a direct nexus to the maintenance and running of the port. The Id. CIT(A) distinguished the case of the Hon'ble Apex Court in the case of *M/s. Liberty India (supra)* which relates to deduction u/s. 80IB of the Act whereas the present case in hand pertains to deduction u/s. 80IA. The Id. CIT(A) also placed reliance on the earlier assessment order of the assessee for about nine years where the said claim of the assessee was allowed by the A.O.

10. From the above observation, it is evident that the assessee has been claiming deduction u/s. 80IA for various receipts such as jetty usage charges, port rental charges

and wharfage and the same has been allowed by the A.O. for earlier years continuously for about nine earlier years. It is evident that the A.O. for the impugned year has failed to categorically state how the port rental charges claimed by the assessee would not have direct nexus with the activity of running and maintaining of the port by the assessee. The A.O. in the assessment order has also not substantiated why the said claim has to be disallowed when the assessee has been claiming the said deduction in the earlier years. The A.O.'s reliance in the case of *M/s. Liberty India* (supra) is distinguishable on the facts of the present case. The A.O. has also failed to establish that the claim of the assessee was not an eligible deduction as per the scheme of section 80IA. There has also been no change in facts during the impugned year which was brought on record by the A.O.

11. The A.O. has not disputed the fact that the assessee has satisfied the condition as per the provision of section 80IA(4) which has been extracted herein below for ease of reference:

Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

80-IA.(4) This section applies to—

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely :—

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government,

local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

12. The only issue in dispute is with regard to the port rental charges claimed by the assessee. There is no iota of doubt that the assessee is carrying on the business of developing or operating and maintaining of infrastructure facility for the purpose of storage, loading and unloading etc. It is also pertinent to note that the CBDT Circular No. 10/2005 dated 16.2.2005 has defined "Port" as infrastructural facility for the purpose of section 10(23G) and 80IA of the Act which includes structure at the ports for storage, loading and unloading, etc. subject to fulfillment of certain conditions which were duly complied with by the assessee. The port rental charges nevertheless pertain to the storage, loading and unloading activities which comes under the preview of the eligibility to claim deduction u/s. 80IA. We would also like to place our reliance on the decision of the Hon'ble Bombay High Court in the case of *CIT vs. M/s. ABG Heavy Industries Ltd.* (in ITA No. 416 of 2010 vide order dated 15.02.2010), wherein it was held that in case of deduction claimed u/s. 80IA, the intention of the legislature was to promote growth and development of infrastructure which has to be construed liberally. The relevant extract of the said decision is cited hereunder for ease of ready reference:

21. The Court cannot be unmindful in the present case of the underlying objects and reasons for a grant of deduction to an enterprise engaged in the development of an infrastructure facility. The provision was intended to give an incentive to investment for infrastructural growth in the country. In *Bajaj Tempo V/s. Commissioner of Income Tax*,¹ the Supreme Court emphasized that a provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. In the present case, the administrative circulars issued by the CBDT proceeded on that basis by adopting a liberal view of the scope and ambit of the provisions of Section 80IA of the Act.

13. From the above observation, it is pertinent to note that the Hon'ble High Court in the above mentioned case has taken a liberal view in granting deduction u/s. 80IA even in case where the assessee was engaged in the contract for leasing of Container Handling Cranes at the Jawaharlal Nehru Port Trust ('JNPT'). In the present case in hand, the assessee itself has developed port at Alibaug and was directly engaged in the business of infrastructure development. We find no justification in denying the claim of the assessee and, hence, we find no reason to deviate from the finding of the Id. CIT(A). Therefore, the grounds raised by the Revenue does not hold merit and is dismissed.

14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 07.08.2023.

Sd/-

Sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 07.08.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai