IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No. 1885/MUM/2019
(Assessment Year: 2015-16)

Ameya Logistics Pvt. Ltd. Village- Dhasakoshi, Post- Khoproli, Kopte, Taluka-Uran, District – Raigad 410 212 PAN – AAECA4562C	Vs.	DCIT, Circle 2(1)(1), R. No. 561, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020

Appellant Respondent

ITA No. 2044/MUM/2019
(Assessment Year: 2015-16)

ACIT, Circle-2(1)(1), Room No. 561, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s Ameya Logistics Pvt. Ltd. 4th Floor, Hamilton House, B.J.N. Heredia Marg, Ballard Estate, Mumbai – 400038 PAN – AAECA4562C

Appellant Respondent

Appellant by : Shri Madhur Agarwal, A.R
Respondent by : Shri Michael Jerald, D.R

Date of Hearing : 28.09.2020
Date of Pronouncement : 29.09.2020

PER RAVISH SOOD, JUDICIAL MEMBER;

The captioned cross appeals are directed against the order passed by the CIT(A)-4, Mumbai, dated 28.01.2019, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961

(for short 'Act'), dated 18.12.2017 for A.Y. 2015-16. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in making addition in Book Profit u/s 115JB of the Act of Rs. 8,61,613/- on account of disallowance under section 14A of the Act.
2. The appellant craves leave to add, alter or amend the above Grounds of Appeal at or before the time of hearing."

On the other hand the revenue has challenged the impugned order on the following grounds:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CTT(A) was right in holding that the assessee is entitled for deduction u/s 801A of the IT Act, 1961 even though activities undertaken by the assessee do not fall within clause (d) of the Explanation to section 801A(4) defining the term Infrastructure facility?"

2. on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing relief to the assessee relying on the decision of Hon'ble Special Bench of ITAT Delhi in the case of Vireet Investment (P) Ltd., without appreciating the facts that the issue has not reached to its finality as the Hon'ble Delhi High Court in its decision in the case of Goetz India Ltd., reported in 361 ITR *505* held that while computing Book Profit disallowance u/s 14A is required to be made. However, in its later judgment the Hon'ble Delhi High Court in the case of Bhushan Steel Ltd. (ITA No. *593 & 594/2015)* has taken a contrary view".

3. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored.

2. Briefly stated, the assessee company which had set up a Container Freight Station (CFS) at Dronagiri/Dhasakoshi Village, Taluka Uran, District: Raigarh, Maharashtra, had e-filed its return of income for A.Y. 2015-16, declaring its total income at Rs.4,23,84,760/- under the normal provisions of the Act and 'book profit' of Rs.92,66,11,382/- under Sec.115JB of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings, it was inter alia observed by the A.O, that the assessee had claimed deduction of Rs.87,96,80,010/- under Sec.80IA(4) of the Act. It was noticed by the A.O that it was the sixth assessment year for claim of deduction under Sec.80IA of the Act, the first year being A.Y. 2010-11. It was further observed by the A.O that his predecessor while framing the assessment for A.Y. 2010-11 had disallowed the assessee's claim for deduction under Sec. 80IA, for the reason,

that the assessee's Container Freight Stations (CFS) was neither a port nor an Inland Port, and thus, not an eligible infrastructural facility as provided in the 'Explanation' to Sec.80IA(4) of the Act. Further, it was observed by the A.O that his predecessor while rejecting the assessee's claim for deduction under Sec.80IA for A.Y. 2010-11 had also drawn support from the CBDT clarification dated 06.01.2011, in which circulars dated 16.12.2005 and 23.06.2020 concerned with the subject were considered. It was observed by the A.O that his predecessor while framing the assessment for the aforementioned year i.e A.Y. 2010-11 had observed that the assessee was merely acting as a contractor in respect of the Container Freight Stations (CFS) facilities being provided, and not as a developer. Further, it was observed by the A.O that as per the Finance Bill, 2009 (No.2) w.r.e.f 01.04.2000, 'Explanation' to Sec.80IA, the assessee being a contractor was not eligible to claim deduction under Sec.80IA(4) in respect of the profits from infrastructure projects executed by it. It was observed by the A.O, that even in A.Y. 2011-12 to A.Y. 2014-15 the assessee's claim for deduction under Sec.80IA was disallowed. Observing, that the facts of the case for the year under consideration were the same as that of A.Y. 2010-11 to A.Y. 2014-15, the A.O called upon the assessee to explain as to why its claim for deduction under Sec.80IA may not on the same lines be rejected. In reply, the assesee tried to impress upon the A.O that its claim for deduction u/s 80IA was within the four corners of law. However, the reply filed by the assessee did not find favour with the A.O. The A.O drawing support from the view that was taken by his predecessor while framing the assessment for A.Y. 2010-11, and also the CBDT clarification, dated 06.01.2011 r.w. circulars dated 16.12.2005 and 23.06.2000, therein concluded, that as Inland container depots and CFS were not 'ports' located on any Inland waterways, river or canal, therefore, they cannot be classified as Inland ports for the purpose of Sec.80IA(4) of the Act. On the issue as to whether or not the assessee was a contractor, the A.O relied on the view that was taken by his predecessor while framing the assessment in the case of the assessee for A.Y. 2010-11. Accordingly, it was

observed by the A.O, that as the assessee was merely a contractor and not a developer, therefore, it was not entitled for deduction under Sec.80IA(4) of the Act. Insofar the decisions of the CIT(A) for A.Y. 2010-11 to A.Y. 2013-14 were concerned, the A.O observed that though the same had been decided in favour of the assessee but the revenue had assailed the same before the Tribunal. In the backdrop of his aforesaid deliberations the A.O disallowed the assessee's claim for deduction under Sec.80IA(4) amounting to Rs.87,96,80,010/-.

4. It was further observed by the A.O that the assessee during the year under consideration had in its return of income shown the following exempt income**:**

"Dividend income from Mutual Funds	Rs. 8,64,053/-
Dividend income from Subsidiary	Rs.6,83,02,067/-
Total Dividend Income	Rs.6,91,66,120/-

It was observed by the A.O that the assessee had disallowed an amount of Rs.1,00,055/- by attributing the same as having been incurred for earning of the aforesaid exempt income. Holding a conviction that the disallowance was liable to be worked out under Sec.14A r.w Rule 8D, the A.O called upon the assessee to put forth an explanation as regards the same. In reply, the assessee submitted details about the investments made in mutual funds and computation of disallowance under Sec.14A r.w. Rule 8D(2)(iii). Alternatively, it was submitted by the assessee, that as the investment in the exempt income yielding assets were made from the self-owned funds and internal accruals and not from borrowed funds, therefore, no part of the interest expenditure was liable to be attributed towards earning of the exempt dividend income. In order to drive home its aforesaid claim, it was submitted by the assessee that its share capital and reserves on 31.03.2015 amounted to Rs.1,37,00,92,747/-, whereas the total investment in subsidiary and in mutual funds aggregated to Rs.37,39,80,155/-. However, the aforesaid explanation of the assessee did not find favour with the A.O, and he worked out the disallowance under Sec.14A r.w. Rule 8D at Rs.19,16,309/-, as under:

"(i) Expenditure directly related to exempt income = NIL
(ii) Production interest expense under Rule 8D(2)(ii)

= A x B/C = Nil

(iii) ½ % of the average of the investments yielding exempt income:

= 0.5% x B= **Rs.19,16,309/-**

* B= Average Investments = (39, 25, 43,300 + 37,39,80,155)/2
= 38,32,61,309/-
* C = Average Assets = (143,78,05,440 + 147,17,19,600)/2
= 148,00,48,205

As the assessee had already offered a disallowance of Rs.1,00,055/- in its return of income, the A.O, therefore, restricted the addition to an amount of Rs.18,16,254/-. Further, the A.O added the disallowance worked out under Sec.14A r.w. Rule 8D to the assessee's 'book profit' under Sec.115JB of the Act.

5. Aggrieved, the assessee assailed the assessment framed by the A.O before the CIT(A). It was observed by the CIT(A) that the disallowance made by the AO of the assessee's claim for deduction under Sec. 80IA(4) in the assessee's own case for A.Y. 2012-13 was vacated by the Tribunal, vide its order passed in ITA No. 5606/Mum/2016. Further, it was noticed by the CIT(A), that his predecessor while disposing off the appeal in the assessee's own case for A.Y. 2014-15, had after relying on the judgement of the Hon'ble High Court of Bombay in the case of CIT Vs. Continental Warehousing Corporation Ltd. (2015) 374 ITR 0645 (Bom), and also, the order passed by the Tribunal in the case of the assessee for A.Y 2010-11 and A.Y 2011-12, had vacated the disallowance made by the A.O of the assessee's claim for deduction u/s 80IA of the Act. It was further observed by the CIT(A) that the Hon'ble Supreme Court in the case of CIT Vs. Container Corporation of India Ltd. (2018) 404 ITR 397 (SC), had observed, that ICDs were Inland ports, and subject to the provisions of Sec.80IA were eligible for claim of deduction therein provided. Observing, that the issue involved in the case of the assessee remained the same as was there in the preceding years, the CIT(A) relying on the order passed by the Tribunal in the assessee's own case for

A.Y. 2012-13, and further drawing support from the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Container Corporation of India Ltd. (supra), vacated the disallowance made by the A.O under Sec.80IA(4) of the Act. As regard the addition of the disallowance worked out under Sec.14A r.w. Rule 8D, as was carried out by the A.O for the purpose of calculating the assessee's 'book profit' under Sec.115JB of the Act, it was observed by the CIT(A) that the issue was squarely covered by the order of the 'Special bench' of the ITAT, Delhi in the case of ACIT Vs. Vireet Investment Pvt. Ltd. (2017) 165 ITD 0027 (Delhi) (SB). Further, relying on the aforesaid order of the 'Special bench' of the ITAT in the case of Vireet Investment Pvt. Ltd.(supra), the CIT(A) directed the A.O to re-compute the disallowance under Sec.14A after considering the annual average value of investment which had yielded exempt income during the year under consideration.

6. Both the assessee and the revenue being aggrieved with the order of the CIT(A) have carried the matter in appeal before us. As regards the issue pertaining to the assessee's entitlement for claim of deduction under Sec.80IA(4) of the Act, we find, that the same is squarely covered by the consolidated order passed by the Tribunal while disposing off the cross-appeals in the assessee's own case for A.Y. 2010-11 and A.Y. 2011-12 in ITA Nos. 6110-6111/Mum/2014, dated 04.08.2016 (copy placed on record). We find, that the Tribunal while dealing with the aforesaid issue, had concluded, that the CFS activities carried out by the assessee were nothing but infrastructure facility as defined under Sec.80IA(4) of the Act, observing as under:

> "8. After considering the relevant finding given in the impugned order as well as decisions relied upon by the Ld. Counsel, we find that it is an undisputed fact that assessee company is engaged in the providing "Container Freight Station" (CFS) which has been duly approved as 'Inland Port' by Ministry of Finance, Department of Revenue, CBEC in its Circular. CFS has been defined as a common user facility with public authority status equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers carried under customs transit by any applicable mode of transport placed under customs control. All the activities related to clearance of goods for home use, warehousing

temporary admissions, re-export, temporary storage for onward transit and outright export, trnas-shipment, take place from such stations.

Hon'ble Delhi High Court in the case of Container Corporation India Ltd. (supra) where the assessee carried out activities of Inland Container Depot; Central Freight Stations and port Containers' Terminals, the Hon'ble Court held that the profit derived from such activity is eligible for deduction under section 80IA(4). Our Hon'ble jurisdictional High Court following the aforesaid decision of Hon'ble Delhi High Court has reiterated the same view. The relevant observations of their Lordship in the case of All Cargo Global Logistics Ltd. (supra) analyzing the sub-section (4) of section 80IA reads as under:-

> "39. A perusal thereof would indicate as to how the Legislature had in mind deduction in respect of profits and gains from industrial undertakings or enterprises engaged in the infrastructure development etc. We are concerned with sub-section (4) and as it read at the relevant time. It says that this section applies to any enterprise carrying on the business of developing or operating and maintaining any infrastructure facility which fulfills all the conditions, namely, 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, it has entered into an agreement with the Central Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility and it has started or starts operating and maintaining the infrastructure facility on or after 1st day of April, 1995. The explanation defines the infrastructure facility to mean, inter alia, a port, airport, inland waterway, inland port or navigational channel in the sea. The word "inland port" was always there in clause (d). What was there prior to its substitution by Finance Act of 2007 with effect from 1st April, 2008, were the words "or inland port". Now the word "or" is deleted, but the words are "inland port or navigational channel in the sea". Thus, an "inland port" was always within the contemplation of the Legislature and it is treated specifically as a infrastructural facility. Therefore, to that extent Mr. Dastur is right in his submission.
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> 40. Mr. Suresh Kumar would urge that when there is an agreement contemplated with the Central Government, then, a specific writing to this effect is necessary which means a document and a mere consent or approval in writing would not suffice.
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> 41. In the present case, what the Tribunal and in Special Bench decision has held is that there may be a reference made to a Board clarification dated 6th January, 2011, and prior circulars dated 16th December, 2005 and 23rd June, 2006 were considered and which clarify that inland container depots and container freight stations are not ports located on any inland water way river or canal and, therefore, they cannot be classified as inland ports for the purpose of section 80-IA(4). Equally, the certificate issued by the JNPT having been withdrawn, the deduction will not be permissible.
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> 42. However, after considering these contentions, what the Special Bench observes is that the Delhi High Court's view in the case of Container Corporation of India Ltd. would enable it to conclude that ICD may not be a port but it is an inland port. The case of Container Freight Station (CFS) is similarly situated in the sense that both carry out similar functions viz. warehousing, customs clearance and transport of goods from its location to the sea-ports and vice versa by rail or by trucks in containers. The issue is no longer res integra.
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> 43. The Tribunal also in the judgment under appeal followed this view of the Special Bench and that of the Container Corporation of India (supra).
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> 44. The findings to which our attention has been invited by Mr. Suresh Kumar in Appeal No.523 of 2013 arising out of the Tribunal's order dated 31st August, 2012, pertaining to assessment year 2008-09 in the case of Continental Warehousing Corporation indicate that the said assessee had informed the Assessing Officer that JNPT had issued a certificate dated 13th July, 2006, to it in accordance with Point

No.3 of CBDT circular No.10 dated 16th December, 2005, However, this letter / certificate was withdrawn by the JNPT on 5th October, 2007.

Secondly, the assessee company has not entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body. Therefore, the condition was not fulfilled. The Commissioner in the appellate order had before him the ground and while dealing with the same, he found that the approval granted by the Ministry of Commerce, Government of India would not constitute an agreement with the Central Government.

Further, the Department of Revenue, Ministry of Finance, issued a Notification dated 1st January, 2006, notifying the assessee as custodian of imported and exported goods received at the container freight station. The various contentions raised in this regard have been referred to by the Commissioner, including that the Ministry of Commerce and Industries granted approval for setting up CFS facility for handling import and export cargo and that the acceptance of the terms and conditions constitute an agreement with the Central Government and all documents in relation thereto have been referred.

The Commissioner in dealing with these conditions held that CFS facility of the assessee is not an infrastructure facility within the meaning of section 80-IA(4) as there is no agreement entered into with the Government and assessee. Therefore, this deduction cannot be claimed. The Tribunal noted these contentions and the findings, but relied upon the Special Bench decision in the case of All Cargo Global Logistics Ltd. The conclusion is that CFS is an inland port as it carries out functions of warehousing, customs clearance and transport of goods from its location to sea-port and vice versa by rail or by trucks in containers and, therefore, its income is eligible to deduction under section 80-IA(4). We have before us a communication from the Government of India, Ministry of Commerce and Industry dated 28th December, 2011, which is addressed to the President of the CFS Association of India. It takes note of their grievance and states that the matter was examined in the light of the guidelines and its norms for setting up of inland container depot / container freight station in India. As per the present norms, operators of these depots and stations who were issued a letter of intent for setting up the same do not require to execute an agreement with the Central Government.

45. Even with regard to this issue we find that the circular dated 16th December, 2005, firstly clarifies that there are certain conditions, including the agreement but pertinently on and from the assessment year 2002-03 structures at the ports for storage, loading and unloading etc. will be included in the definition of port for purposes of section 10(23G) and 80-IA of the Income Tax Act, 1961, if the condition that the concerned port authority has issued a certificate that these structures form part of the port is fulfilled. However, when the Delhi High Court was considering this question it referred not only to the factual position but the specific substantial question of law and the activity of the assessee before it carried out mainly on its ICD's (Inland Container Deports), Central Freight Stations and Port Terminals. The assessee had 45 container depots spread over the country. It is in the business of transporting containerised cargo. It may be concerned with the public sector undertaking and functioning directly under the administrative control of the Ministry of Railways, but the activity of the assessee is carried out mainly on the Inland Container Depot, Central Freight Stations and Port Container Terminals spread all over the country. The assessee has a total 45 Inland Container Depots. The Division Bench of the Delhi High Court then concluded as under:

> "10. Thus it was for the first time from the assessment year 1999-2000 that inland ports started enjoying the deduction under Section 80IA as an "infrastructure facility". The object of the Government was to strengthen and improve the country's infrastructure in general and the transport infrastructure in particular. Inland ports facilitate the transport infrastructure by taking care of the transport of the customs-cleared goods meant for export from the ICD to the sea-port and the imported goods directly from the sea-port to the ICD where they can be customs-cleared. When the

entire Section was recast by the Finance Act, 1999 with effect from 1.4.2000 and even after several amendments were thereafter made to the Section, inland ports continued to enjoy the deduction as infrastructure facility.

11. The question before us is whether the income from ICDs qualify for the deduction under Section 80IA(4)(i) of the Act read with the Explanation (d). We may first notice that out of the total of 45 ICDs operated by the assessee, except two ICDs, all others were notified by the CBDT vide notification No. S.O.744(E) issued on 1st September, 1998 for the purpose of Section 80IA(12)(ca). It may be recalled that under this provision, the Board had the power to notify an infrastructure facility for the purpose of the Section. The notification is reported in (1999) 233 ITR 126 and is reproduced below:-

> "Notification No. S.O.744(E), September Ist, 1998 - Income-tax Act, 1961: Notification under section 80 - IA(12) (ca) : Inland Container Depot and Central Freight Station notified as infrastructure facility. In exercise of the powers conferred by clause (ca) of sub-section (12) of section 80IAof the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby notifies Inland Container Depot (ICD) and Central Freight Station (CFS) as infrastructure facility : Provided that such places are notified as Inland Container Depot and Central Freight Station under section 7(aa) of the Customs Act, 1962."

12. The power to notify infrastructure facilities for the purpose of the Section was taken away from the CBDT with effect from 1.4.2002. The first argument of the learned counsel for the assessee is 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 assessee was eligible for the 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.

13. We have examined the contention. Prior to the amendment made with effect from 1.4.2002 by the Finance Act, 2001, as noticed earlier, the Board was empowered to notify any public facility of a similar nature, other than what was mentioned as infrastructure facility. But an amendment was made and the power to notify was dropped. There was no provision made in the Act saying that the notification issued earlier would cease to have effect from 1.4.2002. Since the notification continued to have effect even beyond 1.4.2002, there is merit in the contention of the learned counsel for the assessee. Circular No. 7/2002, dated 26th August, 2002, reported in (2002) 257 ITR 28 clarified as under:

> "Such projects, for which agreements have been entered into on or after April 1, 1995, but on or before March 31, 2001, and which have been notified by the Board on or before March 31, 2001, would continue to be exempt, subject to the fulfilment of the conditions prescribed in section 80-IA(4)(i)(b), as it existed prior to its substitution by the Finance Act, 2001."

This circular fortifies the assessee's claim.

14. The next question that arises is whether the ICDs can be considered to be inland ports. There is no definition of an inland port in the Act. However, a "port", which also qualifies for the deduction is defined in Section 3(4) of the Indian Ports Act, 1908 (Act 15 of 1908) to include "also any part of a river or channel" in which the said Act is for the time being in force. The word "port" is defined in T. Ramanatha Aiyar's Law Lexicon, 4th Edition (2010) in a number of ways. The most general meaning which is given is that it denotes a harbour or shelter to the vessels from a storm or as a place with a harbour where ships load or unload. It has also been defined in the commercial sense as an enclosed place where vessels load and unload goods for export or import. Commercially considered, "a port is a place where vessels are in the habit of loading and unloading goods". The law lexicon also refers to a judgment of the Bombay High Court in the case of Amarship Management Pvt. Ltd. v. UOI, (1996) 86 ELT 15 (Bom).

> "Port is a place for loading and unloading of cargoes of vessels. The word "port" must be construed in its usual and limited popular or commercial sense as a place where ships are in the habit of coming for the purpose of loading or unloading, embarking or disembarking. It does not mean the physical port. On this basis, it has been held that an oil rig stationed outside territorial waters is a port where ships call for loading or unloading the goods. Amarship Management Pvt. Ltd. v. UOI, (1996) 86 ELT 15 (Bom)."

15. It is interesting to note that the word "port approaches" is defined as those ports of the navigable channels leading to the port in which the Indian Ports Act is in force. There are several other definitions such as port call, port charges, port mark, port of arrival, port of entry, port of departure, port of call and so on and so forth. The whole emphasis however is that whenever the word "port" is used, it carries with it a maritime connection or connotation. That is perhaps why the Section refers separately to airport. An airport does not have a maritime SRP 56/61ITXA523.13.doc connection. But an airport is also a place where customs clearance are made both for import and export. It would be difficult to put the assessee's case as falling within the word "port" having regard to the fact that the word carries with it a maritime connotation. The ICDs are land-locked and it is nobody's case that they are located in such a place where ships or vessels have direct access to them. The goods which are either removed from or brought into the ICDs are brought or taken away either by railway wagons or by container trucks, as the case may be. But it is common ground that customs clearances take place in the ICDs.

16. It is, therefore, for consideration as to whether the ICDs can be said to be "inland ports" for the purposes of the Explanation (d) below sub-section (4) of Section 80IA. We were not able to find a definition of the words "inland port" in any of the dictionaries. But the words "inland container depot" were introduced in Section 2(12) of the Customs Act, 1962, which defines "customs port". This was by way of an amendment made by the Finance Act, 1983 with effect from 13th May, 1983. Simultaneously clause (aa) was inserted in Section 7(1) of the said Act under which the CBEC was empowered to issue notification appointing the places which alone shall be considered as inland container depots for the unloading of imported goods and the loading of exported goods. On 24th April, 2007 the following clarification was issued by the Central Board of Excise and Customs apparently in response to a query raised by the assessee.

"F. No. 450/24/2007-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi,
April 24th, 2007

To,
Ms P. Alli Rani,
Executive Director (Finance),
Container Corporation of India Limited,
CONCOR Bhawan,
C-3, Mathura Road, Opp.
Appolo Hospital,
New Delhi-110076.

Subject : Clarification regarding 'Inland Port' –
regarding

Kindly refer to your letter CON/FA/128/Vol2/80IA/2003- 04 dated 18.04.2007 seeking clarification regarding "Inland Port".

2. It is stated that as per Customs Act, 1962 section 2(12) defines "Customs port" as any port appointed under clause (a) of section 7 to be a customs port and includes Inland Container Depot (ICD) appointed under clause (aa) of section 7. Container Freight Stations (CFSs) are "Customs area" attached to a "port". The work related to Customs is performed at these ICDs/CFSs. Accordingly, ICDs and CFSs (i.e. Customs area of port) are "Inland Ports".

Sd/-
(M.M. Parthiban)
Director (Customs)
Ph-23093908

Copy to,
Shri Jagdeep Goel, Director ITA-I, CBDT."

46. We have found that there is a specific reference made by the Delhi High Court to the communication dated 24th April, 2007, from the Government of India, Ministry of Finance, Department of Revenue. These are then classified as inland ports and categorised accordingly. There is a further communication from the Ministry of Commerce and Industry as well. We do not find that a view different than the one taken by the Delhi High Court is possible. Bearing in mind the facilities that are extended and for purposes of loading, unloading, storage and warehousing of the goods that the facility is a infrastructure facility. That it has easy accessibility to the port and particularly the sea-port gives it certain advantages and benefits and which clearly accrue to those using the port for import and export of cargo. Further, the location thereof is also a relevant factor as noted. In such circumstances, the reliance by the Special Bench and equally by the Bench of the Tribunal in the impugned orders on the Division Bench judgment of the Delhi High Court is thus well placed.

47. We do not find that anything other and further than this material is relied. However, even the High Court of Judicature at Madras has referred in its Division Bench decision to the view taken by the Delhi High Court. The Division Bench in paragraphs 10 and 12 of its judgment extensively referred to the Tribunal's conclusions. It also referred to the Special Bench decision of the Tribunal. Thus, when the proposal to set up a CFS has been accepted by the Government, there is no requirement of either a specific agreement as contended by Mr. Suresh Kumar. Nor can it be said that by virtue of any certification of the JNPT and its subsequent withdrawal the position undergoes any change. Once the facility is nothing but a infrastructural facility set up and within the precincts of the port, then, considering and even otherwise having considered its proximity to the sea port and its activities that we have no doubt and it can be safely concluded that the deduction admissible under sub-section (4) of section 80-IA can be claimed by both the ICDs and CFSs.

48. We do not think that the view taken by the Tribunal is in any way perverse or runs contrary to the language of subsection (4) of section 80-IA or the object of the Income Tax Act, 1961, as a whole.

Once such a conclusion is reached, then, it is not necessary to refer to any other material, particularly any circulars of the Board or otherwise or the certificates issued by the authorities. Even their contents need not be referred to. We are of the view that the extensive reasoning in the judgment of the Division Bench of the Delhi High Court and which finds approval even of the High Court of Madras and with which we broadly agree that the substantial questions of law on both counts need to be answered in favour of the assessee and against the Revenue".

The aforesaid decision and ratio of the Hon'ble jurisdictional High Court as well as that of Delhi High Court is squarely applicable here where assessee is carrying out CGS activities which is nothing but infrastructure facility as defined under section 80IA(4). Accordingly respectfully following the same, we confirm the order of the CIT(A) and direct the AO to allow the deduction under section 80IA(4). Thus, ground raised by the revenue does not stand and as such we dismiss the same. Resultantly, appeal of the revenue stands dismissed."

The aforesaid order of the Tribunal had thereafter been upheld by the Hon'ble High Court of Bombay while dismissing the respective appeals of the revenue for A.Y. 2010-11 and A.Y. 2011-12, vide its orders passed in ITA No. 952 of 2017, dated 27.08.2019 and ITA No. 940 of 2017, dated 14.10.2019, for the aforementioned respective years. In fact, we find that the revenue in the course of hearing of the aforementioned appeals before the Hon'ble High

Court of Bombay, had admitted, that the activities undertaken by the assessee would fall within the meaning of the term infrastructure facility as defined in Clause (d) of the 'Explanation' to Sec.80IA(4) of the Act. Also, we find, that the Tribunal while disposing off the appeal in the assessee's own case for A.Y. 2013-14 in ITA No. 492/Mum/2017 a.w. C.O No. 119/Mum/2018, dated 25.01.2019, had after relying on the judgment of the Hon'ble Supreme Court in the case of CIT Vs M/s Container Corporation of India Ltd. (2018) 404 ITR 397 (SC) concluded, that the CIT(A) was right in holding that the assessee was entitled for deduction under Sec.80IA(4) of the Act. In the backdrop of the aforesaid factual matrix, we are of the considered view that the issue as regards the assessee's entitlement for claim of deduction under Sec.80IA(4) is squarely covered by the aforesaid judicial pronouncements and also the orders passed in the assessee's own case. Accordingly, finding no infirmity in the order of the CIT(A) who had rightly concluded that the assessee was duly entitled for claim of deduction u/s 80IA of the Act, we uphold his order to the said extent. **Ground of appeal No. 1** raised by the revenue is dismissed.

7. We shall now advert to the respective grounds raised by both the assessee and the revenue, on the basis of which they have assailed the observation of the CIT(A), insofar the same pertains to considering of the disallowance under Sec.14A r.w.Rule 8D, for the purpose of calculating the 'book profit' under Sec.115JB of the Act. As is discernible from the order of the CIT(A), we find, that relying on the order of the 'Special bench' of the ITAT, Delhi in the case of ACIT Vs. Vireet Investment Pvt. Ltd. 82 (2017) 165 ITD 0027 (Delhi) (SB), he had observed that the computation of the 'book profit' under Clause (f) of 'Explanation 1' to Sec.115JB(2) was to be made without resorting to the computation as contemplated under Sec.14A r.w. Rule 8D of the Income Tax Rules, 1962. Insofar, the aforesaid reliance placed by the CIT(A) on the order of the 'Special bench' of the ITAT, Delhi in the case of Vireet Investment Pvt. ltd. (supra) is concerned, we find no infirmity in the same. Apart from that, the observation of the CIT(A) that for the purpose of

computing the average value of investments while calculating the disallowance under Sec.14A r.w. Rule 8D, only those investments were to be considered which had yielded exempt income during the year under consideration, the same also find favour with us. Insofar the grievance of the assessee is concerned, wherein it had assailed the order of the CIT(A) on the ground that he had erred in making addition in the 'book profit' u/s 115JB on account of disallowance u/s 14A of the Act, the same in our considered view is misconceived as the CIT(A) had himself relied on the order of the 'Special bench' of the Tribunal in the case of Vireet Investments Pvt. Ltd. (supra) However, for the sake of clarity, we may herein observe that pursuant to the aforesaid order of the 'Special bench' of the ITAT, Delhi in the case of Vireet Investment Pvt. Ltd. (supra), the A.O while computing the 'book profit' under Sec.115JB of the Act shall not resort to the computation as contemplated under Sec.14A r.w. Rule 8D of the Income tax Rules,1962. As regards the claim of the ld. A.R that as the investment in the exempt yielding investments were made by the assessee out of its self-owned funds and no part of the interest bearing funds were therein utilised, therefore, no disallowance of any part of the interest expenditure was called for u/s 14A r.w Rule 8D(2)(iii), we find ourselves principally to be in agreement with the same proposition so canvassed by the ld. A.R. before us. But then, the said claim of the assessee would require verification of the factual position. If the aforesaid claim of the assessee that it had sufficient self-owned funds for making the investments in the exempt income yielding investments is found to be in order, then no disallowance u/s 14A of any part of the interest expenditure would be called for in its hands. Our aforesaid view is fortified by the order of the Hon'ble High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 0505 (Bom). The **Ground of appeal No. 2** raised by the revenue is dismissed and the **Ground of appeal No. 1** raised by the assessee is partly alowed in terms of our aforesaid observations.

8. Resultantly, the appeal of the revenue is dismissed, while for the appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-	Sd/-
RAJESH KUMAR (ACCOUNTANT MEMBER)	RAVISH SOOD (JUDICIAL MEMBER)

Mumbai, Date: 29.09.2020
R. Kumar

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai