

‘Inland Container Depots’ are ‘Inland Ports’ and therefore eligible for benefit under Section 80-IA of the Income-tax Act – Supreme Court

Background

Recently, the Supreme Court in the case of Container Corporation of India Ltd.¹ (the taxpayer) held that the ‘Inland Container Depots’ (ICDs) are ‘Inland Ports’ and therefore the taxpayer is eligible for the benefit under Section 80-IA of the Income-tax Act, 1961 (the Act) on the profits earned from the ICDs.

Facts of the case

- The taxpayer, a government company, is engaged in the business of handling and transportation of containerised cargo and is under the direct administrative control of Ministry of Railways.
- Its operating activities are mainly carried out at its ICDs, Container Freight Stations (CFSs) and Port Side Container Terminals (PSCTs) spread all over the country.
- The issue in the present case pertains to the Assessment Year (AY) 2003-04 to 2005-06. The taxpayer filed the returns on the income for all these years and claimed deduction under various heads including deduction under Section 80-IA of the Act.
- This issue is with regard to the deduction claimed under Section 80-IA on the profits earned from the ICDs and on rolling stocks. The claim for deduction on the profits earned from the ICDs and further the deduction on account of rolling stocks has been rejected by the Assessing Officer (AO).

- The Commissioner of Income-tax (Appeals) [CIT(A)] also denied the deduction to the taxpayer. The Tribunal, partly allowed the appeal and held that the deduction under Section 80-IA can be claimed with regard to the rolling stocks of the company but not with regard to the ICDs.
- The High Court held that the taxpayer is entitled to claim deduction on the income earned from the ICDs for the relevant period under consideration under Section 80-IA of the Act.
- The tax department filed an appeal before the Supreme Court.

Supreme Court decision

Whether the taxpayer is eligible for 80-IA benefit on profits earned from the ICDs

- Section 80-IA gives the power to the Central Board of Direct Taxes (CBDT) to notify certain other enterprises which can avail the benefit of Section 80-IA of the Act, which do not fall within any of the specified categories but carries out activities of similar nature.
- CBDT, in exercise of its power under Section 80-IA(12)(ca), notified² ICDs and CFSs as infrastructure facility.

¹ CIT v. Container Corporation of India Ltd. (Civil Appeal No. 8900 of 2012 (SC) – Taxsutra.com

² Notification No.S.O.744(E), dated 1 September 1998

- In addition to the above, the Finance Act, 1998, which came into effect on 1 April 1999, made a change in the definition of 'Infrastructure facility' as is relevant to the present case. The words 'Inland water ways and inland ports' were added in the definition of infrastructure facility.
- A noticeable change was further brought by the Finance Act, 2001, which came into effect from 1 April 2002, in the terms that the power of the CBDT to extend the benefit of the said provisions to any infrastructure facility of similar nature by issuing a notification was taken away.
- The tax department contended that the High Court erred in relying on the Notification issued by CBDT to hold that the enterprises holding ICDs are allowed to claim deductions under Section 80-IA of the Act. As the said power of the CBDT was specifically taken away by the amendment made by Finance Act, 2001, in light of the said amendment, the Notifications which were issued by the CBDT would cease to operate after the AY 2002-03.
- The Supreme Court observed that the tax department's contention does not have much force as the said amendment is silent with regard to any effect it would have upon the Notifications issued earlier by the CBDT in due exercise of its power. Had it been the intention of the legislature that the Notifications issued by the CBDT earlier are of no effect after AY 2002-03, it would have had found a place in the said amendment. In the absence of the same, the Supreme Court is unable to concur with the tax department that the Notifications which were issued in legitimate exercise of the power conferred on the CBDT would cease to have effect after AY 2002-03.
- The tax department contended that the High Court committed an error in holding ICDs as Inland Ports. It was further contended that the ICDs are never understood to fall in the category of 'Inland Port' under the scheme of the IT Act. The argument in support of this contention is that if the word 'Inland Port', as used in the Explanation attached to Section 80-IA(4) of the Act defining 'infrastructure facility' includes ICDs, there would have been no need for the CBDT to separately exercise its power given under the said Section, as it stood then, to notify it as infrastructure facility.
- However, The Supreme Court observed that the argument of the tax department does not hold much weight behind it as the Notification which was issued by the CBDT came into effect on 1 September 1998 i.e., the time when the term 'Inland Port' was not in itself inserted in the provisions of Explanation attached to Section 80-IA(4) of the Act defining the term 'infrastructure

facility'. It was inserted through Finance Act, 1998 which came into effect from 1 April 1999. So there seems to be no conflict within the Notification issued by the Board and the fact that the ICDs are Inland Ports or not.

- The taxpayer is entitled for the benefit of Section 80-IA of the Act much before the Finance Act, 2001 which came into force on 1 April 2002 and exemption for the period of 10 years cannot be curtailed or denied by any subsequent amendment regarding the eligibility conditions under the period is modified or specific provision is made that the benefit from 1 April 2002 onwards shall only be claimed by the existing eligible units if they fulfill the new conditions.

Whether the ICDs can be termed as Inland Ports

- The term 'Port' as is used in the Explanation attached to Section 80-IA(4) seems to have maritime connotation perhaps that is the reason why the word airport is found separately in the Explanation. Considering the nature of work that is performed at ICDs, they cannot be termed as Ports. However, taking into consideration the fact that a part of activities that are carried out at ports such as custom clearance are also carried out at these ICDs, the claim of the taxpayer can be considered within the term 'Inland port' as is used in the Explanation.
- It is significant to note that the word 'Inland Container Depots' was first introduced in the definition of 'Customs Port' as is given in Section 2(12) of the Customs Act, 1962 (Customs Act), through amendment made by the Finance Act, 1983 with effect from 13 May 1983.
- The term 'Inland Port' has been defined nowhere. But the notification that has been issued by the CBEC dated 24 April 2007 in terms holds that considering the nature of work carried out at these ICDs they can be termed as Inland Ports. Further, the communication dated 25 May 2009 issued on behalf of the Ministry of Commerce and Industry confirming that the ICDs are Inland Ports, fortifies the claim of the taxpayer.
- Though both the Notification and communication are not binding on CBDT to decide whether ICDs can be termed as Inland Ports within the meaning of Section 80-IA of the Act, the taxpayer is unable to put forward any reasonable explanation as to why these notifications and communication should not be relied to hold ICDs as Inland Ports.

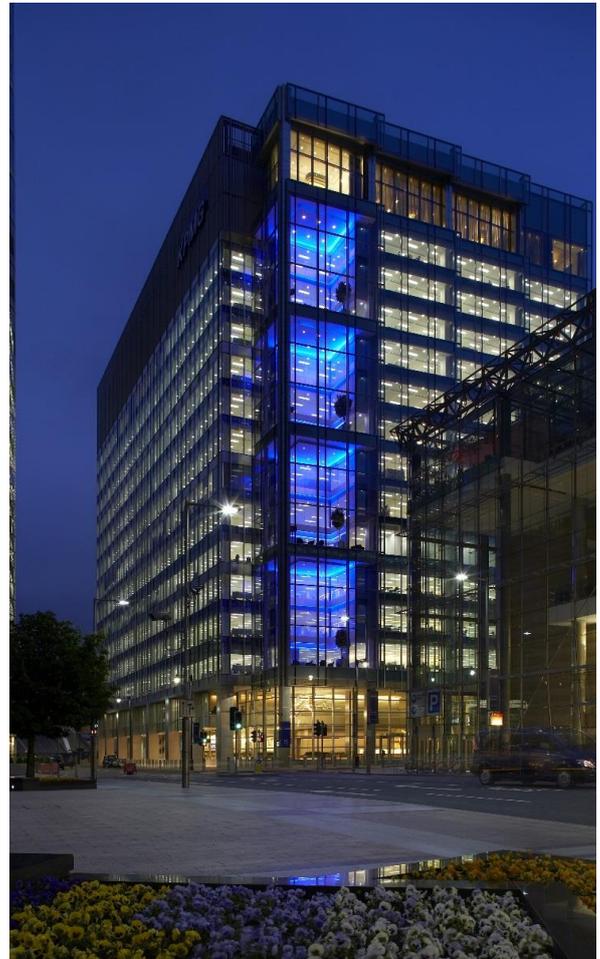
- Unless shown otherwise, it cannot be held that the term 'Inland Ports' is used differently under Section 80-IA of the Act.
- All these facts taken together clear the position beyond any doubt that the ICDs are Inland Ports and subject to the provisions of the Section and deduction can be claimed for the income earned out of these Depots.
- However, the actual computation is to be made in accordance with the different Notifications issued by the Customs department with regard to different ICDs located at different places.

Our comments

This is a welcome decision of the Supreme Court which resolves the controversy with respect to the availability of the benefit under Section 80-IA of the Act to the profits earned from ICDs post amendment in Section 80-IA of the Act by the Finance Act, 2001³. The Supreme Court held that ICDs are 'Inland Ports' and therefore the taxpayer is eligible for the benefit under Section 80-IA of the Act.

The Supreme Court provided clarity that the subsequent amendment in Section 80-IA of the Act introduced by the Finance Act, 2001, which takes away the power of the CBDT to extend the benefit of the said provisions to any infrastructure facility of similar nature, is silent with regard to any effect it would have upon the Notifications issued earlier by the CBDT in the due exercise of its power.

It is important to note that provisions of Section 35AD of the Act have been amended, with effect from AY 2013-14, to provide that the taxpayer is eligible to claim entire capital expenditure where the specified business is in the nature of setting up and operating ICDs or CFSs notified or approved under the Customs Act.



³ With effect from AY 2002-03

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