

**THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 810 of 2018

Principal Commissioner of Income Tax-6,]
4 th Floor, Aayakar Sadan,]
Bodhi Tower,]
Salisbury Park, Gultekdi,]
Pune-411037]... Appellant

Versus

Maharashtra State Warehousing Corporation,]
583/B, Market Yard,]
Gultekdi, Pune 411 037.]
]
PAN : AABCM3988M]
A.Y. 2011-12]..Respondent

Mr. Suresh Kumar, Advocate for appellant.

Ms.Rucha Vaidya i/b Ms.Farzeen Khambatta, Advocate for respondent.

**CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, JJ.**

RESERVED ON :	5th JANUARY, 2023
PRONOUNCED ON :	9th JANUARY 2023

J U D G M E N T

PER DHIRAJ SINGH THAKUR, J.

1. This appeal under section 260A of the Income Tax

Act, 1961 ('the Act') has been preferred against the order dated 28th July 2017 passed by the Income Tax Appellate Tribunal, Pune ("Tribunal"), relevant to the assessment year 2011-12, whereby, the appeal of the revenue has been dismissed.

2. The following substantial questions of law have been framed for our consideration :

- (i) Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal, Pune (ITAT) has erred in holding that the assessee was eligible for deduction claimed under section 80IA(4) of the Act, amounting to Rs.6,33,26,452/-?
- (ii) Whether on the facts and in the circumstances of the case and in law, the ITAT, Pune has not appreciated the facts finding made by the A.O. that Jawaharlal Nehru Port Trust (JNPT) has declined to issue a certificate that Warehousing of the assessee is part of the Port?
- (iii) Whether on the facts and in the circumstances of the case and in law, the ITAT, Pune has not appreciated that Board's notification dated 30.06.2000 relied by the assessee has been subsequently withdrawn through Circular No.10/2005 dated 16.12.2005?
- (iv) Whether on the facts and in the

circumstances of the case and in law, the ITAT, Pune has erred in relying on the decision of Container Corporation of India Ltd. Vs. ACIT (2012) 346 ITR 140 (Delhi)?

(v) Whether on the facts and in the circumstances of the case and in law, the ITAT, Pune was justified in holding that the assessee has fulfilled all the conditions laid down for the deduction claimed under section 80IA(4) of the Act?

3. Briefly stated the material facts are as under :

(a) The assessee is a State Government undertaking which had set up an Inland Container Depot (ICD) and Container Freight Station (CFS) in the vicinity of Jawaharlal Nehru Port Trust (JNPT). In its return of income, the assessee claimed a deduction in terms of section 80IA(4) of the Act.

(b) The Assessing Officer, however, denied the benefit on the ground that the assessee had failed to furnish a certificate from the concerned Port Authority certifying that the structure was a part of the Port, which it considered mandatory in view of the Board's notification dated 23rd June 2000

followed by Circular No.10 of 2005 dated 16th December 2005.

4. A similar claim was also denied to the assessee for the year 2009-10, for similar reasons. The Tribunal, in reference to the assessment year 2009-10, allowed the appeal of the assessee by placing reliance upon the judgment in the case of *Assistant Commissioner of Income-tax Vs. JWC Logistics Park P. Ltd.* ¹

5. This finding of the Tribunal was followed even for the instant assessment year 2011-12. It needs to be mentioned that an appeal filed by the revenue against the order of the Tribunal, being Appeal No.886 of 2017, in regard to the assessment year 2009-10, also came to be dismissed vide order dated 24th September 2019 following the views expressed by Delhi High Court in *Container Corporation of India Ltd. Vs. Asstt. Commissioner of Income Tax* ² and this Court in *Commissioner of Income Tax Vs. Continental Warehousing Corporation* ³.

1 [2014] 34 ITR (Trib) 598 (ITAT, Pune)

2 (2012)346 ITR 140 (Delhi)

3 (2015) 374 ITR 645 (Bom)

6. Since a view has already been taken in ***Continental Warehousing Corporation*** (Supra) on the same issue and since there is no change in either the facts or the law, we are of the opinion that the questions proposed do not given rise to any substantial question of law.

7. The appeal is, therefore, dismissed.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]