IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 613 OF 2015
ALONGWITH
INCOME TAX APPEAL NO. 618 OF 2015

The Pr. Commissioner of Income
Tax, Central-1 ....Appellant
V/s.
M/s. JWC Logistics Park Pvt. Ltd. ....Respondent

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Mr. P.C. Chhotaray, Advocate for the appellant.

Mr. Satish Mody i/by. Ms. Aasifa Khan, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 11TH APRIL, 2018.

P.C. :-

1. These two Appeals under Section 260A of the Income-Tax Act, 1961 challenge the common order dated 21st August, 2014 passed by the Income Tax Appellate

Tribunal (the Tribunal). The common order dated 21st August, 2014 is in respect of Assessment Year 2008-09 and 2009-10. Thus, these two Appeals.

2. The identical question raised in the two Appeals which is urged for our consideration is as under :-

> *"Whether on the facts and in the circumstances of the case and in law the Hon'ble Income Tax Appellate Tribunal was justified in allowing the claim of deduction under Section 80IA of the Act made by the assessee ?"*

3. The impugned order of the Tribunal dismissed the Revenue's Appeal before it by holding that the Container Freight Station (CFS) run by the respondent-assessee is eligible for deduction under Section 80IA of the Act as an infrastructure facility. Thus, upholding the view of the Commissioner of Income-Tax Appeals (CIT (A)). This by following the decisions of the Special Bench of the Tribunal in **M/s. All Cargo Global Logistics**

Ltd. Vs. DCIT (ITA No.5018 to 5022 and 5059) rendered on 6th July, 2012 and the decision of the Regular Bench of the Tribunal in the case of **Continental Warehousing Corporation (Nhava Sheva) Vs. ACIT** (ITA No. 7055/Mum/2011) dated 31st August, 2012. The submission of the Revenue that as Appeals have been filed against the aforesaid two decisions of the Tribunal, before this Court, the Revenue's Appeal be allowed, was not accepted by the Tribunal. In the meantime, the above two Tribunal decisions in case of *All Cargo Global Logistics Ltd.* (supra) and *Continental Warehousing Corporation (Nhava Sheva)* (supra) have been upheld by this Court in **Commissioner of Income-Tax v. l. Continental Warehousing Corporation (Nhava Sheva) Ltd. and anr. [2015] 374 ITR 645 (Bom)** while dismissing the Revenue's Appeal. This issue therefore stands concluded in favour of the respondent-assessee.

4. Notwithstanding the above, Mr. Chhotaray, the

Learned Counsel appearing for the Revenue submits that the decision of this Court in *Continental Warehousing Corporation (Nhava Sheva)* (supra) will not govern this case as that decision does not refer to a CBDT Circular / Clarification dated 6th January, 2011. At this, Mr. Mody points out that, specific reference to the board Circular / Clarification dated 6th January, 2011 has been made by this Court in *Continental Warehousing Corporation (Nhava Sheva)* (supra) at para-41. On this being pointed out, he now states it has not dealt with the above Circular and therefore the above decision is wrong. We point out to him that the Court was conscious of the Circular / Clarification dated 6th January, 2011 when it passed the order in *Continental Warehousing Corporation (Nhava Sheva)* (supra) and has taken a decision on the Revenue's Appeal after making a specific reference to the Circular / Clarification dated 6th January, 2011. Further, we point out to him that the decision of the Co-ordinate Benches of this Court is binding upon us and any grievance which the

Revenue has inrespect of *Continental Warehousing Corporation (Nhava Sheva)* (supra) is to challenge it before the Apex Court. Inspite of the aforesaid fact being pointed out to Mr. Chhotaray, Learned Counsel appearing for the Revenue, insists that decision of this Court in *Continental Warehousing Corporation (Nhava Sheva)* (supra) is wrong as it has not declared the Circular / Clarificaton dated 6th January, 2011 bad or not binding. Somebody must seek it before Court declares it to be so.

5. We are pained to record this most unreasonable attitude on the part of the Advocate for the Revenue of seeking to reargue settled concluded issues, without having obtained any stay from the Apex Court. This results in unnecessary wastage of the scarce judicial time available in the context of the large number of the appeals awaiting consideration. We would expect Mr. Chhotaray, as an Advocate to act with responsibility as an Officer of the Court and not merely argue for the sake of arguing when an issue is clearly covered by the decision of Co-

ordinate Bench of the Court and take up scarce judicial time. The Advocate must bear in mind that this is a Court of law and not an University/College debating Society, where debates are held for academic stimulation. We deal with real life disputes and decide them in accordance with the Rule of Law, of which an important limb is uniformity of application of law. This on the basis of judicial discipline and law of precedents.

6. Accordingly, both the Appeals are dismissed. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**