TRUSHA TUSHAR MOHITE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2959 OF 2022

Chennai Container Terminal Pvt.Ltd. .. Petitioner

Versus

Assistant Commissioner of Income-tax,
Circle-2(1)(1), Mumbai & Ors. .. Respondents

Mr.Nitesh Joshi, Advocates for the Petitioner.

Ms.Samiksha Kanani, Advocate for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON: JUNE 8, 2026
PRONOUNCED ON : JUNE 16, 2026

ORAL JUDGEMENT (PER FIRDOSH P. POONIWALLA, J.)

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. This Writ Petition challenges the Notice dated 26th March 2021 issued under Section 148 of the Income Tax Act, 1961 ("**the I.T. Act**"), the impugned Order dated 14th February 2022 and the impugned Show Cause

Notice dated 15th March 2022 along with the Draft Assessment Order.

FACTS

3. The present Petition is concerned with the Assessment Year (A.Y.) 2014-15.

4. The Petitioner was incorporated as a company on 12th September 2000 as a consortium of four different shareholders, being P & O Ports (Chennai) Limited, Mauritius, Jakari Express Pvt. Ltd., India, Meherji Cashinath Ltd., Mauritius and Chettinad Logistics Pvt. Ltd., India. In this regard, the said parties had executed a Memorandum of Understanding on 21st June 2000. A Letter of Acceptance had been issued by the Ministry of Surface Transport declaring their bid, to develop and manage the Chennai Container Terminal in accordance with the Major Port Trusts Act, 1963 and Guidelines issued there under, to be successful. The Petitioner had received Certificate for Commencement of Business as per the Companies Act, 1956, on 13th November 2000. From the financial year 2008-09, the Petitioner is a 100% subsidiary of P & O Ports(Chennai) Ltd., Mauritius,which in turn now is entirely held by D. P. World Ltd., Dubai.

5. On 9th August 2001, a License Agreement was executed between

the Board of Trustees of Chennai Port and the Petitioner for the development and management of the Chennai Container Terminal. By the said License Agreement, the Petitioner was granted exclusive license for designing, re-designing, engineering, financing, constructing, equipping, operating and maintaining etc. the project facilities. Pursuant thereto, the Petitioner invested Rs.911 lakhs in the Bharathi Dock at the Chennai Port towards Wharf and Draft upgradation. Since, the said port was earlier operated and maintained by the Chennai Port Trust, they granted to the Petitioner the right to use the existing assets at the port. However, post the license agreement, extensive facilities by way of 7 Quay gantry cranes (QCs) and 22 Rubber tyred gantry cranes (RTGs) have been deployed by the Petitioner, for which an aggregate amount of Rs.35,210 lakhs has been spent by the Petitioner.

6. Pursuant to the receipt of licence to develop, operate and maintain the Bharathi Dock at the Chennai Port and time to time infrastructural developments thereon, the Petitioner has been earning income from operation and maintenance of the same from the financial year 2001-02. As per Section 80-IA of the Act, the assessee has an option to claim deduction under the said Section for a period of 10 consecutive assessment years out of 15 years beginning from the year in which the undertaking or the enterprise develops and begins to operate the infrastructure facilities.

7. Since the Petitioner started making profits from the activity of development, operation and maintenance of the said infrastructure facility from the previous year relevant to A.Y. 2008-09, it has been claiming deduction under Section 80-IA of the Act from that year. In the course of assessment proceedings for A.Y. 2008-09, after thoroughly examining the eligibility condition, the Petitioner has been found to be eligible for claiming the said deduction.

8. Thereafter, for A.Y.2009-10 to A.Y. 2014-15, the Petitioner's return of income has been subjected to scrutiny and since its business income only comprised of income from the said port facility, deduction has been claimed and allowed in respect of the same.

9. For the year under consideration, i.e., previous year relevant to A.Y. 2014-15, the Petitioner's Profit and Loss Account reflected profit before tax of Rs.22,88,77,835. In Note 1 to the Notes to the financial statements forming part of its Annual Report, the Petitioner has *interalia* brought out that it is engaged in the business of managing, developing and maintaining the Container Terminal at Bharathi Dock at Chennai Port pursuant to a License Agreement with the Chennai Port Trust. Further, the Petitioner has

also brought out that it is a wholly owned subsidiary of P & O Ports (Chennai) Ltd., Mauritius which in turn was a wholly owned subsidiary of D.P. World Ltd., Dubai. It was also clarified that the license agreement with the Chennai Port Trust was for a period of 30 years.

10. Further, in the Tax Audit Report to be obtained as per Section 44AB of the Act, read with Rule 6G of the Income-tax Rules, necessary disclosures were made with respect to P & O Ports (Chennai) Ltd., Mauritius, being its parent company and the transactions entered into with it.

11. Further, in accordance with the provisions of Section 80-IA(7) read with Rule 18BBB of the Rules, the Petitioner obtained an audit report from a Chartered Accountant reflecting the enterprise or undertaking which qualified for deduction under Section 80-IA, its ownership status, description of the eligible business and quantum of deduction to be claimed.

12. Since the Petitioner had entered into international transactions with its associate enterprises, including with P & O Ports (Chennai) Ltd., Mauritius, the said fact was duly reflected in the Audit Report obtained in Form 3CEB as per Section 92E of the Act.

13. The Petitioner filed its return of income for A.Y. 2014-15 on 28th November 2014. In the said return of income it claimed deduction of its entire business income of Rs.25,40,88,755. The said return of income also discloses that the Petitioner is a wholly owned subsidiary of P & O Ports (Chennai) Ltd., Mauritius.

14. The said return of income was picked up for scrutiny by Respondent No.1 by issuing of notice dated 01st September 2015 under Section 143(2) of the Act. In the course of the assessment proceedings, Respondent No.1 *interalia* issued notices dated 8th July 2016. In response to the same, the Petitioner filed its submission on 30th August 2016. Further, in the course of hearing held on 09th November 2016, Respondent No.1 had asked for various information including a note on royalty payment made to the Chennai Port Trust. By its letter dated 02nd December 2016, the necessary information along with reference to the License Agreement was provided to Respondent No.1.

15. Pursuant thereto, Respondent No.1 passed an Assessment Order on 27th December 2016 accepting the Petitioner's business to be that of managing, developing and maintaining the container terminal at Bharathi Dock at Chennai Port and also accepting its claim for deduction under

Section 80-IA.

16. Thereafter, the Petitioner received a notice dated 26th March 2021 from Respondent No.1 alleging that he had reason to believe that its income chargeable to tax for A.Y. 2014-15 had escaped assessment. Consequently, he required it to deliver to him within ten days from the service of the notice a return in the prescribed form for the said assessment year. The said notice also alleges that it had been issued after obtaining the necessary satisfaction from Respondent No.3.

17. On 7th April 2021, the Petitioner informed Respondent No.1 that it was in the process of filing the Return of Income pursuant to the notice issued under Section 148 of the Act and requesting him to provide a copy of the reasons recorded by him before reopening the assessment.

18. The Petitioner was provided with a copy of the reasons recorded before reopening the assessment on 13th May 2021. In the said reasons, it is alleged that the record revealed that the Petitioner, which has been referred to as an "enterprise", is owned by a company named P & O Ports (Chennai) Ltd., Mauritius, which is not a company registered in India, thereby violating the condition in sub- clause (a) of clause(i) of sub-Section (4) of Section 80-

IA which requires that the enterprise carrying on the eligible business should be owned by a company registered in India.

19. The Petitioner filed its objections before Respondent No.1 on 01st July 2021 *interalia* urging that the initiation of reassessment proceedings was invalid in view of application of first proviso below Section 147 of the Act as there was no failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the purposes of its assessment, that the belief as formed by Respondent No.1 merely reflected a change of opinion and there was no basis for formation of this belief. The Petitioner also urged that the proposal was sent by Respondent No.1 to Respondent No. 2 on 25th March 2021, who approved the same on the same date and in turn forwarded the said proposal to the Respondent No.3, who recorded his satisfaction on 26th March 2021, resulting into effective recording of satisfaction in a mechanical manner and without application of mind.

20. The Petitioner's objections were rejected by Respondent No.1 by his impugned order dated 14th February 2022.

21. Thereafter, the Petitioner was served with notices dated 18th February 2022 issued under Section 143(2) of the Act and dated 08th March

2022 issued under Section 142(1) of the Act requiring it to make its submission on various aspects, including grant of deduction under Section 80-IA of the I.T. Act on or before 14th March 2022.

22. In response to the above, the Petitioner, by its letter dated 14th March 2022, requested for time.

23. On 15th March 2022, without referring to the Petitioner's application for time, Respondent No. 4 issued the impugned show cause notice annexing a Draft assessment order seeking to deny the Petitioner's claim for deduction under Section 80-IA of the Act. It is in these circumstances that the Petitioner has filed the present Petition.

SUBMISSION OF THE PARTIES

24. Mr.Nitesh Joshi, the learned counsel for the Petitioner, submitted that as the Notice dated 26th March 2021 had been issued under Section 148 of the Act after the expiry of 4 years from the end of the relevant AY, the assessment can be reopened only if income chargeable to tax has escaped assessment on account of the failure of assessee to disclose fully and truly all material facts necessary for its assessment for that Assessment Year.

The four years expired on 31st March 2019 in respect of AY 2014-15. The Notice dated 26th March 2021 was thus beyond the period of four years.

25. Further, Mr.Joshi submitted that the enterprise which is carrying on the eligible business in the present case is the Chennai Port Bharathi Dock undertaking of the Petitioner, which is owned by the Petitioner, which is a company registered in India. Mr.Joshi submitted that Respondent No.1 had erred in equating the Petitioner company as the 'enterprise', and consequently holding that it is owned by P & O Ports (Chennai) Ltd., Mauritius, which is not a company registered in India. Mr.Joshi submitted that there is no doubt that the assessee claiming the deduction under Section 80-IA is the Petitioner, which fulfills the requirement of being registered as a company in India and owning the relevant enterprise which is carrying on the eligible business.

26. Further, Mr.Joshi submitted that in any event, assuming without admitting that the interpretation now placed by Respondent No.1 on the provisions on the requirement in the relevant sub-clause of Section 80-IA is correct, the relevant facts have been repeatedly brought to the notice of Respondent No.1 as a part of the Annual Report, Tax Audit Report Form 3CEB and the Income Tax Return.

27. Mr.Joshi further submitted that it is further alleged in the said reasons that the record shows that the Petitioner is engaged in maintaining, managing and operating the existing container terminal at Chennai Port handed over to it by Chennai Port Trust and no new infrastructure facility was brought into existence. In this regard, reference has, also been made to Note 2.6 to the Notes to the Financial Statement, where the Petitioner has disclosed the fact that certain assets had been taken on lease from the Chennai Port Trust. Mr.Joshi submitted that, here again, Respondent No.1 has overlooked the fact that the Petitioner had set-up 7 Quay gantry cranes (QCs) and 22 Rubber tyred gantry cranes (RTGs) facility at the dock and had incurred substantial expenditure of approximately Rs.35,210 lakhs. Mr.Joshi further submitted that it was also overlooked that consistently in the assessment orders passed by Respondent No.1 for the earlier years, and the current year, the Petitioner's business had been referred to as including development of the Container Terminal at the Bharathi Dock at Chennai Port.

28. Further, Mr. Joshi submitted that, in any event, a bare perusal of the reasons itself indicates that the information relied upon by Respondent No.1 formed part of the Petitioner's Annual Report. Mr. Joshi submitted that

therefore the reasons recorded before reopening the assessment had no basis and it was based on mere change of opinion and there was no failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the purpose.

29. Ms. Samiksha Kanani, the learned Advocate for the Respondents, relied upon an Affidavit in Reply dated 21st June 2022 filed by Hari Om Meena, DCIT-2(1)(1) on behalf of the Respondents. Ms. Kanani submitted that as per the provisions of Section 80-IA the Act, the enterprise had to be owned by a company registered in India. She submitted that audit scrutiny revealed that the Petitioner's enterprise is owned by a company named P&O (Chennai) Limited, Mauritius, which is not a company registered in India.

30. Further, Ms. Kanani submitted that though the License Agreement was not on record, it was observed from the Order dated 15th June 2007 of the Madras High Court in the Petitioner's own case that P&O Ports Australia was the successful bidder pursuant to the tender invited by Chennai Port Trust, in November 1997 to take over, maintain, manage and operate the existing container terminal at Chennai Port. P&O Ports Australia formed a SPV called Chennai Container Terminal Limited, which later became a

private limited company i.e. the Petitioner. Thereafter, the Petitioner entered into an agreement on 09th August 2001 with Chennai Port Trust. As per the Annual Report of the Petitioner, now it is a wholly owned subsidiary of P&O Ports (Chennai) Limited, Mauritius which is a fully owned subsidiary of M/s. DP World Limited, which is also not an Indian company. As per Note 3.33, the ultimate holding company ie DP World Ltd is a Dubai, (UAE) based company.

31. Ms. Kanani submitted that from the above it can be seen that the enterprise, (the Petitioner company), was formed by a company registered outside India (i.e., in Mauritius) for carrying out the aforesaid infrastructure activities, which is in violation of the condition that the enterprise is owned by a company registered in India. Further, Ms.Kanani submitted that another condition for claiming deduction under Section 80IA(4) is that the Petitioner shall develop or operate and maintain a new infrastructure facility. Audit scrutiny or records however revealed that the Petitioner is engaged in maintaining, managing and operating the existing container terminal at Chennai Port handed over to it by Chennai Port Trust and no new infrastructure facilities were brought into existence by the Petitioner. Ms.Kanani submitted that this fact is also strengthened by the Petitioner's own submission vide Note 2.6 set out in the Notes to financial statements

wherein the Petitioner disclosed that certain assets were taken on lease from the Chennai Port Trust. Ms.Kanani submitted that from the above it transpires that the Petitioner is not fulfilling the basic conditions prescribed for availing the deduction under Section 80-IA of the Act. Hence, the deduction allowed under Section 80-IA needs to be set aside.

32. Further, Ms.Kanani submitted that the Petitioner has claimed an inadmissible claim of deduction under Section 80-IA of the Act. The incorrect claim of such deduction, which was allowed in the assessment, has been brought out by the Revenue Audit, which is one of the agencies identifying revenue leakages, and hence reopening proceedings have been rightly initiated, which is within the ambit of law.

ANALYSIS AND FINDINGS

33. Before we deal with the submissions of the parties, it would be useful to set out Section 80-IA(1), (4) and Explanation to sub-Section (4) of the I.T. Act which read as under:

> *"Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.*
>
> *"80-IA.[(1) Where the gross total income of an assessee includes*

any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-Section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.]

(2) ……

(3) ……

(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 fulfills 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:

[Explanation.- For the purposes of this clause, "infrastructure facility" means-

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

d) a ports, airport, inland waterway [,inland port or navigational channel in the sea];]

34. The first reason given for re-opening the assessment is that the assessee (Petitioner) is an enterprise and that it it is owned by a company named P&O (Chennai) Ltd.,Mauritius, which is not a company registered in India, and, hence, the Petitioner has committed a breach of Section 80-IA(4) and is not entitled to a deduction under Section 80-IA.

35. In our view, this reason given by Respondent No.2 is incorrect. Respondent No.2 has made the mistake of equating the Petitioner with an enterprise.

36. The Concise Oxford English Dictionary (Twelfth Edition) defines enterprise as "**enterprise** - n. **1** a project or undertaking, especially a bold one. bold resourcefulness. **2** a business or company".

37. Thus, the primary meaning of an enterprise is a project or an undertaking.

38. In the present case, the enterprise is the Chennai Port Bharathi Dock undertaking of the Petitioner which is owned by the Petitioner which is a company registered in India. The Respondents have erred in equating the Petitioner as the 'enterprise' and, consequently, holding that it is owned by P

& O Ports (Chennai) Ltd. Mauritius, which is not a company registered in India.

39. There is no doubt that the assessee claiming the deduction under Section 80-IA of the Act is the Petitioner, which fulfills the requirement of being registered as a company in India and owning the relevant enterprise which is carrying on the eligible business.

40. The second reason given for re-opening the assessment is that for claiming deduction under Section 80IA(4) of the Act, the assessee has to develop, or operate and maintain or develop, operate and maintain a new infrastructure facility. However, from the records, it is seen that the assessee is engaged in maintaining, managing and operating the existing container terminal at Chennai Port handed over to it by Chennai Port Trust and no new infrastructure facilities were brought into existence by the Petitioner. According to the Respondents, this fact is strengthened by the Petitioners own submission vide Note 2.6 to the Notes to financial statements wherein the Petitioner has disclosed that certain assets were taken on lease from Chennai Port Trust.

41. In our view, this reason given by Respondent No.2 is also

incorrect. Whilst noting Note 2.6 to the Notes to financial statements, the Respondents have overlooked the fact that the Petitioner had set up 7 Quay gantry cranes (QCs) and 22 Rubber tyred gantry cranes (RTGs) facility at the Dock and had incurred substantial expenditure of approximately Rs.35,210 lakhs.

42. The Respondents have also overlooked that consistently in the assessment orders passed by Respondent No.1 for the earlier years and the current year, the Petitioner's business had been referred to as including development of the Container Terminal at the Bharathi Dock at Chennai Port.

43. Without prejudice to what is stated earlier, in our view, even if the reasons given by the Respondents were to be assumed to be correct, the assessment of the Petitioner could not have been re-opened as there was no failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the assessment.

44. Section 147 of the Act [as it stood at the relevant time] empowered the Assessing Officer to re-open a concluded assessment subject to certain restrictions as set out therein. It provided that if the Assessing

Officer has reason to believe that any income chargeable to tax has escaped assessment for any Assessment Year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also other income chargeable to tax which had escaped assessment and which comes to his notice subsequently in the course of the proceedings. The first proviso to Section 147 [as it stood then] reads thus:-

> *"Provided that where an assessment under sub-Section (3) of Section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-Section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year;"*
>
> *(emphasis supplied)*

45. A perusal of the said proviso makes it clear that where an assessment under Sections 143(3) or 147 has been carried out for the relevant assessment year, no action under Section 147 can be taken after the expiry of four years from the end of the relevant assessment year unless income chargeable to tax had escaped assessment by reason of the failure on the part of the assessee to make a return under Section 139, or in response to a notice issued under Section 142(1) or Section 148, or to disclose fully and truly all material facts necessary for its assessment for that assessment year.

46. In the present case, the Assessment Year involved is Assessment Year 2014-15. The four years as provided in the proviso to Section 147 expired on 31st March 2019. The Notice under Section 148 of the Act was issued to the Petitioner on 26th March 2021 i.e. after the expiry of the said period of 4 years. In these circumstances, the Petitioner's assessment could be re-opened only if the Petitioner had failed to disclose fully and truly all material facts necessary for the purposes of its assessment.

47. The fact that the Petitioner is engaged in the business of managing, developing and maintaining the Container Terminal at Bharathi Dock at Chennai Port pursuant to a License Agreement with the Chennai Port Trust, that the Petitioner is an Indian company, that it is a wholly owned subsidiary of P & O Ports (Chennai) Ltd., Mauritius which is a wholly owned subsidiary of D.P. World Ltd., Dubai is all disclosed in the Annual Report, Tax Audit Report Form 3CEB and in the Income Tax Return of the Petitioner.

48. As far as the second reason given is concerned, a perusal of the reason itself indicates that the information relied upon by the Respondents forms a part of the Annual Report.

49. Thus, the Petitioner had disclosed all the material facts. In

paragraph 5 of the Reasons to Believe, the Respondents have made a bald statement that there was a failure on the part of the Petitioner to disclose fully and truly all material facts necessary for assessment for that year. However, Respondents have not stated as to what material facts were not disclosed by the Petitioner. This, by itself, shows that the Petitioner had not failed to disclose any material fact.

ORDER

50. In the light of the aforesaid discussion, and for the aforesaid reasons, the following Orders are passed:

a. The Petition is allowed in terms of prayer (A) of the Petition which reads as under:

> *"A. that this Hon'ble Court may be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and, after examining the legality and validity of the impugned notice dated 26.03.2021 issued under Section 148 of the Act (being EXHIBIT 'J' hereto), the impugned order dated 14.02.2022 (being EXHIBIT 'N' hereto) and the impugned show cause notice dated 15.03.2022 alongwith Draft assessment order (being Exhibit 'Q1' hereto)quash and set aside the same."*

b. Rule is made absolute in the aforesaid terms.

c. In the facts and circumstances of the case, there will be no order as to costs.

51. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**