Chennai Container Terminal Pvt.Ltd — Writ Petition No. 2959 of 2022

2026:BHC-OS:13165-DB

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 26 th March 2021

issued under of the Income Tax Act, 1961 ("the "), 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 12 th 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 and

Guidelines issued there under, to be successful. The Petitioner had received

Certificate for Commencement of Business as per the ,

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 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 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 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 L269: 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 , 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 of the Act.

13. The Petitioner filed its return of income for A.Y. 2014-15 on 28 th 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 01 st September 2015 under 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 30 th August 2016. Further, in

the course of hearing held on 09 th 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 02 nd 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

.

16. Thereafter, the Petitioner received a notice dated 26 th 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 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 13 th 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 L387:

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 01 st July 2021 interalia urging that the initiation of reassessment proceedings was

invalid in view of application of first proviso below 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 25 th 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 26 th

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 18 th

February 2022 issued under of the Act and dated 08 th March

2022 issued under of the Act requiring it to make its

submission on various aspects, including grant of deduction under of the I.T. Act on or before 14th March 2022. 22. In response to the above, the Petitioner, by its letter dated 14 th

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 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 26 th March 2021 had been issued under

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 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 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 21 st 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 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 15 th 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 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 of the Act. Hence, the deduction allowed under needs to be set aside.

32. Further, Ms.Kanani submitted that the Petitioner has claimed an inadmissible claim of deduction under 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