IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 32 OF 2016.

Parkkot Maritima Agencies Pvt. Ltd., having registered Office at Parkkot House, Swatantra Path, Vasco-da-Gama, Goa 403 602, represented herein by its Joint Managing Director Shri Vinod Parkkot, PAN Card No.AADCP 1208P …... Appellant.

V E R S U S

Commissioner of Income Tax
"Aaykar Bhavan",
Patto, Panai, Goa. …... Respondent.

Mr. Menino Pereira, Advocate for the appellant.

Ms. Asha Dessai, Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA & C.V. BHADANG, JJ.

Date : - 15th November, 2016.

ORAL ORDER : (PER SMT. R.P. SONDURBALDOTA , J.)

Heard Mr. Menino Pereira, learned Counsel appearing for the appellant and Ms. Asha Desai, learned Counsel appearing for the respondent.

2. This appeal filed by the appellant-Assessee challenges the order dated 12th August, 2015 passed by the Income Tax Appellate Tribunal (ITAT), Panaji, Goa in ITA No.199/PNJ/2015, disallowing expenditure of ₹ 68,71,290/-, allegedly incurred by the Assessee during the Assessment Year 2010-11, towards incentives paid to the loaders at Port premises, as business expenditure.

3. Before the Assessing Officer, the Assessee had claimed that the incentive to the extent of ₹ 68,71,290/- was required to be paid to the loaders at the Port to achieve timely completion of loading. By paying the incentive, the Assessee was able to save substantial amount of demurrages for its customers. The Assessing Officer rejected the claim holding that the loaders being employees of the Port Trust, the Local Authority were to be paid only their legitimate dues and any amount paid to them as inducement is illegal payment. In the appeal filed by Assessee, the Commissioner of Income-tax (Appeals), Panaji-1, vide his Order dated 25th February, 2015, relying upon the decision in the case of ***M/s. A.P.L. (India) Pvt. Ltd. vs. DCIT,*** (2005) 96 ITD 227 (Mum), held that speed money to the Dock workers cannot be

disallowed, treating the same as illegal in nature and allowed the expenditure of ₹ 68,71,290/- incurred by the Assessee during the said Assessment Year as business expenditure. The matter carried to ITAT by the Department. The ITAT, by the impugned Order, confirmed the nature of the payment as legal, but disallowed the deduction on the ground that the Assessee had not been able to prove that the payments made were in fact disbursed to the Port workers. At paragraph 11 of the impugned order, the learned ITAT refers to two of the vouchers produced by the Assessee to hold that it is difficult to relate the same to the loading activity in the concerned period of time. It observes that though the cash payment voucher specifies name of the person, it however, lacks details like address, contact number, or any other details relating to actual expenditure. Further, it is observed that the Assessee has only produced voucher specifying that payment is made towards disbursement for speeding up loading of a particular ship, but the dates do not tally nor the amount in cash payment voucher tallies with the amount mentioned in the list produced by the Assessee and ultimately disallowed the expenditure of ₹ 68,71,290/-. Being aggrieved, the Assessee has filed the present appeal.

4. Mr. Menino Pereira for the Assessee states that the Assessee is in possession of a number of vouchers and is in a position to establish that such expenditure was, in fact, incurred by the Assessee for the purpose of its business and requests for an opportunity to the Assessee to produce the vouchers. According to him, the vouchers produced earlier were only by way of an example so as not to burden the record. Ms. Ash Desai, the learned Advocate for the Department does not oppose to the request. She however requests that the remand for consideration of the additional material to be produced by the Assessee be to the Assessing Officer and not to the ITAT. She submits that the Assessing Officer would be in a better position to assess the material to be produced by the Assessee. We find substance in the submission.

5. In the above circumstances, without going into the merits of the matter, solely because the Assessee claims to have been in possession of additional vouchers which would prove the expenditure in question, we are of the opinion that it would be appropriate and in the interest justice to give an opportunity to the Assessee to produce such vouchers before the Assessing Officer and dispose of the appeal

in the following terms :

ORDER

(I) The impugned order dated 12th August, 2015, passed by the Income Tax Appellate Tribunal (ITAT), Panaji, Goa in ITA No.199/PNJ/2015 is quashed and set aside.

(II) The matter is remanded to the Assessing Officer for the limited purpose of giving an opportunity to the Assessee by production of additional evidence to establish that the expenditure incurred by it of ₹ 68,71,290/- was for business purpose.

(III) The Assessing Officer shall decide the issue within a period of one year from today.

C.V. BHADANG, J. **SMT. R.P. SONDURBALDOTA, J.**

ssm.