IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.90 OF 2017

The Principal Commissioner of
Income Tax, Panaji. ….. Appellant
Versus
Sea Hath Canning Company …... Respondent.

Ms Amira Razaq, Junior Central Govt. Standing Counsel for the Appellant.

Coram : N.M. Jamdar & Prithviraj K. Chavan, JJ.

Date : 30 October 2017.

P.C.:

The appeal is filed by the Revenue, challenging the decision of the Income Tax Appellate Tribunal, Panaji Bench, Panaji in ITA No.37/PAN/2016 dated 10 May 2016.

2. The Tribunal was considering the appeal filed by the Appellant-Revenue against the order of the Commissioner of Income Tax (Appeals) in Appeal No.123/CIT(A)PNJ-1/15-16 dated 28 December 2015.

3. The Respondent is a firm, engaged in the business of export of fish and fish products. The Respondent-Assessee filed its return of income on 31 December 2012. The Assessing Officer, by

an order dated 19 March 2015, held that the payments made to the suppliers of the Respondent-Assessee were made to the traders and not to the fish vendors or producers and, therefore, an amount of ₹ 9605330/- was disallowed and added to the income under Section 40A(3) of the Income Tax Act as the cash payments exceeded ₹ 20000/- An appeal was filed by the Respondent-Assessee before the Commissioner of Income Tax, which was partly allowed by the Commissioner by Order dated 28 December 2015 and disallowance of ₹ 9329370/- was deleted and disallowance of ₹ 275960/-, was confirmed. As against this order passed by the Commissioner (Appeals), the appellant-Revenue filed an appeal before the Tribunal, which was dismissed by the Tribunal by the impugned order.

4. The learned Counsel for the Appellant submitted that the question of law that would arise for consideration in this appeal is, whether the payments made to various persons by the Respondent-Assessee would fall within the ambit of Rule 6DD(e) and Section 40A(3), as they could not have been held to be payments for fish and fish products.

5. The Commissioner (Appeals), as well as the Tribunal, after considering the material, have rendered a factual finding that the payments to various persons were not bogus and they were for the

purpose of fish or fish products. No perversity in this factual finding is pointed out. Once this factual finding is accepted, then the payments will squarely fall within clause (3) of Rule 6DD of the Income Tax Rules read with Section 40A(3) of the Act. Therefore, the Commissioner (Appeals), as well as the Tribunal, have rightly given the benefit to the Respondent-Assessee of Section 40A(e) read with Rule 6DD(e).

6. In the circumstances, there is no merit in this appeal, which is accordingly dismissed.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***