

IN THE HIGH COURT OF KARNATAKA, BANGALORE

Dated this the 8th day of December, 2014

PRESENT:

THE HON'BLE Mr. JUSTICE N.KUMAR

AND

THE HON'BLE Mr. JUSTICE B. MANOHAR

Income Tax Appeal No.213/2009

BETWEEN

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING, ATTAVAR
MANGALORE
2. THE ASST. COMMISSIONER OF INCOME TAX
CIRCLE - 2(1), MANGALORE ... APPELLANTS

(By Sri E SANMATHI INDRAKUMAR, ADV.,)

AND

M/s. BLUE WATER FOODS & EXPORTS
PVT. LTD., INDUSTRIAL AREA
BAIKAMPADY, MANGALORE ... RESPONDENT

(By Sri S PARTHASARATHI, ADV.,)

THIS ITA FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT
OF ORDER DATED 1-12-2008 PASSED IN
ITA.NO.887/BANG/2008 FOR THE ASSESSMENT YEAR 2003-04,
PRAYING TO (i) FORMULATE THE SUBSTANTIAL QUESTIONS OF

LAW STATED THEREIN AND (ii) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA.NO.887/BANG/2008 DATED 1-12-2008.

THIS ITA COMING ON FOR FINAL HEARING, THIS DAY, **N.KUMAR, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The Revenue has preferred the appeal against the order passed by the Tribunal, which has held Section 40A(3) of the Income Tax Act, 1961 (for short hereinafter referred to as 'the Act') is not attracted to the facts of the case.

2. The assessee is a 100% Export Oriented Unit engaged in the Exports of Fish. The assessing authority during the course of assessment proceedings found that a sum of Rs.1,40,14,283/- cash payment had been made and the assessee has failed to produce the identity of purchases and the genuineness of purchases were not established. In other words, he held purchases to the aforesaid extent are not genuine and disallowed the same as these payments have been made by cash. In appeal preferred by the assessee, the

first appellate authority deleted the addition made by the assessing officer, but enhances the addition by disallowing 20% of the entire expenditure. In effect, disallowance was Rs.2,51,00,909/- as against Rs.1,40,14,283/- made by the assessing officer by invoking Section 40A(3) of the Act.

3. The assessee preferred an appeal before the Tribunal against the said order. The Tribunal held once the majority of the fish was purchased through banking channel, there was no reason to invoke the provision of Section 40A(3) of the Act for the entire purchases solely on the issue that the payments were not made to the producer of fish and therefore allowed the appeal and set aside the order of the assessing authority. Aggrieved by the said order, the Revenue is in appeal. On 9.9.2010, the appeal came to be admitted to consider the following substantial question of law:-

“Whether the Tribunal was justified in setting aside the order of the Appellate Tribunal which had disallowed 20% of the total purchases of fish on the

ground that the entire purchases are made by cash contrary to sub-section (3) of Section 40A, when the payment of entire consideration by cash was not in dispute?”

4. We have heard the learned Counsel for the parties.

5. Section 40A(3) reads as under:-

“Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March, 1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding ([twenty] thousand) rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, [twenty per cent of such expenditure shall not be allowed as a deduction].”

6. Rule 6DD(f) of the Income Tax Rules, 1962 (for short hereinafter referred to as ‘the Rules’) reads as under:-

“(f) where the payment is made for the purchase of-

- (i) agricultural or forest produce; or*
- (ii) the produce of animal husbandry (including hides and skins) or dairy or poultry farming; or*
- (iii) fish or fish products; or*
- (iv) the products of horticulture or apiculture,*

to the cultivator, grower or producer of such articles, produce or products;”

7. The circular issued dated 5.12.2008 explaining the meaning of the expression ‘fish or fish products’ used in sub-clause (iii) of clause (e) of rule 6DD of the Rules reads as under:-

“(i) The expression ‘fish or fish products’ used in rule 6DD(e)(iii) would include ‘other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.’.”

8. The argument of learned Counsel for the Revenue is the assessee has not produced any material to show that

they have purchased this fish from the producer. Therefore, the assessee is not entitled to the benefit of Rule 6DD of the Rules.

9. The material on record discloses that the assessee procures fish from sea shore bordering Goa to Kochi and has been able to make export turn over of more than Rs.10 crores. The 'producers' of 'fish or fish products' for the purpose of rule 6DD(e) of the Rules would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

10. It is only when fish is purchased from a trader; broker or any other middleman, the benefit of the aforesaid provision is not available. The assessee is a trader/exporter of fish. The assessee has purchased the fish from the fishermen or the headman of the fisher and once the

purchase is made of fish from the aforesaid persons, no disallowance under sub-section (5) shall be made, even if any portion in a sum exceeding twenty thousand rupees is made to a person in a day, otherwise than by a crossed cheque drawn on a bank or an crossed bank draft in the cases of bank draft. Therefore, the order passed by the Tribunal holding that Section 40A(3) is not attracted to the facts of this case, is proper and cannot be found fault with. Thus, the substantial question of law is answered in favour of the assessee and against the revenue.

11. We do not find any merit in the appeal. Accordingly, appeal is ***dismissed***.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

cp*