

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

**I.T.A.No.468/2018 c/w I.T.A.No.816/2017,
I.T.A.No.817/2017, I.T.A.No.818/2017,
I.T.A.No.819/2017, I.T.A.No.820/2017,
I.T.A.No.821/2017, I.T.A.No.469/2018,
I.T.A.No.470/2018, I.T.A.No.471/2018,
I.T.A.No.472/2018 & I.T.A.No.473/2018**

IN I.T.A.No.468/2018:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001
- 2 . THE ASST. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1, PRESENT ADDRESS
ACIT, CIRCLE -1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALESH, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 28.02.2018 PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.194/BANG/2017 (IN ITA NO.1358/BANG/2015) FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.194/BANG/2017 (IN ITA NO.1358/BANG/2015) DATED 28.02.2018 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-1(1), MANGALURU.

IN I.T.A.No.816/2017:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001

- 2 . THE ASST. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1,
PRESENT ADDRESS ITO,
WARD-1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALESH, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 02.05.2017 PASSED IN ITA NO.1358/BANG/2015 FOR

THE ASSESSMENT YEAR 2006-2007, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.1358/BANG/2015 DATED 02.05.2017 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1(1), MANGALURU.

IN I.T.A.No.817/2017:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001
- 2 . THE ASSISTANT COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-1,
PRESENT ADDRESS ITO,
WARD-1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

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AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALES, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 02.05.2017 PASSED IN ITA NO.1359/BANG/2015 FOR THE ASSESSMENT YEAR 2007-2008, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.1359/BANG/2015 DATED 02.05.2017 AND CONFIRM THE ORDER OF THE APPELLATE

COMMISSIONER CONFIRMING THE ORDER PASSED BY THE
INCOME TAX OFFICER, WARD-1(1), MANGALURU.

IN I.T.A.No.818/2017:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001

- 2 . THE ASSISTANT COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-1,
PRESENT ADDRESS ITO,
WARD-1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALESH, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION
260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER
DATED 02.05.2017 PASSED IN ITA NO.1360/BANG/2015 FOR
THE ASSESSMENT YEAR 2008-2009, PRAYING TO
I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED
ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS
PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL,
BENGALURU IN ITA NO.1360/BANG/2015 DATED 02.05.2017
AND CONFIRM THE ORDER OF THE APPELLATE
COMMISSIONER CONFIRMING THE ORDER PASSED BY THE
INCOME TAX OFFICER, WARD-1(1), MANGALURU.

IN I.T.A.No.819/2017:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001

- 2 . THE ASSISTANT COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-1,
PRESENT ADDRESS ITO,
WARD-1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALESH, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 02.05.2017 PASSED IN ITA NO.1361/BANG/2015 FOR THE ASSESSMENT YEAR 2009-2010, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.1361/BANG/2015 DATED 02.05.2017 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1(1), MANGALURU.

IN I.T.A.No.820/2017:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA

MANGALURU-575001

- 2 . THE ASSISTANT COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-1,
PRESENT ADDRESS ITO,
WARD-1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALES, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 02.05.2017 PASSED IN ITA NO.1362/BANG/2015 FOR THE ASSESSMENT YEAR 2010-2011, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.1362/BANG/2015 DATED 02.05.2017 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1(1), MANGALURU.

IN I.T.A.No.821/2017:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001
- 2 . THE ASSISTANT COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-1,
PRESENT ADDRESS ITO,
WARD-1(1), C.R.BUILDING

ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALES, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 02.05.2017 PASSED IN ITA NO.1363/BANG/2015 FOR THE ASSESSMENT YEAR 2011-2012, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.1363/BANG/2015 DATED 02.05.2017 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1(1), MANGALURU.

IN I.T.A.No.469/2018:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001
- 2 . THE ASST. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1,
PRESENT ADDRESS ACIT,
CIRCLE -1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001

...RESPONDENT

(BY SRI M.THIRUMALESH, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 28.02.2018 PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.195/BANG/2017 (IN ITA NO.1359/BANG/2015) FOR THE ASSESSMENT YEAR 2007-2008, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.195/BANG/2017 (IN ITA NO.1359/BANG/2015) DATED 28.02.2018 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-1(1), MANGALURU.

IN I.T.A.No.470/2018:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001
 - 2 . THE ASST. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1,
PRESENT ADDRESS ACIT,
CIRCLE -1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001
- ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,

TRIBUNAL, BENGALURU IN M.P.NO.198/BANG/2017 (IN ITA NO.1362/BANG/2015) FOR THE ASSESSMENT YEAR 2010-2011, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.198/BANG/2017 (IN ITA NO.1362/BANG/2015) DATED 28.02.2018 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-1(1), MANGALURU.

IN I.T.A.No.473/2018:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX
C.R.BUILDING, ATTAVARA
MANGALURU-575001
- 2 . THE ASST. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1,
PRESENT ADDRESS ACIT,
CIRCLE -1(1), C.R.BUILDING
ATTAVARA, MANGALURU-575001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s HASSAN HAJEE & CO.,
NO.20-8-678,
NEAR OLD MUNICIPAL OFFICE
BUNDER, MANGALURU-575001 ...RESPONDENT

(BY SRI M.THIRUMALESH, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 28.02.2018 PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.199/BANG/2017 (IN ITA NO.1363/BANG/2015) FOR THE ASSESSMENT YEAR 2011-2012,

PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.199/BANG/2017 (IN ITA NO.1363/BANG/2015) DATED 28.02.2018 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-1(1), MANGALURU.

THESE APPEALS COMING ON FOR HEARING, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Since the common and alike questions are involved in these appeals, the same are heard and disposed of by this common judgment.

2. ITA Nos.816/2017, 817/2017, 818/2017, 819/2017, 820/2017, 821/2017 are directed against the common order dated 02.05.2017 passed in ITA Nos.1358/Bang/2015, 1359/Bang/2015, 1360/Bang/2015, 1361/Bang/2015, 1362/Bang/2015, 1363/Bang/2015 by the Income Tax Appellate Tribunal, Bangalore [‘Tribunal’ for short] relating to the

assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 respectively.

3. ITA Nos.468/2018, 469/2018, 470/2018, 471/2018, 472/2018, 473/2018 are directed against the common order dated 28.02.2018 passed in M.P.No.194/Bang/2017 (ITA No.1358/Bang/2015), M.P.No.195/Bang/2017 (ITA No.1359/Bang/2015), M.P.No.196/Bang/2017 (ITA No.1360/Bang/2015), M.P.No.197/Bang/2017 (ITA No.1361/Bang/2015), M.P.No.198/Bang/2017 (ITA No.1362/Bang/2015), M.P.No.199/Bang/2017 (ITA No.1363/Bang/2015) by the Income Tax Appellate Tribunal, Bangalore ['Tribunal' for short] relating to the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 respectively.

4. These appeals were admitted to consider the following substantial questions of law:-

**ITA Nos.468/2018, 469/2018, 470/2018,
471/2018, 472/2018, 473/2018**

“1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in giving a finding that it has not rendered any finding as to the nature of the payments found in the loose sheets?

2. Whether on the facts and circumstances of the case, the order of the Tribunal can be said as perverse in holding that illegal payments were not made to the port officials ignoring the evidences seized during the course of search operations and the statements recorded during the course of search?

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside disallowance of unauthorized payments made to port officials in the guise of speed money ignoring Explanation (1) to Section 37(1) of the Act which bars from making claim under said section in respect of unauthorized payments?”

**ITA Nos.816/2017, 817/2017, 818/2017,
819/2017, 820/2017, 821/2017.**

“1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in deleting the disallowance made by the assessing officer on account of speed money claimed as labour charges in the books of accounts?

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in deleting the disallowance of labour charges claimed as sub-contract payments by the assessee ignoring contradictory statements given by the assessee during appellate proceedings before the CIT(A) and factual investigations conducted by the CIT(A)?

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in deleting disallowance of speed money claimed as labour charges through employee sub-contractors ignoring the evidence found during the course of search and investigations which suggested that the said expenses were not genuine?

4. *Whether on the facts and in the circumstances of the case, the Tribunal is right in law disallowance of speed money claimed as labour charges to disguise payments made to port officials not authorized by law, ignoring the evidence found during the course of search action and post search investigations?*

5. *Whether on the facts and circumstances of the case, the Tribunal is right in law in deleting the disallowance of labour charges claimed on the basis of inadequate supporting documents ignoring the fact that the supporting documents suffered from various discrepancies?”*

5. The assessee is a partnership firm engaged in the business of stevedoring, clearing, forwarding and other services relating to the New Mangalore Port Trust (NMPT). A search was conducted under section 132 of the Income Tax Act, 1961 (“Act” for short), assessment order came to be passed whereby the Assessing Officer made certain additions by disallowing of speed money claimed as labour charges paid through sub-

contractors. Being aggrieved, the assessee preferred appeals before the CIT (A). The said authority partly allowed the appeals vide order dated 10.07.2015, against which the Revenue preferred appeals before the Tribunal relating to the assessment years 2002-03 to 2003-04, 2006-2007 to 2011-2012 and the assessee preferred appeal relating to the assessment year 2004-05. The Tribunal has partially granted the relief to the assessee with some directions. The assessee preferred Miscellaneous Petition Nos.191 to 199/Bang/2017 seeking for modification of the order dated 02.05.2017. The Tribunal passed the order dated 28.02.2018 observing that no finding was given or any observation was made with regard to the nature of payments found in loose sheets. Challenging the order of the Tribunal dated 02.05.2017 as well as the order passed in Miscellaneous Petitions dated 28.02.2018, the Revenue has preferred appeals raising common substantial

questions of law and grounds for all the assessment years in question.

6. Learned counsel for the Revenue submitted that the Tribunal erred in deleting the disallowance allowed by the Assessing Officer on account of speed money claimed as labour charges in the books of accounts claimed as sub-contract payments by the assessee ignoring contradictory statements given by the assessee during the appellate proceedings and before the CIT(A) during the investigations conducted by the said authority. The speed money claimed as labour charges to disguise payments made to port officials not being authorized by law, the same having been discovered during the course of search and post-search investigations, deleting such disallowance by the Tribunal sans valid reasons is unjustifiable. Further the Tribunal erred in setting side the additions made by the Assessing Officer which indeed was duly supported with

material evidence. On the Miscellaneous Petitions filed by the assessee, the finding given by the Tribunal that no observation or finding was made with regard to the legality of payments shown in loose sheets goes contrary to the material on record and the same is perverse and factually incorrect.

7. Learned counsel for assessee would submit that on disallowance of expenditure towards speed money in the appeal filed by the assessee, CIT(A) has recorded that the Assessing Officer has not brought out any material to restrict the speed money expenses to Rs.26/- per metric ton. The Assessing Officer has merely relied upon the vouchers relating to one ship found at the time of the raid in 2011, applied the same rate to all assessment years under consideration which is not justified. Accordingly, the addition was deleted for the reason that the assessment cannot be reopened as it amounts to change of opinion. It was further

observed by the CIT (A) that the Assessing Officer has also disallowed the amounts paid to the employees through sub-contractors which were accounted under the total speed money payment, 10% disallowance of the entire speed money paid shall serve the ends of justice. Against the said appellate order, both the assessee as well as the Revenue had preferred appeals before the Tribunal. The Tribunal while deciding the appeals of the Revenue, concluded that the disallowance to the extent of 10% is just and proper without adjudicating upon the challenge made by the Revenue in respect of the allowance of speed money charges to the extent of 90% i.e., over and above Rs.26/- per ton. Indeed the appeals filed by the assessee are pending consideration before the jurisdictional Tribunal. In the Miscellaneous Petitions filed by the assessee seeking rectification of the order dated 02.05.2017, relating to the findings made that, "from the mere perusal of the loose sheets it is clear that 10% of the cash payments

was made to the officials of the port trust”, the Tribunal has clarified that no finding was rendered as to the nature of the payments found in the loose sheets. Learned counsel placing reliance on the judgment of this Court in the case of ***CIT, Mangalore vs. M/s. Konkan Marine Agencies, Mangalore (ITA.No.603/2004 DD 28.07.2008), CIT, Mangalore vs. Sri Clifford D’Souza (ITA.No.22/2011 DD 24.02.2015)***, submitted that the speed money payments made by the assessee to the sub-contractors, to the labourers, is considered to be a normal practice in the line of the business of the assessee to pay certain extra amounts to port labourers as speed money for promptly and speedily carrying on the labour work of handling cargo beyond working hours. Thus, the payment made through sub-contractors to labourers is not prohibited by law.

8. We have carefully considered the submissions made by the learned counsel for the parties and perused the material on record.

9. The search and seizure operation in the case of assessee was carried out on 4.8.2011 in terms of the provisions of the Act. During the course of search, certain incriminating evidence has been seized. On the basis of the said incriminating material, it was noticed by the Assessing Officer that the assessee was inflating the expenditure substantially. In pursuance of the search and seizure conducted, notices were issued to the assessee under section 153A and 143(2) of the Act, subsequent to which, the assessee filed the return of income. The Assessing Officer has referred to the statements recorded during the course of search and seizure and analysed the statements given by different persons namely Sri.Abdul Aziz, Accountant of the assessee – Firm, Sri.Hemachandra Shetty, Manager of

the assessee – Firm, Sri.Mohammed Shariff, Supervisor of the assessee – Firm, Sri. Mohammed Amin, Partner of the assessee – Firm, Sri.B.Kunhi Ahmed, partner of the assessee – firm vis-à-vis the seized documents. It is also recorded that the Department has made several enquiries during the course of post-search investigation by recording the statement of some of the port-labourers under section 131 of the Act and collecting information from around 500 port labourers under section 133 (6) of the Act who have denied receipt of any amount from the stevedoring or C & F agents. Speed money payments said to have been paid through the sub-contractors to whom the cheques were issued also got verified by recording statements of those sub-contractors under section 131 of the Act. Having extensively considered the incriminating materials discovered at the time of search and seizure and the statements of the relevant persons recorded, disallowed the expenditure claimed. While determining the quantum of speed money of

Rs.26/- per ton against the claim of Rs.50/- per ton made by the assessee, held that the same is based on evidence, but the assessee has failed to establish that the same is more than Rs.26/- per ton. Relating to the amounts which have been paid to the Government officials, opined that the same amounts to an offence prohibited under law by making illegal gratification for undue favours, such expenditure cannot be allowed in the pretext of speed money.

10. The Appellate Authority has consolidated the entire issues and disallowed 10% of the entire speed money expenditure claimed. As could be seen, appeals filed by the assessee relating to the disallowance of 10% speed money expenditure is still pending before the jurisdictional Tribunal. Tribunal while considering the case of the Revenue relating to the assessment years in question, challenging the allowance of 90% of speed money observed that “*mere perusal of the loose sheets it*

is clear that about 10% of the cash payments was made to the officials of the port trust". Consequently, held that disallowance to the extent of 10% is just and proper. This order amounts to allowing the appeals filed by the assessee which are still pending where the challenge is made to the extent of disallowance of 10%. On further miscellaneous petitions filed by the assessee, strangely the Tribunal has held that no finding has been rendered as to the nature of payments found in loose sheets which is ex-facie contrary to the finding recorded in the order dated 02.05.2017. This would indicate that the Tribunal has not applied its mind while arriving at the conclusion. The Tribunal being the last fact finding authority ought to have discussed the factual aspects, more importantly when the Assessing Officer has made efforts to discover the tax evasion, placing reliance on the incriminating materials seized and the statements of the relevant persons recorded. Instead of adjudicating on the challenge made by the Revenue, passing the

orders to the effect of deciding the subject matter of the appeals filed by the assessee which were not before the Tribunal, amounts to perversity and suffers from patent illegality. The impugned orders lack application of mind and reasoning. Given the circumstances, we have no other option except to set aside the impugned orders and remand the matter to the Tribunal for reconsideration, keeping open all the rights and contentions of the parties sans answering the substantial questions of law.

11. The Tribunal is directed to club these matters along with the appeals filed by the assessee and shall take appropriate decision in accordance with law in an expedite manner. Hence, the following:

ORDER

Appeals are allowed in part.

The impugned common order dated 02.05.2017 passed by the Tribunal in ITA Nos.1358/Bang/2015,

1359/Bang/2015, 1360/Bang/2015, 1361/Bang/2015, 1362/Bang/2015, 1363/Bang/2015 relating to the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 respectively and the common order dated 28.02.2018 passed by the Tribunal in M.P.No.194/Bang/2017 (ITA No.1358/Bang/2015), M.P.No.195/Bang/2017 (ITA No.1359/Bang/2015), M.P.No.196/Bang/2017 (ITA No.1360/Bang/2015), M.P.No.197/Bang/2017 (ITA No.1361/Bang/2015), M.P.No.198/Bang/2017 (ITA No.1362/Bang/2015), M.P.No.199/Bang/2017 (ITA No.1363/Bang/2015) relating to the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 respectively are set aside.

The appeals are restored to the file of the Tribunal for re-consideration, keeping open all the rights and contentions of the parties. The Tribunal shall club these matters along with IT (SS) A Nos.1 to 6/Pan/2015 filed

by the assessee and after providing reasonable opportunity of hearing to both the parties shall take appropriate decision in accordance with law in an expedite manner, keeping in mind the search and post search investigation reports of the Assessing Authority. Such exercise shall be made in an expedite manner in accordance with law.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BSS/PMR/NC.