THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A. No. 464 of 2015

ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

This appeal, at the instance of Revenue, arises from the order dated 28.01.2011, in ITA No.1409/Hyd/2010 of the Income Tax Appellate Tribunal, for the assessment year 2004-05. Two questions of law said to be arising from the orders of the Tribunal have been raised before us for the Assessment Year 2004-05. The questions read as under:

> **"(A) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the expression total turnover and export turnover found in Section 10A of the Income Tax Act are co-terminus and any component, if excluded from export turnover, should also be excluded from the total turnover for the purposes of grant of deduction under section 10A of the Income Tax Act.?**
>
> **(B) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the communication expenses to a tune of Rs.6,72,64,568/- cannot be included in the total turnover, merely because the same stood excluded from export turnover?"**

2. The sum and substance of the questions is that, whether the communication charges for the total turnover for the purpose of computing deduction under Section 10A of the Income Tax Act are includable in the export turnover.

3. The predominant opinion of all the Courts is that if the

communication charges are to be excluded from the export turnover, the same also needs to be excluded from the total turnover. This issue is now settled by the judgment of the Bombay High Court in **Commissioner of Income Tax v. Gem Plus Jewellery India Ltd.,**[1] and Karnataka High Court judgment in **Commissioner of Income Tax and another v. Tata Elxsi Limited**[2]**.** These two judgments have been followed by this Court in the case of **Commissioner of Income Tax-III v. Virinchi Technologies Ltd.** in ITTA No.591 of 2013 while dismissing the appeal filed by the Department on 06.12.2013.

4. Respectfully following the opinion expressed by this Court in **Virinchi Technologies**, the questions of law are answered in favour of the assessee and against the Revenue.

5. The appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

11th August, 2015

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HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

<u>I.T.T.A. No. 464 of 2015</u>

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[1] [2011] 330 ITR 175 (Bom)

[2] [2012] 349 ITR 98 (Karn)