THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. No. 747 of 2014

DATED:21.01.2015

Between:
The Commissioner of Income Tax –II,
Hyderabad.

… Appellant

And

M/s. Virtusa (India) Pvt. Ltd.,
Hyderabad.

….Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. No. 747 of 2014

Judgment: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted against the order of the learned Tribunal dated 24.8.2012 in relation to the assessment year 2006-2007 on the following suggested questions of law:

1. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is justified in law in not upholding the order of the Assessing Officer excluding the communication charges and insurance charges from Export Turnover and directing the Assessing Officer to consider the "Principle of Parity" in deciding the issue ?

2. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is justified in not upholding the order of the Assessing Officer excluding the Reimbursed expenses from Export Turnover and directing the Assessing Officer to consider the "Principle of Parity" in deciding the issue ?

3. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in upholding the order of the learned Commissioner of Income Tax (Appeals) directing the Assessing Officer to consider the statutory disallowances under Section 40A(3), Section 40A(7) and Section 43B of the Act as eligible business profits for computation of deduction under Section 10A of the Act without appreciating that the statutory disallowances are not profits earned by the Respondent assessee ?

We have heard Mr. B.Narasimha Sarma, learned counsel appearing for the Revenue and have gone through the impugned judgment and order of the learned Tribunal.

It appears, the learned Tribunal while deciding the appeal on the points agitated before us, remanded the matter for hearing on the issue of exclusion of communication charges and insurance from the total turn over. So, no decision has been rendered on merits and there is no point of admitting the appeal on the aforesaid issue. We have noted the facts narrated in the impugned order. There is no allegation that the matter was remanded on absurd ground.

As far as the other issue is concerned, namely, the statutory disallowances under Sections 40A(3), 40A(7) and 43-B of the Act in connection with the deduction under Section 10-A, we find that the learned Tribunal decided the issue in favour of the assessee, following its earlier judgments in the case of **Planet Online Pvt. Ltd.**, in I.T.A. No. 1016/Hyd/07 and **Zawata India Pvt. Ltd**., in I.T.A. No. 1100/Hyd/2009. It was not argued before us that the earlier decisions of the learned Tribunal have been upset or any appeals have been filed before this Court against those decisions.

Therefore, we do not find any element of law for admitting the appeal.

The appeal is accordingly dismissed.

Consequently, the miscellaneous applications, if any pending, shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,
J

21st January, 2015
Pnb