THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A. No. 27 of 2015

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

This appeal, at the instance of Revenue, arises from the order dated 30.09.2014 in ITA No.1065/Hyd/2014 of the Income Tax Appellate Tribunal, for the assessment year 2009-10. The following substantial questions of law are raised in the Memorandum of Grounds of Appeal:

> **"i. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in setting aside the order of the Commissioner of Income Tax holding that the order of the Assessing Officer is not erroneous without appreciating the fact that the expenditure under Section 40(a)(i)/Section 40(a)(ia) and Section 36(a)(va) of the Income Tax Act 1961 were not discussed by the Assessing Officer while allowing the claim of the Respondent-assessee under Section 10AA of the Income Tax Act 1961, which otherwise are not allowable and hence the order is erroneous and prejudicial to the interest of the Revenue?**
>
> **ii. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in holding that the exemption under Section 10A of the Income Tax Act 1961 is to be allowed even on the disallowed amount for non-compliance of statutory provisions, without appreciating that the addition on account of statutory non-compliance will not add to the true business profits of the Respondent-assessee and that the amounts so added will actually to be allowed in the year of their payment and therefore, the allowance of deduction under Section 10 of the Income Tax Act 1961 in the year under consideration will amount to double benefit?"**

2. The Commissioner of Income Tax, while exercising powers under Section 263 of the Income Tax Act, directed the Assessing Officer to consider the submissions of the assessee regarding the 'profits' quantified for allowing deduction under Section 10AA of the

Income Tax Act and decide the issue thereafter; and to examine whether the disallowance made out of ‘Employeess Provident Fund’ is to be brought to tax under the head “Income from other sources”; and also give fresh opportunity to the assessee to make submissions and consider the submissions before completing the assessment. Aggrieved by the orders passed under Section 263 of the Income Tax Act, 1961, by the Commissioner of Income Tax-III, Hyderabad, the assessee preferred an appeal before the Income Tax Appellate Tribunal, Hyderabad Bench ‘A’, Hyderabad. The Income Tax Appellate Tribunal allowed the appeal filed by the assessee holding that the view taken by the Assessing Officer is one of the possible views and, as a matter of fact, the view taken by the Assessing Officer is in line with the judgment of the Bombay High Court in **CIT v. Gem Plus Jewellery India Ltd.**[1]. The Tribunal recorded a finding that the twin conditions of the order of assessment being erroneous as well as prejudicial to the interest of the Revenue are not satisfied. The Tribunal accepted the argument of the assessee that all the material necessary for allowing the claim under Section 10AA of the Act was available on record and the issue of statutory disallowance under Section 40(a)(ia) of the Act as business profit eligible for deduction under Section 10A of the Act, has been considered by the Tribunal in the case of **Virtusa India Pvt. Ltd. v. DCIT**[2]**,** and the ratio laid down in the said order is squarely applicable to the facts in the present case. These aspects of the Tribunal before us, there is no other material to take a contra view and nothing new has been brought before us to take a contra view. Having regard to the facts and circumstances of the case, we do not see any reason to interfere with the impugned order.

3. 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

15th June, 2015

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HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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[1] (2011) 330 ITR 175

[2] (2014) 41 taxmann. Com 244 (Hyd) (Trib)